

FORM 13

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SC Court of Appeals

APPELLANT'S FINAL BRIEF

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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APPEAL FROM COLLETON COUNTY

Court of Common Pleas

Kenneth A. Campbell, Jr., Special Referee

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Appellate Case No. 2019-001886

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Patricia E. Campbell

Respondent

v.

Joanne Ahearn and Robert J. Plum

Appellant's

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APPELLANT'S FINAL BRIEF

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Joanne Ahearn 4-5-2021

Joanne Ahearn

Date

504 Forest Circle Apt. 123

Walterboro, South Carolina, 29488

843-603-0566

Pro See

Robert J. Plum 4/5/2021

Robert J. Plum

Date

504 Forest Circle Apt. 123

Walterboro, South Carolina, 29488

843-603-0566

Pro See

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STATEMENT OF ISSUES ON APPEAL

1. WERE THE APPELLANT'S PROPERLY SERVED CONCERNING THE ACTIONS TAKEN BY THE RESPONDANT'S REMOVING THE APPELLANT'S FROM THE RESPONDANT'S DEEDED PROPERTY IN COLLETON COUNTY SOUTH CAROLINA?
  
2. DID RESPONDANT DIVULGE ANY INFORMATION TO THE RESPONDANT'S ATTORNEY ON RECORD OR KENNETH A. CAMPBELL JR., SPECIAL REFEREE PERTAINING TO THE WHEREABOUTS OF APPELLANTS, INCLUDING ANY CONTACT PHONE NUMBERS, ANY VOICEMAIL MESSAGES LEFT BY RESPONDANT, OR THE APPELLANT'S FLORIDA ADDRESS PRIOR TO, DURING OR AFTER THE RESPONDANT TAKING THE ACTION IN REMOVING APPELLANTS FROM THE RESPONDANT'S DEEDED PROPERTY IN COLLETON COUNTY, SOUTH CAROLINA?
  
3. DID RESPONDANT OFFER ANY PROOF CLAIMING ALLEDGED LACK OF MENTAL INCAPACITY DURING THE SIGNING OF THE APPELLANTS TO RESPONDANT'S DEEDED PROPERTY?
  
4. WHY DID RESPONDANT LIST ROBERT J. PLUM AS SUCCESSOR AGENT FOR RESONDANT'S HEALTH CARE POWER OF ATTORNEY?
  
5. WAS THE REPONDANT UNDER ANY KIND OF ALLEDED DURESS?
  
6. COULD DEBORAH B. KANE HAVE KNOWN OF THE MENTAL INCAPACITY OF RESPONDANT ON DECEMBER 18, 2018, DURING THE SIGNING OF THE LEGAL DOCUMENT PLACING THE APPELLANTS ON THE RESPONDQNT'S DEEDED PROPERTY?

7. DID THE RESPONDANT MEET THE BURDEN OF PROOF DURING THE FINAL JUDGEMENT TO HAVE THE DEED IN QUESTION SET ASIDE?

#### STATEMENT OF THE CASE

The previous contract was conveyed to the Respondent and Appellants by property deed dated December 18, 2018. On or about April 11, 2019 the Respondent brought this action in filing a complaint and alleging the unknown whereabouts of the Appellants. The Respondent also alleged she lacked the mental capacity (S.C. Ann. 44-23-410), (2012), (S.C. Ann. 44-23-410(A), (2011), (S.C. Ann. 44-23-410)(1), (2011) to make that lawful decision with adding the Appellants to the Respondent's deeded property in Colleton County, South Carolina on December 18, 2018, four months after the fact in placing the Appellants on her deeded property. On April 15, 2019 the Respondent petitioned for a publication in the Colletonian on three separate dates, April 25, 2019, May 2, 2019 and May 9, 2019. The complaint action was tried on October 7, 2019 and judgment was entered and granted on October 9, 2019. On November 21, 2019 the Appellants served and filed the amended notice of appeal on the Respondent through The South Carolina Court of Appeals, Case No. 2019-001886.

#### STANDARD OF REVIEW

The case of Vereen V. Bell, (1971) is an action to rescind and cancel a deed to real estate on the grounds of alleged lack of mental capacity of the grantor. This case is one of equitable

jurisdiction. The Respondent failed to carry the burden of proof as to mental incompetency in this case to execute a deed (Vereen V, Bell, (1971). In the case of ( Vererdy v. Daniels, 2001), on December 16, 1996, Vererdy, Appellant brought this action to set aside the power of attorney (Vererdy v. Daniels, 2001), both documents executed by her mother Doris W. Thames. Veredy alleges that on that date her mother Doris W. Thames lacked the mental capacity. The Probate Court dismissed Veredy's action, holding Thames was mentally competent at the time the documents were executed in favor of Daniels, the former power of attorney which appointed Vererdy her attorney in fact ( Vererdy v. Daniels, 2001). The Respondent in this case failed to carry the burden of proof as to lack of mental competency to revoking the former power of attorney (Vererdy V. Daniels, 2001).

#### STATUTES

South Carolina Code 16-9-1(1)(1993). It is unlawful for a person to willfully give false, misleading or incomplete testimony under oath in any Court of record, Judicial, Administrative, or Regulatory proceedings in this state([www.scstatehouse.gov](http://www.scstatehouse.gov), 1993).

S.C. Code Ann. 44-23-410 (2012). Determining fitness to stand trial; time for conducting examination; extension; independent examination; competency distinguished.

S.C. Code Ann. 44-23-410(A) (2011). Whenever a judge of the circuit or family court has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own, the judge shall: S.C. Code Ann.

(2011) order examination of the person by two examiners designated by the department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs, if the person is suspected of having intellectual disability or having a related disability or both sets of examiners if the person is suspected of having both mental illness or related disability. The examination must be made within thirty days after the receipt of the court's order and may be conducted in any suitable place unless otherwise designated by the court.

#### ARGUMENT

1. WERE THE APPELLANTS PROPERLY SERVED CONCERNING THE ACTIONS TAKEN BY THE RESPONDANT REMOVING THE APPELLANTS FROM THE RESPONDANT'S DEEDED PROPERTY IN COLLETON COUNTY, SOUTH CAROLINA?

The Appellants elected to include the following in the Appellants reply Brief in response to Respondent's Brief which contain Actions taken against the Appellants which contain either the Appellants whereabouts are unknown or the verbiage contained in these documents lead in the direction of the Appellants whereabouts are unknown. Health Care POWER OF ATTORNEY (Exhibit 1), which list Appellant Joanne Ahearn as Primary Health Care Power of Attorney lists Joanne Ahearn's phone number, being (843) 603-0566, the phone number which she is still in possession today. Appellant Robert J. Plum was listed as Successor Health Care Power of Attorney (exhibit 1), listing Robert J. Plum's phone number and Robert J. Plum's Florida address. Respondent Patricia E. Campbell initialed each page and

signed where required in the presence of two witnesses, Deborah B. Kane and Sarah Kinard. The Respondent's signature was also notarized, dated December 18, 2018, TITLE TO REAL ESTATE, (exhibit 2). Respondent Patricia E. Campbell added Appellants Joanne Ahearn and Robert J. Plum as joint tenants with rights to survivorship. Once again Respondent Patricia E. Campbell signed the TITLE TO REAL ESTATE with two witnesses present, Deborah B. Kane and Sarah Kinard. The document was notarized on December 18, 2018. Last Will and Testament of Patricia E. Campbell, (exhibit 3), number two, I will, devise and bequeath all of my estate, whether real, personal or mixed, and where over situate, to my daughter, Joanne Ahearn and her fiancé Robert J. Plum, share and share alike, absolutely and in fee simple, signed by Respondent Patricia E. Campbell and witnessed by Deborah B. Kane and Sarah Kinard, also notarized. IN THE COURT OF COMMON PLEAS, COMPLAINT, (exhibit 4), number two, that the Defendants whereabouts are unknown, dated April 10, 2019. (Exhibit 5), Appellants Motion to file Rule 60(b)(3), Respondent Patricia E. Campbell's inexcusable neglect and fraud, dated January 10, 2020. Appellant Robert J. Plum received a text message from Respondent Patricia E. Campbell dated November 7, 2019 at 1:32 am, (exhibit 6). (Exhibit 7), Record of hearing, dated October 7, 2020, publication in the Colletonian. (Exhibit 8), ORDER QUIETING TITLE TO PROPERTY, FINDING OF FACTS, that the defendant's residency is unknown, dated September 7, 2019. CONFORMATORY DEED, (Exhibit 9), dated October 7, 2019. (Exhibit 10), petition for publication.

2. DID RESPONDANT DIVULGE ANY INFORMATION TO THE RESPONDANT'S ATTORNEY ON RECORD OR KENNETH A. CAMPBELL JR., SPECIAL REFEREE, PERTAINING TO THE

APPELLANTS, INCLUDING ANY CONTACT PHONE NUMBERS, ANY VOICE MESSAGES LEFT BY RESPONDANT, OR THE APPELLANTS FLORIDA ADDRESS PRIOR TO, DURING OR AFTER THE RESPONDANT TAKING THE ACTION IN REMOVING APPELLANTS FROM RESPONDANT'S DEEDED PROPERTY IN COLLETON COUNTY, SOUTH CAROLINA?

The Respondent offered no location as to where the Appellants were located. the Respondent also did not anytime offer voice mails left on Appellant Joanne Ahearn's Phone number, (843) 603-0566. The following is a transcript created of the voice mails. The Respondent also failed to mention the text message sent to APPELLANT Robert J. Plum's phone number (386) 416-9561 on November 7, 2020 at 1:32 am, entered as (Exhibit 6), where the Respondent's attorney Benjamin Cullifer Pickens Sapp stated "Appellants offered text messages that occurred after the judgment of the court and are inconclusive as to whether the Respondent sent these messages, although they appear to have been sent from the Respondent's telephone." The statement made by the Respondent's attorney Benjamin Cullifer Pickens Sapp, " although they appear to be sent from the Appellants telephone", validates and proves without a reasonable doubt, the Respondent had contact information for the Appellant's prior to the execution of the Respondent's action's in the removal of the Appellant's from said deeded property. The previous statement from the Respondent's attorney also applies to the following transcripts of voicemails, prior and after the Respondent's complaint.

3. TRANSCRIPTS OF VOICEMAILS TAKEN FROM APPELLANT JOANNE AHEARN'S PHONE (843) 603-0566, RECEIVED FROM RESPONDANTPATRICIA E. CAMPBELL'S PHONE

NUMBER 843-599-0606

Please enter your password you have saved voice messages just press 1 to send a message  
Press 2 to change your personal options first save voice message sent Monday  
February 18<sup>th</sup> at 9:04am from, this is Patricia Campbell and you can leave a message at any  
time thank you, duration 34 seconds Joey it's mom, listen I lost my cigarettes last night and  
my lighter and I don't know if I lost them there at the hospital in the room when I was sitting  
or when I left the hospital so I bin without a cigarette. Do you have any lighters or matches  
anywhere, if you do give me a call, and how are you doing this morning, let me know, love you  
bye. End of message, to erase this message press 7, to send a reply message, press 8, message  
saved. Next message sent Saturday March 23<sup>rd</sup> at 7:26 pm, from. This is Patricia Campbell and  
you can leave a message at any time, thank you. Duration 18 seconds. Joanne I'm gonna be  
going to bed shortly, give me a call if you want tomorrow, cause I wanna discuss some things  
with you, talk to you then bye. End of message, to erase this message press 7, to send a reply  
message press 8, to save it press 9, to hear more message, saved. Next message sent Saturday  
October 5<sup>th</sup> at 11:38 am, from 386-416-9561, duration 22 seconds. Hey give me a call, it's me, I  
thought you were gonna be available on your phone. I'm up here at the property, the sheriffs  
in here talking to your mother at in the house and so far so good, talk to you later bye, love  
you. End of message, to erase this message press 7, to send a reply message press 8, to save it  
press 9, to hear more message saved, next message sent Monday October 28<sup>th</sup> at 9:35 am  
from Patricia Campbell and you can leave a message at any time, thank you. Duration 12  
seconds. Nanette had text you about getting your stuff 9:00 o'clock this morning, where the  
hell are you, let's get it outta here now. End of message, to erase this message press 7, to  
send a reply message press 8, to save it press 9, to hear more options press 0.

4. DID RESPONDANT OFFER ANY PROOF CLAIMING ALLEDGED LACK OF MENTAL INCAPACITY DURING TO THE SIGNING OF THE APPELLENT'S TO RESPONDANT'S DEEDED PROPERTY?

The Respondent Patricia E. Campbell offered or displayed no proof that the Respondent was suffering from any kind of mental incapacitation whatsoever when the Respondent added the Appellant's Joanne Ahearn and Robert J. Plum to the Respondent's deeded property.

5. WHY DID RESPONDANT LIST ROBERT J. PLUM AS SUCCESSOR AGENT FOR RESONDANT'S HEALTH CARE POWER OF ATTORNEY?

The Respondent listed Appellant Robert J. Plum as Respondent's Hearth Care Power of Attorney because at the time the Appellants were living with the Respondent and the Appellant's Joanne Ahearn and Robert J. Plum were together for twenty two years.

6. WAS THE REPONDANT UNDER ANY KIND OF ALLEDED DURESS?

If there was any duress, it was just that, alleged duress. The Appellants were living with the Respondent at the Respondent's request. The Appellants were preparing meals, helping the Respondent with bills, house work, mowing the yard, grocery shopping and taking the Respondent to and from doctor's appointments.

7. ON DECEMBER 18, 2018, COULD DEBORAH B. KANE HAVE KNOWN THE MENTAL INCAPACITY OF RESPONDANT PATRICIA E. CAMPBELL DURING THE SIGNING LEGAL DOCUMENT PLACING THE APPELLANTS ON THE RESPONDANT'S DEEDED PROPERTY?

Upon information and belief, Deborah B. Kane is the only individual that could have known the mental capacity of The Respondent Patricia E. Campbell during the signing of the documentation on December 18, 2018. Deborah B. Kane noted that the Respondent was of sound body and mind and also noted the Respondent was not under any undue influence or duress. Deborah B. Kane was present on December 18, 2018, which was four months prior to the Respondent taking action against the Appellants. Deborah B. Kane was present on December 18, 2018, when The Respondent's Attorney on record and Kenneth A. Campbell Jr. were not, therefore the Respondent's attorney, Benjamin Cullifer Pickins Sap and Kenneth A. Cambell Jr., Special Referee, cannot assume the Respondent's state of mind on December 18, 2018. Let it also be known that Deborah B. Kane is a former presiding Judge and was also chosen to be Special Referee in this case but refused to it being a conflict of interest

1. DID THE RESPONDANT MEET THE BURDEN OF PROOF DURING THE FINAL JUDGEMENT TO HAVE THE DEED IN QUESTION SET ASIDE?

With the previous information provided, without a reasonable doubt, the Respondent did not meet the burden of proof in this case against the Appellant's Joanne Ahearn and Robert J. Plum.

## CONCLUSION

The Appellants Joanne Ahearn and Robert J. Plum were added to the Respondent's deeded property on December 18, 2018. Four months later the Respondent started the actions to remove the Appellants from her deeded property, claiming the Respondent was under duress and claimed to lack the mental capacity to make that lawful decision. Knowing the Appellants were located in Florida, The Respondent denied and misled the lower court located in Walterboro, South Carolina and now THE SOUTH CAROLINA COURT OF APPEALS, therefore the Appellants being denied due process of service. The Respondent knew of the Appellant's whereabouts and continued to deceive. There was no supporting documentation of the Respondent's mental incapacity presented, because there isn't any. With the above presented facts presented by the Appellant's, where there is no reasonable doubt, the Appellants wish and pray the Appellate Court of Appeals rule in the Appellant's favor and reverse the lower court's decision and place the Appellant's Joanne Ahearn and Robert J. Plum on the Respondent's deeded property in Colleton County, South Carolina.