

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Capers G. Barr, III, Special Referee

Appellate Case No. 2021-000185

Case No. 2019-CP-10-03042

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SC Court of Appeals

Judith A. Brown, as Personal Representative for the Estate of Mildred C. Knight, and
Norman R. "Bobby" Knight III,.....Appellants

v.

Chloe Knight Tonney,.....Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
Judith A. Brown, as Personal	)	CASE NO.: 2019-CP-10-03042
Representative for the Estate of	)	
of Mildred C. Knight, and Norman R.	)	
"Bobby" Knight, III,	)	
	)	ORDER
Plaintiffs,	)	DENYING MOTION TO
	)	AMEND COMPLAINT
vs.	)	
	)	
Chloe Knight Tonney,	)	
	)	
Defendant.	)	

This case came before me for Hearing on August 26, 2020, on Plaintiffs' Motion to Amend their complaint to add causes of action for loss of consortium and conspiracy. J. Seth Whipper of the Charleston Bar appeared for Plaintiff/Movants, and Charles S. Altman appeared on behalf of the Defendant. At the close of arguments, the undersigned requested that Defendant brief the question of prejudice as that concept applies under Rule 15 of the South Carolina Rules of Civil Procedure ("SCRCP"). Defendant's Memorandum was received September 8, 2020 and Plaintiff's Reply was received September 15, 2020.

For the reasons hereafter discussed I am compelled to conclude that Plaintiffs' motion to amend the complaint must be denied.

PROCEDURAL FACTS

The Summons and Complaint in this case were filed June 7, 2019. The allegations of the Complaint relate principally to the status of title to the real Property at 3831 Rivers Avenue in Charleston County (the "Property"), which is presently titled in the name of the Defendant, Chloe Knight Tonney. Plaintiffs allege that title to the Property should vest in them by adverse possession.

Alternatively, they allege that the court should impose a constructive or resulting trust on the Property for the benefit of Plaintiff Brown's Decedent, Mildred C. Knight, and the Decedent's late husband Norman R. Knight, Jr. (the latter of whom is not a party to the action.). Plaintiffs further and alternatively allege that the conveyance was made to the Defendant Tonney by mutual mistake. Plaintiffs allege a single wrongful act by the Defendant, that is her wrongful demolition of the house on the property, for which they seek an award of damages.

The memoranda filed by the parties show that the underlying claims for adverse possession and for the imposition of a trust were originally filed in 2005, when Plaintiffs' Decedent and the late Norman Knight, Jr. were alive. The original summons and complaint filed in 2005 was struck from the court roster and was thereafter restored, perhaps on multiple occasions, so that it presently carries a 2019 docket number. However, the same claim has been pending for fifteen years.

On March 4, 2008, the late Mildred C. Knight and the Plaintiff Norman R. Knight, III filed their motion, *pro se*, to amend the then-pending complaint to allege the loss of consortium between the late Mildred Knight and her husband, the late Norman Knight, Jr., allegedly arising from the initiation by the South Carolina Department of Social Services of litigation in 2004 to address the care and welfare of the late Norman Knight, Jr. A transcript from hearing held in this case's predecessor filing on April 14, 2018 before the Honorable Markley Dennis shows that the late Mildred Knight, who had filed a motion to amend her then-pending complaint to allege the tort of loss of consortium, withdrew the motion in open court, and on the record.

I find and conclude as a procedural fact, therefore, that this action to effect the title to the Property by adverse possession or by the imposition of a trust was first filed in 2005, fifteen years ago. I further find and conclude from the procedural record that Plaintiff Brown's Decedent had actual knowledge of the facts or evidence she believed would support a cause of action for loss of

consortium at least as of March 4, 2008 when she filed her motion to amend the then pending complaint to allege loss of consortium.

CONCLUSIONS OF LAW

Rule 15(a) of the SCRCP provides that a complaint may be amended within thirty days after it has been served, as a matter of course. Following that thirty-day time, a complaint may be amended "only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party". I take notice that courts regularly practice by the rule, freely granting motions to amend complaints filed in civil actions.

The prejudice contemplated in Rule 15 is not that the non-moving party is forced to defend the merits of a valid claim. Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleadings or a timely motion to amend. The prejudice that would warrant a denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it. *Patton v. Miller*, 420 S.C. 471, 491-492, 804 S.E.2d 262, (S.Ct. 2017) (Internal citations omitted.).

In the *Patton* decision above quoted, Supreme Court Justice Few also wrote: "Under Rule 15(a), the circuit court should have considered whether the Defendants were prejudiced by the amendment or whether there was some other substantial reason to deny it." 420 SC at 490.

Even if an amendment is allowed, the Court must then address Rule 15(c) and the question whether the amendment relates back to the time of initial filing. *Patton*, supra, 420 SC at 493.

Rule 15(c) provides: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading."

An amendment of a complaint will not be allowed if a wholly new cause of action is thereby introduced, where the new cause of action is so old as to have been barred by the statute of limitations. In other words, an amendment which substitutes a new and different cause of action, and debars the defendant of the privilege of pleading the statute of limitations, will not be allowed. *Coral Gables, Inc. v. Palmetto Brick Co.*, 183 SC 478, 191 S.E. 337 (1937). The Supreme Court has held that a defective complaint cannot be amended to state a new or different cause of action after the statute of limitations has run. *Scott v. McCain*, 272 SC 198, 250 S.E.2d 118 (S.Ct. 1978). On the other hand, if the amendment merely expands or amplifies what was alleged in support of the initially filed cause of action, it relates back to the commencement of the action and is not affected by the intervening lapse of time. *Scott v. McCain*, *supra*, 272 SC 202-203.

A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint. In rare cases, however, a trial court may deny a motion to amend if the amendment would be "clearly futile". *Skydive Myrtle Beach, Inc. v. Horry County*, 426 SC 175, 826 S.E.2d 585 (Sup.Ct.2019); *Jennings v. Jennings*, 389 SC 190, 209, 697 S.E.2d 671, 681 (Ct. App. 2010) (*Rev'd on other grounds*, 401 SC 1, 736 S.E.2d 242 (S.Ct.2012)).

DISCUSSION

The genesis of this case was the filing by Plaintiff Brown's Decedent of a summons and complaint in 2005 seeking an order that she and her late husband had acquired title to the Property by adverse possession, and alternatively seeking the imposition of a trust for their benefit. Until

the filing of the motion now before me, the only allegation of active conduct against the Defendant related to her demolition of the home on the Property.

After a timespan of fifteen years, Plaintiffs now seek to amend their complaint to allege active, tortious conduct by Defendant; that is, her participating in the filing of DSS protective proceedings relating to the Defendant's late father, Norman Knight, Jr., allegedly occurring in 2004. The allegation in the proposed amended complaint is that the Defendant's role in prosecuting the DSS proceeding proximately caused the loss of consortium between the late Norman Knight, Jr. and his wife, Plaintiff Brown's Decedent Mildred Knight. The alleged tort occurred in 2004, sixteen years ago.

The investigation, discovery and presentation in evidence of events transpiring sixteen years before the filing of an action may well be an almost impossible task. But even if it could be accomplished, it would present significant challenges and difficulties to all parties, and would thereby be prejudicial; and not only to the Defendant but to the Plaintiffs as well. Indeed, it should be emphasized, the burden of proof of the tort will be borne by the Plaintiffs.

Whereas the cases hold that mere delay in seeking to amend pleadings should not be a basis to deny an amendment, I must conclude that a sixteen-year delay is an undue delay, that transcends the general rule. The decision of the United States Supreme Court in the case of *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227 (1962) is often cited with respect to issues such as that presented here:

"It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. (internal citation omitted.) The rules themselves provide that they are to be construed to secure the just, speedy, and inexpensive determination of every action."

"In the absence of any apparent or undeclared reason – such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. – the leave sought should, as the rules require, be 'freely given'. Of course, the grant or denial of an opportunity to amend is within the discretion of the district court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules."

I find that the delay here is undue. Because of it, the Defendants, and also the Plaintiffs for that matter, would be challenged to investigate, discover and present evidence, not relating to adverse possession, or constructive trust, or demolition of a house, but rather relating to DSS proceedings sixteen years ago. The time and expense involved in that process is likely to be considerable. I must conclude, therefore, that because of the prejudice to Defendant by the undue delay, Plaintiffs' motion to amend their Complaint must be denied.

Further analysis is also necessary. Even if I were to conclude that the amendment should be allowed, under the rubric of Justice Few's opinion in the *Patton* case, I must also address whether the amendment "relates back" to the date of the original filing. As previously observed, Rule 15(c) SCRCF provides that a claim "relates back" to the date of the original pleading if the amended claim "arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings".

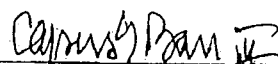
As before observed, the amended complaint alleges tortious wrongdoing by the Defendant by her alleged complicity in the 2004 DSS proceedings relating to her father, the late Norman Knight, Jr. that caused the loss of consortium between her parents. The only wrongful conduct of Defendant alleged in the original complaint is that she demolished the house on the property. There is no nexus whatsoever between the original complaint's allegations of adverse possession and Defendant's demolition of the house, on the one hand, and the allegations of the proposed amended complaint that the Defendant tortiously caused a DSS intervention with her father, on the

the other. I must conclude there is no "logical relation" between the matters sought to be pled in the amended pleading, and those originally pled. "The new claim must be 'logically related' to the matters originally pleaded so that the Defendant is not prejudiced by the new claim asserted after the statute of limitations has expired." *Whitfield Construction Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207, 525, S.E.2d 888 (Ct. App. 1999). Because the allegations of the proposed amended complaint do not relate back to the date of original filing, they must be considered as of the date of filing of the Plaintiff's motion to amend in this case. Simply put, the proposed amended complaint seeks to state a new cause of action.

South Carolina Code Section 15-3-530 provides for a three year limitations period for the commencement of an action for any injury to the person or to the rights of another, not arising on contract and not enumerated by law. Because more than three years has elapsed since the 2004 DSS proceedings that form the basis for Plaintiff's proposed amended complaint, and because the amended complaint does not "relate back" to the original filing, the amended complaint would be barred by the statute of limitations. Moreover, the proposed amended complaint would also be barred by the doctrine of futility. *Skydive Myrtle Beach, Inc. v. Horry County*, supra.

I acknowledge this ruling is not consistent with the spirit of Rule 15 to freely permit the amendment of pleadings. However, extraordinary facts require extraordinary rulings. Such is the case here. Plaintiffs' motion to amend their complaint is denied.

AND IT IS SO ORDERED.


Capers G. Barr, III,
Special Referee

Charleston, South Carolina

October 16, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Judith A. Brown, as Personal)
Representative for the Estate of)
of Mildred C. Knight, and Norman R.)
"Bobby" Knight, III,)

CASE NO.: 2019-CP-10-03042

Plaintiffs,)

ORDER
DENYING MOTION TO
ALTER OR AMEND

vs.)

Chloe Knight Tonney,)

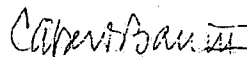
Defendant.)

This case came before me for hearing on November 24, 2020, on Plaintiffs' Motion to Alter or Amend my Order filed October 28, 2020, denying Plaintiffs' motion to amend their complaint. J. Seth Whipper appeared for Plaintiffs, and Charles S. Altman appeared for Defendant. The Plaintiff, Norman R. Knight, III also appeared.

I have considered arguments of counsel, and I have studied the authorities cited in argument and in memoranda. Based thereon, I find and conclude that my original ruling should not be disturbed. Accordingly, Plaintiffs' Motion to Alter or Amend the Order of October 28, 2020 is, respectfully,

Denied.

AND IT SO ORDERED.


Capers G. Barr, III,
Special Referee

Charleston, South Carolina

January 14, 2021

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MILDRED KNIGHT, individually, and as)
duly appointed guardian for NORMAN R.)
KNIGHT, JR.,)

Plaintiffs,)
)
vs.)
)
CHLOE KNIGHT TONNEY,)
)
Defendant,)
)

COURT OF COMMON PLEAS

CASE NO. 05-CP-10-2674

COMPLAINT
(Jury Trial Requested)

FILED
2005 JUN 24 PM 4:15
JULY 11 2005
CLERK OF COURT

The Plaintiffs, complaining of the Defendant herein, alleges and states as follows:

1. Plaintiffs are citizens and residents of Charleston County.
2. Mildred Knight has been appointed guardian for her husband, Norman R. Knight, Jr.

Collectively, they will be referred to as "the Knights."

3. Defendant is a citizen and resident of Georgia. She is a former resident of Charleston County.
4. This dispute involves the ownership of real property located in Charleston County.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.
6. In or about 1979, Jean Knight deeded 3831 Rivers Avenue ("the Property") to the Defendant.
7. Jean Knight was the mother of Norman R. Knight, Jr., mother-in-law of Mildred Knight, and the grandmother of the Defendant.

-
8. The Defendant was a minor at the time of the deed.
 9. There was no consideration for the transfer of the Property from Jean Knight to the Defendant.
 10. The transfer to the Defendant was subject to the understanding that the Property was truly to be owned by the Knights.
 11. The Defendant has never occupied the Property.
 12. The Defendant has never made any use of the Property.
 13. The Defendant has never maintained or protected the Property.
 14. From 1979 to approximately 2004, the Knights maintained the Property.
 15. From 1979 to approximately 2003, the Knights paid the taxes, utilities and all other expenses associated with the Property.
 16. The Knights, through their agent, enclosed the Property.
 17. Jean Knight passed away in 1988.
 18. Before her passing, Jean Knight was taken care of by the Knights. The Knights provided food and shelter for Jean Knight and cared for her before and after she entered a nursing home.
 19. The Knights held actual, open, notorious, hostile, continuous and exclusive possession of the Property for more than 20 years.
 20. The Defendant demolished the home which formerly occupied the Property.
 21. The Knights have adversely possessed the Property and the Court should issue an order transferring legal title to the Knights.
 22. The Knights' financial expenditures to maintain and protect the Property are the

equivalent of paying the purchase price for the Property.

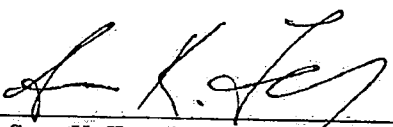
23. The Defendant holds the Property in an resulting trust, the beneficiaries of which are the the Knights.

24. Transfer of legal title to the Defendant was a mutual mistake in that the Property, including its house, was intended to go to the Knights.

25. Equity requires that the Court reform the deed to vest legal title of the Property in the Knights.

26. The Defendant is liable for damages for her destruction of the Property's improvements.

WHEREFORE, having fully stated their Complaint against the Defendant, the Knights pray that this Court hold a jury trial on the factual issues, issue an order awarding legal title of the Property to the Knights, and issue such other legal or equitable relief that the Court deems proper.

By: 

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ATTORNEY FOR PLAINTIFFS

June 24, 2005

North Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JUDITH A BROWN, as Personal)
Representative for the Estate of)
MILDRED C. KNIGHT, and)
NORMAN R. "BOBBY" KNIGHT, III.)
)
Plaintiffs,)
)
versus)
)
CHLOE KNIGHT TONNEY,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10 3042

COMPLAINT
(ADVERSE POSSESSION)
(CONSTRUCTIVE TRUST)
(RESULTANT TRUST)
(JURY TRIAL REQUESTED)

FILED
2019 JUN -7 PM 2:10
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW the Plaintiffs, JUDITH A BROWN AND NORMAN R. "BOBBY" KNIGHT, III, alleging and complaining as follows:

1. Plaintiff Judith A. Brown is the duly appointed Personal Representative for the Estate of Mildred C. Knight and a resident of Georgia.
2. Plaintiff Norman R. "Bobby" Knight is a resident of Charleston County, South Carolina.
3. Defendant Chloe Knight Tonney is a resident of Charleston County, South Carolina.
4. This matter involves the ownership and title to real property located in Charleston County, South Carolina.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.
6. In or about 1979, Jean Knight deeded 3831 Rivers Avenue ("the property") to the Defendant.
7. Jean Knight was the mother of Norman R. Knight, Jr., mother-in-law of Mildred C. Knight, and the grandmother of Defendant and Norman R. "Bobby" Knight, III.
8. The Defendant was a minor at the time of the deed.

9. There was no consideration for the transfer of the Property from Jean Knight to the Defendant.
10. The transfer to the Defendant was subject to the understanding that the Property would truly be owned by Norman R. Knight, Jr. and Mildred C. Knight (hereinafter, "The Knights").
11. The Defendant has never occupied the Property.
12. The Defendant has never made any use of the Property.
13. The Defendant had never maintained or protected the Property.
14. From 1979 to approximately 2004, the Knights maintained the Property.
15. From 1979 to approximately 2003, the Knights paid the taxes, utilities and all other expenses associated with the Property.
16. The Knights, through their agent, enclosed the Property.
17. Jean Knight passed away in 1988.
18. Before her passing, Jean Knight was taken care of by the Knights; the Knights provided food and shelter for Jean Knight and cared for her before and after she entered a nursing home.
19. The Knights held actual, open, notorious, hostile continuous and exclusive possession of the Property, as improved, for more than 20 years.
20. The Defendant demolished the home which formerly occupied the Property.
21. The Knights have adversely possessed the Property and the Court should issue an order transferring legal title to the Knights.
22. The Knights' financial expenditures to maintain and protect the Property are the equivalent of paying the purchase price for the Property.
23. The Defendant holds the Property in a resulting trust and/or constructive trust, the beneficiaries of which are the Knights.

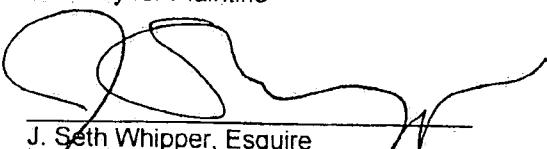
24. Transfer of legal title to the Defendant was a mutual mistake in that the Property, including its house, was intended to go to the Knights.
25. Defendant had reason to know that the property was for the Knights and that she merely was an accommodation transferee for the property.
26. Equity requires that the Court reform the deed to vest legal title of the Property in the Estate of Mildred C. Knight who is the sole devisee of Norman R. Knight, Jr., and/or Norman R. "Bobby" Knight, III who is the sole devisee of Mildred C. Knight.
27. The Defendant is liable for damages for her destruction of the Property's improvements.

WHEREFORE, having fully stated their Complaint against the Defendant, Judith A. Brown as Personal Representative, and Norman R. "Bobby" Knight pray that this Court hold a jury trial on the factual issues, issue an order awarding legal title of the Property to the Estate of Mildred C. Knight and/or Norman R. "Bobby" Knight, and issue such other legal or equitable relief that the Court deems proper.

WHIPPER LAW FIRM

Attorney for Plaintiffs

June 7, 2019


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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.:2019-CP-10-3042
	)	
JUDITH A. BROWN, as Personal	)	
Representative for the Estate of	)	
MILDRED C. KNIGHT, and	)	AMENDED COMPLAINT
NORMAN R. "BOBBY" KNIGHT,III,	)	(ADVERSE POSSESSION)
	)	(CONSTRUCTIVE TRUST)
Plaintiffs,	)	(RESULTANT TRUST)
	)	(LOSS OF CONSORTIUM)
versus	)	(CONSPIRACY)
	)	
CHLOE KNIGHT TONNEY,	)	
	)	
Defendant.	)	

COMES NOW the Plaintiffs, JUDITH A. BROWN AND NORMAN R. "BOBBY" KNIGHT, III, alleging and complaining as follows:

FIRST CAUSE
(CONSTRUCTIVE TRUST)
(ADVERSE POSSESSION)
(RESULTANT TRUST)

1. Plaintiff Judith A. Brown is the duly appointed Personal Representative for the Estate of Mildred C. Knight and a resident of Georgia.
2. Plaintiff Norman R. "Bobby" Knight is a resident of Charleston County, South Carolina.
3. Defendant Chloe Knight Tonney is a resident of Charleston County, South Carolina.
4. This matter involves the ownership and title to real property located in Charleston County, South Carolina.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.
6. In or about 1979, Jean Knight deeded 3831 Rivers Avenue (" the property") to the Defendant.

7. Jean Knight was the mother of Norman R. Knight, Jr., mother-in-law of Mildred C. Knight, and the grandmother of Defendant and Norman R. "Bobby" Knight, III.
8. The Defendant was a minor at the time of the deed.
9. There was no consideration for the transfer of the Property from Jean Knight to the Defendant.
10. The transfer to the Defendant was subject to the understanding that the Property would truly be owned by Norman R. Knight, Jr. and Mildred C. Knight (hereinafter, "The Knights").
11. The Defendant has never occupied the Property.
12. The Defendant has never made any use of the Property.
13. The Defendant had never maintained or protected the Property.
14. From 1979 to approximately 2004, the Knights maintained the Property.
15. From 1979 to approximately 2003, the Knights paid the taxes, utilities and all other expenses associated with the Property.
16. The Knights, through their agent, enclosed the Property.
17. Jean Knight passed away in 1988.
18. Before her passing, Jean Knight was taken care of by the Knights; the Knights provided food and shelter for Jean Knight and cared for her before and after she entered a nursing home.
19. The Knights held actual, open, notorious, hostile continuous and exclusive possession of the Property, as improved, for more than 20 years.
20. The Defendant demolished the home which formerly occupied the Property.
21. The Knights have adversely possessed the Property and the Court should issue an order transferring legal title to the Knights.
22. The Knights' financial expenditures to maintain and protect the Property are the equivalent of paying the purchase price for the Property.

23. The Defendant holds the Property in a resulting trust and/or constructive trust, the beneficiaries of which are the Knights.
24. Transfer of legal title to the Defendant was a mutual mistake in that the Property, including its house, was intended to go to the Knights.
25. Defendant had reason to know that the property was for the Knights and that she merely was an accommodation transferee for the property.
26. Defendant and Linda Jones have long-standing contempt and ill-feelings for Plaintiff, Bobby Knight (hereinafter 'Bobby') and, by August 2004, were in open contestation of the Decedent Mildred C. Knight.
27. Bobby Knight had returned home to live with his parents in 1984 after his then wife was found to be unfaithful.
28. During the post 1984 years with his parents Bobby operated a successful construction company and contributed substantially and generously to his parents and other family members.
29. 3831 Rivers Avenue is the childhood home of Decedent Norman R. Knight, Jr. (hereinafter 'Norman') and over the years, after Defendant's marrying, Norman would advise her to return the property as she had agreed to do, but Defendant consistently avoided the request.
30. In or around January 2004, Mildred C. Knight and Norman executed revised powers of attorney appointing Defendant and Linda Jones, but the Decedents determined that the powers of attorney were suspiciously defective and had them revoked in June - July, 2004.
31. In or around the summer of 2004, Mildred and Norman were the subject of allegations of abuse and neglect as to the care of Norman.
32. After a full investigation, the charge of abuse and neglect was determined to be unfounded.

33. Upon information and other disclosures, it was determined that the Defendant and her sister Linda Jones were connected to the DSS complaint.
34. Defendant then filed, in late summer 2005, a Petition seeking to change her mother's role in the care and management of her father and during this litigation recklessly alleged and claimed that Norman was abused and neglected; no forum has ever found Norman to have been neglected or abuse.
35. In or about June, 2004, Defendant negligently and recklessly had Bobby served an ejectment or trespass regarding his assisting Norman with work at 3831 Rivers Ave., the subject property.
36. Mildred and Norman were forced into Defendants' actions despite their senior status, causing much anxiety and frustration.
37. Defendant conspired with others to remove Mr. Knight from his home with reckless and unfounded allegations of abuse and neglect; and there was never a finding of abuse or neglect.
38. Equity requires that the Court reform the deed to vest legal title of the Property in the Estate of Mildred C. Knight who is the sole devisee of Norman R. Knight, Jr., and/or Norman R. "Bobby" Knight, III who is the sole devisee of Mildred C. Knight.
39. The Defendant is liable for damages for her destruction of the Property's improvements.

SECOND CAUSE
(LOSS OF CONSORTIUM)

40. Plaintiff realleges each and every allegation of the FIRST CAUSE as if fully alleged herein and incorporates the same by reference.
41. Defendant's actions as alleged and described are reckless, tortious, intentional violation of Mildred's right to the companionship, aid, society and services of Norman. And, Defendant's actions as alleged and described are reckless, tortious,

intentional violation of Norman's right to the companionship, aid, society and services of Mildred.

42. Defendant's actions are the legal and proximate cause of Mildred's & Norman's injuries and loss, and, Plaintiffs desire compensation for their harm and feel that they each are entitled to same.

THIRD CAUSE
(Conspiracy)

43. Plaintiff reallege each and every allegation if their FIRST and SECOND causes of action as if fully alleged herein and incorporates the same by reference.
44. Defendant in cooperation with others and with ill purposes seeking to cause harm to Plaintiff did act in manner that caused the Plaintiffs to experience financial harm and distress.
45. Defendant's behavior is legal and proximate cause of Plaintiff's harm and they desire to be compensated and belief same should be granted.

WHEREFORE, having fully stated their Complaint against the Defendant, Judith A. Brown as Personal Representative, and Norman R. "Bobby" Knight pray that this Court hold a jury trial on the factual issues, issue an order awarding legal title of the Property to the Estate of Mildred C. Knight and/or Norman R. "Bobby" Knight, declare the estate of Norman R. Knight, Jr. a necessary party and issue such other legal or equitable relief that the Court deems proper.

Signature on Next Page

WHIPPER LAW FIRM

Attorney for Plaintiffs

August 12, 2020

S/ J. Seth Whipper

J. Seth Whipper, Esquire (S.C. Bar 6061)

4592 Durant Avenue (29405)

Post Office Box 70070

North Charleston, South Carolina 29415

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	CASE NO.: 2008-CP-10-02537
JUDITH A BROWN, as Personal	)	
Representative for the Estate of	)	
MILDRED C. KNIGHT, and	)	
NORMAN R. "BOBBY" KNIGHT, III	)	
Plaintiffs,	)	
versus	)	MOTION TO AMEND COMPLAINT
CHLOE KNIGHT TONNEY,	)	
Defendant.	)	

TO: PRESIDING JUDGE: CLERK: CHARLES ALTMAN, ATTORNEY FOR DEFENDANT:

NOW COMES Plaintiffs, by and through the undersigned attorney, to move to amend the Complaint in this matter on the following basis:

1. At all times pertinent to the events complained of pending before the Charleston County Court and the Complaint, the decedents were married and proper Plaintiffs in Case 2005-CP-10-2764, and the Plaintiff herein is the lawful Personal Representative of Mildred C. Knight;
2. That a result of the wrongful and negligent acts of the Defendant, the decedents were caused to suffer, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship;
3. That all the aforesaid injuries and damages were caused solely and proximately by the wrongful and malicious negligence of the Defendant.

WHEREFORE, the Plaintiff on behalf of the decedents and their estates demands judgment as follows:

- A. Demand for jury trial on all issues per the Amended Complaint;
- B. Compensatory damages as required by law;
- C. All other relief as determined just and fair.

FURTHER, this Motion is supported by court rules, state statutes, and the jurisprudence for the State of South Carolina.

PLEASE BE PRESENT TO ARGUE, IF SO MINDED.

WHIPPER LAW FIRM
Attorney for Plaintiff

_____, 2020

S/ J. SETH WHIPPER
S.C. BAR 6061
J. Seth Whipper, Esquire
4592 Durant Avenue (29405)
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ELECTRONICALLY FILED - 2020 Jul 16 9:41 AM - CHARLESTON - COMMON PLEAS - CASE#2008CP1002537

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.:2019-CP-10-03042
	)	
JUDITH A. BROWN, as Personal	)	
Representative for the Estate of	)	
MILDRED C. KNIGHT, and	)	
NORMAN R. " BOBBY" KNIGHT,III,	)	
	)	MOTION TO ALTER OR AMEND ORDER
Plaintiffs,	)	(SCRCP 59 (e))
	)	
versus	)	
	)	
CHLOE KNIGHT TONNEY,	)	
	)	
Defendant.	)	

TO: CAPERS G. BARR, III, SPECIAL REFEREE: CLERK: CHARLES S. ALTMAN, ESQ.:

COMES NOW, Plaintiffs, by and through the undersigned attorney, to move this honorable Court to alter, amend and modify its "Order Denying Motion To Amend Complaint" in the following particulars:

1. Allow the amendment of the original Complaint;
2. Allow inclusion of the additional causes of action;
3. Clarify the basis for the futility finding;
4. Acknowledge that the " Civil Conspiracy" cause is available through S.C. Code 15-3-380.

This motion is based on Thomas v. Grayson 318 S.C. 82, 456 S.E. 2d 377, 380 (1995)(The purpose of SCRCP 15(c) is to salvage causes of action otherwise barred by the statue of limitations); the proposed amendments merely restated the circumstances then and there existing and were the conduct, transaction or occurrence that gave rise to the original complaint; Defendant offered nothing to demonstrate any prejudice that they would encounter because of the amendments; the reactions of a pro se litigant of any status, weeks after burying their spouse of sixty-plus years is no indicator of the strength

of a legal argument; the ultimate separation of the Decedents is not the only harm encountered by the Knight couple and their heir; logical relationship depends on the facts pled and not the legal theory, so an amendment may relate back notwithstanding that the proffered amendment offers a new legal theory." Steven Baicker- McKee, et al., Federal Civil Rules Handbook, 554, (2018 ed.)

This motion is further based on South Carolina Jurisprudence, court rules, statutes, and laws.

PLEASE BE PRESENT TO ARGUE, if you are so minded.

WHIPPER LAW FIRM

S/ J. Seth Whipper

J. SETH WHIPPER S.C # Bar 6061

P.O. Box 70070

North Charleston, South Carolina 29415

(843) 740-7777 Fax (843) 740-9108

ATTORNEY FOR PLAINTIFF

Charleston, South Carolina

Dated: October 26, 2020

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 TRANSCRIPT OF PROCEEDINGS
5 AUGUST 26, 2020

6 JUDITH A. BROWN, AS PERSONAL REPRESENTATIVE FOR
7 THE ESTATE OF MILDRED C. KNIGHT, AND NORMAN R.
8 "BOBBY" KNIGHT, III,

9 Plaintiffs,

ORIGINAL

10 vs.

CASE NO. 2019-CP-10-03042

11 CHLOE KNIGHT TONNEY,

12 Defendant.
13

14
15 BEFORE SPECIAL REFEREE CAPERS BARR

16 TIME: 10:00 AM

17
18 LOCATION: VIA VIDEOCONFERENCE
19 CHARLESTON, SC

20
21
22
23 REPORTED BY: MACKENZIE ALLEN
24 CLARK & ASSOCIATES, INC.
25 CHARLESTON, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

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A P P E A R A N C E S

2

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ON BEHALF OF PLAINTIFFS:

4

WHIPPER LAW FIRM

5

BY: J. SETH WHIPPER

4592 Durant Avenue

6

North Charleston, SC 29405

7

ON BEHALF OF DEFENDANT:

8

LAW OFFICES OF CHARLES S. ALTMAN

9

BY: CHARLES ALTMAN

575 King Street

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Suite A

Charleston, SC 29403

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I N D E X

CERTIFICATE OF REPORTER

47

(No Exhibits Marked)

1 THE COURT: Well, let me publish
2 the matter. We're here today in the case of
3 Brown as personal representative for the estate
4 of Knight and Bobby Knight, III versus Chloe
5 Knight Tonney, T-O-N-N-E-Y. Case number
6 2019-CP-10-3042, which for the record was
7 consolidated with a previous case,
8 2008-CP-10-2537.

9 My name is Capers G. Barr, III. I was
10 appointed as special referee in the case by order
11 of the court during trial. And we're here today
12 on a motion of defendant, Chloe Knight. I stand
13 corrected. We're here on behalf of the plaintiff
14 to amend -- plaintiffs, plural -- to amend their
15 complaint.

16 For clarity, Mr. Whipper, I don't see
17 that the motion to amend was filed. Do you know
18 whether it was filed or not?

19 MR. WHIPPER: It was. The motion
20 was filed. And then we served the proposed
21 amendments. So the motion was filed. The motion
22 was filed on the -- and this is an assumption.
23 Capers, what happened here is that -- or I'm
24 sorry, Mr. Barr -- what happened here is that in
25 this motion to amend this file, it was filed

1 under the earlier case.

2 THE COURT: So it's under the 2008
3 case?

4 MR. WHIPPER: The actual motion
5 being filed is under the 2008.

6 THE COURT: That's why I couldn't
7 find it. Okay. Of course I have the proposed
8 amended complaint so I understand the essence of
9 what you seek to amend. And I received the
10 return of the defendant -- I mean -- yes, of the
11 defendant to the motion.

12 So for the record, let me ask you just
13 to state your names as appearances so that the
14 court reporter will get that down. For the
15 plaintiff?

16 MR. WHIPPER: For the plaintiffs,
17 J. Seth Whipper. My first initial is J. Seth
18 Whipper. And I say that because everything on my
19 documents say J. Seth Whipper. And if I might,
20 Mr. Barr, the case number for purposes of the
21 clerk of court requires a 0 before the 3042.

22 THE COURT: Correct. To get into
23 the electronic system, yes, you've got to put a 0
24 ahead of it. Right.

25 MR. WHIPPER: And so I wanted to

1 just kind of clarify that. I'm here for the
2 plaintiffs, Judith Brown, Mildred Brown, and
3 Norman R. Bobby Knight, III.

4 THE COURT: And for the defendant?

5 MR. ALTMAN: Charles Altman for the
6 defendant, Chloe Knight Tonney.

7 THE COURT: I'm sorry, ladies and
8 gentlemen. I'm babysitting a dog in my office.

9 MR. WHIPPER: Mr. Barr, we might
10 have to mute you.

11 THE COURT: Go ahead. Mr. Altman,
12 publish your appearance, please.

13 Charlie, can you hear us?

14 MR. ALTMAN: I thought I did. I'm
15 Charles Altman representing the defendant, Chloe
16 Knight Tonney.

17 THE COURT: Thank you. Well,
18 Mr. Whipper, it's your motion. Let me invite you
19 to proceed, please.

20 MR. WHIPPER: May it please the
21 Court. Our rules of civil procedure under
22 Rule 15(c) states as follows: 15(c) is entitled
23 Relation Back of Amendments. And it says,
24 whenever the claim or defense asserted in the
25 amended pleading arose out of the conduct,

1 transaction, or occurrence set forth or attempted
2 to be set forth in the original pleadings, the
3 amendment relates back to the date of the
4 original pleading.

5 And so that's why we're here because in
6 stating that and in saying that an amendment to a
7 pleading relates back to the date of the original
8 pleading, what our law is saying is that for
9 those purposes the rules of -- or the authority
10 of the statute of limitation is told and set
11 aside so that these claims, or other causes of
12 action that are a part of the amendment, that
13 they can be handled and be a part of the original
14 action of the serial case involved of maybe the
15 exchange of parties in terms of relating back,
16 but the case law has followed this strongly.

17 The case that I'm mentioning is Thompson
18 v. Grayson, South Carolina case. And the South
19 Carolina cite is 318 S.C. 82. And it's a 1995
20 case. And Thompson v. Grayson actually holds
21 that the purpose of Rule 15(c) is to salvage
22 causes of actions otherwise barred by the statute
23 of limitations. So it specifically states this
24 is a part of our jurisprudence.

25 And in other cases that are seemingly

1 postured, it is a part of our jurisprudence that
2 to the best of our ability in South Carolina we
3 try to have cases heard on the merits. All
4 right.

5 So a case that Mr. Altman is familiar
6 with -- and I think he was partially on the
7 winning side in this case, a case called
8 Whitville -- I'm sorry -- Whitfield Construction
9 Company v. Bank of Tokyo Trust Company. The
10 citation for that case is 338 S.C. 207. It's a
11 Court of Appeals case, 1999.

12 In that case, the Court held that an
13 amendment to a pleading relates back to the date
14 of the original pleading whenever the claim of
15 defense asserted in the amended pleading arose
16 out of the conduct, transaction, or occurrence
17 set forth or attempted to be set forth in the
18 original pleading. So that's -- I feel that I
19 need to do that.

20 And then in interpreting our law, the --
21 one of our District Court cases that was reported
22 in 2008 says that, the central requirement here
23 is that the party defending against the new claim
24 have sufficient notice of it. In other words,
25 the new claim must be logically related to the

1 matters originally pled or pleaded so that the
2 defendant is not prejudiced by the new claim
3 asserted after the statute of limitations has
4 expired.

5 So the facts pled here originally show
6 that, number one, the defendant was destroying
7 property that was sound, property that was being
8 repaired in order to chastise the other side in
9 this original case. And the other side of course
10 at that time was her mother, Mildred C. Knight,
11 acting on her behalf and behalf of the -- of her
12 father, Norman R. Knight, Jr.

13 And as a part of that she had -- in the
14 allegations that she never occupied the property,
15 she never made any use of the property, that she
16 never maintained or protected the property, and
17 that she had demolished the property, which was
18 known to be the home of her father and a property
19 that was well-situated -- it was a good piece of
20 property and construction.

21 So as a part of that, we -- that conduct
22 was a part of the conduct that was going on with
23 this family. And I think when you look -- and I
24 have to say that we're dealing with the
25 pleadings. This is about our motion to amend.

1 And so what we have done, we have just asked that
2 the Court take into consideration this conduct in
3 its fullest expressions of what was going on at
4 that time.

5 And our amendments add other causes of
6 action because at that same time the defendant
7 was acting in concert with others to separate the
8 mother from the father. There were allegations
9 of abuse and neglect on several occasions within
10 that same period. And it was in that same period
11 which we have alleged that is a part of this
12 fight that none of these abuse and neglect things
13 were ever founded, and it ended up that there was
14 even conspiracy to remove -- further conspiracy I
15 think during that period to remove the father
16 from the home.

17 And of course, this goes without saying,
18 Your Honor, that the family -- the mother and the
19 father had been married over 60-some-odd years
20 and were both senior citizens living together in
21 their -- in the marital home. And so we felt
22 like her behavior to do the things that we said
23 and filing claims against Norman R. Knight, III
24 when the property was -- the property belonged to
25 his father, and he was, in fact, not even living

1 there. He was just working on the property based
2 on being directed by the father.

3 I think we have that in our -- and
4 that's what we alleged in our complaint. And so
5 what we're saying is that -- what we've done is
6 made our other cause of action for the loss of
7 consortium because we say that a lot of what the
8 defendant did was done negligently and some
9 intentionally and certainly with reckless
10 disregard for what would happen to the family.

11 And then we allege conspiracy as a part
12 of the conduct that we're talking about in the
13 original complaint, which is that she denied that
14 she was supposed to return the property to her
15 father. And that's a big part of this. And
16 that's why this thing kept spiralling.

17 And I think -- although I believe that,
18 in fact, Mr. Altman's return is really -- it's
19 out of order because what this motion is about is
20 about the pleadings. And what his return is
21 about is about litigating the case before we get
22 a chance to do what pleadings allow us to do,
23 which is discovery and the development of
24 evidence and the development of what we know to
25 be a part of the conduct, the transaction, which

1 would be the fact that this house was supposed to
2 be held in trust for Mr. Knight and Mrs. Knight
3 and the fact that this occurrence is all a part
4 of the bad blood between the parties.

5 And so that's what the pleadings are
6 about. We're asking the opportunity that the
7 pleadings be amended so we can look at that
8 period of time.

9 We're not putting in facts that require
10 the Court to consider what happened in 2010 or
11 2011. We're talking about what happened at the
12 time that the original complaint was filed. And
13 so I think that the Court is constrained to look
14 at that because it's not about -- if we make out
15 a claim, I think the Court has to accept it on
16 the pleadings. That's what the pleadings is all
17 about.

18 And so when you look at the loss of
19 consortium, which is based on the statute of
20 South Carolina Code 15-75-20, loss of
21 companionship of a spouse, the language is pretty
22 clear. Any person may maintain an action for
23 damages arising from an intentional or tortious
24 violation of the right to the companionship, aid,
25 society, and services of his or her spouse

1 provided that such action shall not include any
2 damages recovered prior thereto.

3 And so that's not a question here, but
4 the main -- the gravamen of 15-75-20 we think
5 we've alleged the facts that would do that in our
6 amendment based on the conduct and the
7 occurrences and the transactions that are the
8 basis of the original cause of action.

9 And I think that -- I think we can see
10 from what Counsel has tried to do that he didn't
11 file a motion. He filed a return. But it
12 indicates that, yeah, everybody knows that this
13 is what the conduct was at that time.

14 And so then when you look at our
15 pleadings -- and we talk about civil conspiracy,
16 and we allege that she worked with others. We
17 talked about the fact that her and her sister
18 filed this false complaint with the Department of
19 Social Services that was completely unfounded.

20 And then so I look -- we look at, well,
21 what is civil conspiracy in the Bedrock case for
22 telling me what I need to show in civil
23 conspiracy is case -- South Carolina case
24 entitled Lee, L-E-E, versus Chesterfield General
25 Hospital, Incorporated. The South Carolina cite

1 is 289 S.C. 6. And it's a 1986 Court of Appeals
2 case.

3 And in that case, the Court held that a
4 conspiracy, number one, consists of three
5 elements: a combination of two or more persons;
6 for the purpose of injuring the plaintiff; three,
7 which causes him or her special damages.

8 And then in that case they cite further
9 to a case that they have heard going way back to
10 -- it's called Charles v. Texas Company, 192 S.C.
11 82. It's a 1939 case. And in explaining the
12 further conspiracy, the Court says the gravamen
13 -- it's G-R-A-V-A-M-E-N -- a gravamen of the tort
14 of civil conspiracy is the damage resulting to
15 the plaintiff from an overt act done pursuant to
16 the combination, not the agreement or combination
17 per se. And it cites a number of other cases.

18 And it says, a civil conspiracy may of
19 course be furthered by an unlawful act. However,
20 in the Chesterfield case -- Lee case -- Lee v.
21 Chesterfield -- in that case, it says, however,
22 an unlawful act is not a necessary element of the
23 tort. An action for conspiracy may lie, that's
24 L-I-E, even though no unlawful means are used and
25 no independently unlawful acts are committed.

1 And so we think we've set that out in
2 terms of claiming that a civil conspiracy has
3 occurred and there was special damages. That's
4 what we're talking about all through this. And
5 so we made out on the face of our amendment a
6 complaint because we only bring in the
7 allegations of what happened at that time.

8 And we say they should be allowed to
9 relay back -- because I am second or third
10 counsel in this case -- who should relay back to
11 the original action because that's why the case
12 got filed. This original action was filed in
13 June of 2005 after all of the fighting about the
14 property and the revocation of the powers of
15 attorney that were given to the defendant and her
16 sister, Linda Jones, the two people that we think
17 are a part of all of this conspiring.

18 And so we just think we've made out a
19 cause of action, and I don't think the Court has
20 to decide that we're going to win or lose.
21 That's not what amending the pleading is about.
22 It's not about when the Court reads a pleading,
23 oh, that doesn't look like Seth's got a chance in
24 this case. No, it's not what it's about. It's
25 do we make out a cause of action, number one.

1 And then number two, you know, looking
2 at the face of it, we can't say any of it's
3 untimed because it's all in that same time. And
4 so we should be allowed to develop the case and
5 pursue these claims.

6 And by the way, as we talk about
7 prejudice, if there's anybody who is prejudiced,
8 I've got to tell you, Your Honor, it's probably
9 the plaintiffs because the injured people are
10 deceased. But there are ways to develop what has
11 happened here because there has been a lot of
12 litigation and there has been a lot of stuff
13 that's gone on around the same time.

14 So we don't think that the defendant is
15 prejudiced at all because the defendant is alive
16 and present -- Linda Jones is alive and present.
17 They've got materials that they're going to try
18 to raise issues with. We've got materials that
19 we think have -- that give us reason to file this
20 complaint, and we expressed those things in our
21 complaint. And so we think this is well settled
22 that we should go forward.

23 And I just want to say one other thing,
24 Your Honor, that the idea that we have to be --
25 oh, yeah. And the notice issue. Again, it's all

1 been going on for years between them, even that
2 period of time. And the notice issue means that
3 more than anything else not only is it logically
4 related, it's definitely logically related.

5 They've been fighting about this
6 property, fighting about parents. It's all
7 logically related. And two, they can't say that
8 if this claim comes about it's a surprise. And
9 we can tell by the response that has been made
10 that there's no question about it being
11 anticipated or we can see why we would file this
12 claim. I think there's one other thing here,
13 Judge.

14 Now, we don't have a lot of -- I think
15 the South Carolina history and the case law, it
16 doesn't -- it doesn't put a lot of weight on the
17 time period that has transpired in bringing this
18 particular amendment. Of course we know what
19 happened. We found out that it had been further
20 withdrawn, but we thought it was always part of
21 the case history.

22 But in a Supreme Court case, the case is
23 Krupski, K-R-U-P-S-K-I, versus Costa Crociere,
24 that's C-R-O-C-I-E-R-E S.P.A -- the cite -- yes,
25 cite 560 U.S. 538. 560 U.S. 538. It's a 2010

1 case. But in Krupski v. Costa Crociere, it says
2 that the issue of undue delay -- and this is not
3 undue delay. This case has been trying to get
4 off everybody's mind for a long time.

5 The issue of undue delay --

6 (Audio feed was lost.)

7 -- relates back under Rule 15(c). And
8 that's a 2010 Supreme Court case. So I just
9 think we've done what we need to do. I think the
10 probability of what it is all about, I think that
11 can be clearly seen to anybody who is involved
12 with this kind of stuff. And I think that we're
13 not here to litigate whether we're going to win
14 or not. This is had we made out a cause of
15 action that can relate back because of the
16 conduct, transaction, and occurrences. It
17 doesn't have to be all of them. It can be any of
18 them. So definitely the conduct is there.

19 And so we think we've done what we
20 needed to do to have this amendment accepted and
21 let us go at the rest of the litigation. And
22 that's all I'll say first, Mr. Barr.

23 THE COURT: Thank you very much,
24 Mr. Whipper. Mr. Altman?

25 MR. ALTMAN: Mr. Barr, thank you.

1 I'll start by saying that Mr. Whipper's
2 admissions he made, his statute of limitations is
3 wrong with regard to this claim -- or these
4 claims. And what the plaintiffs are seeking to
5 do is get a relationship back to a totally
6 unrelated issue.

7 The provision of Rule 15(c) says that
8 there has to be some relationship. What we're
9 talking about is a claim with regard to ownership
10 of property that was conveyed to the defendant in
11 1979 versus something that supposedly happened
12 some time after 2004. It was unrelated to it,
13 and that is with regard to if you look at the
14 competency of Mr. Knight -- Norman Knight, Jr. --
15 and the relationship he had with his wife.
16 They're totally unrelated issues.

17 An amendment under Rule 15(a) says it's
18 done so without prejudice. The amended complaint
19 or the revised amended complaint that added
20 conspiracy, because the amendment only asked to
21 add the claim of loss of consortium, specifically
22 says that they're asking for a jury trial.

23 THE COURT: Say that again. There
24 has to be what?

25 MR. ALTMAN: They're asking for a

1 jury trial with regard to these claims. The
2 original claim that we were dealing is the
3 ownership of the property. The plaintiffs have
4 agreed that that's fine without a jury, and now
5 they want a jury trial.

6 Your Honor, this case was originally
7 filed in 2005. It was dismissed for lack of
8 prosecution. There was a hearing in 2008.
9 Shortly before that hearing, Mrs. Knight filed a
10 motion. It was filed by her and Bobby Knight in
11 a number of cases: a 2005 case, a 2006 case, a
12 2007 case, another 2005 case asking to amend the
13 pleadings to do the exact same thing with regard
14 to the loss of consortium.

15 There was a hearing before Judge Dennis
16 on April 14, 2008. Now, Mrs. Knight was not
17 represented, and Mr. Knight, Jr. -- III showed
18 up. He was not allowed to talk. He didn't have
19 an attorney. He wasn't part of the case. But in
20 that case and that hearing -- which was to
21 restore the 2005 case -- and the hearing also
22 included the motion to amend -- Mrs. Knight
23 withdrew the motion. That happened 12 years
24 ago -- or over 12 years ago. The case was
25 restored and became the 2008 case, which,

1 likewise, was dismissed because the plaintiff
2 didn't do anything.

3 Then in 2019 a motion is filed to
4 restore. The case was restored. That's three
5 times that they've filed, and now this is -- if
6 you want to add this, this becomes a fourth time
7 that the case is restored or the case is added --
8 something's added to it. Rule 1 says that we can
9 do this without -- with the least expensive way
10 possible.

11 THE COURT: Say that again, please.
12 Rule 1 --

13 MR. ALTMAN: Rule 1 of South
14 Carolina Rules of Civil Procedure say that the
15 rules have to be interpreted to keep the cost
16 down. And what we're trying to do here -- or
17 what Mr. Whipper is trying to do here on behalf
18 of his clients is expand the case and cost a lot
19 more because we've alleged here conspiracy. We
20 don't know who the conspiracy is with. We're
21 talking about more depositions. We need to find
22 out who the conspiracy is with and what they did.

23 Mr. Whipper says that we're talking
24 about facts, not about whether or not he's
25 alleged a cause of action. But yet, he goes into

1 the facts to try to get us to that point. The
2 loss of consortium here is because of the actions
3 of Mrs. Knight and Bobby Knight, III. We've
4 provided copies of court orders that they
5 specifically disobeyed and as a result ended up
6 in jail.

7 Because of what they did, Mr. Knight,
8 Jr. was removed from the home. It's an order
9 before the Court. They suggest they've alleged
10 something, but where does it go? Where does it
11 go? We're trying to keep the expense down.
12 We're trying to move this matter forward. And
13 what the plaintiff is trying to do is expand this
14 beyond anything that the Court should be hearing.

15 If there was a cause of action for loss
16 of consortium or conspiracy, it didn't exist --
17 didn't come into existence when the motion was
18 filed to amend in 2019 or 2020 because they knew
19 it existed or claimed it existed in 2008 at the
20 latest. And now we're sitting here 12 years
21 later and saying, oh, this is something basically
22 new. It's not new. They knew it before.

23 It's just beyond my imagination, A, that
24 they should be allowed to go forward, and, B,
25 that there could be a relationship back to escape

1 the statute of limitations that they knew was
2 right in front of them. But when we look at
3 whether this motion complies with the rules to
4 allow an amendment, it's just not there, a loss
5 of consortium action entitled to real estate that
6 has been pending over and over again. It's been
7 pending for years, well before the death of Mr.
8 Knight, Jr. and the death of Mrs. Knight.

9 To allow them to come in now and start
10 raising these issues increases expense, increases
11 the length of time this case is going to be --
12 we've done some discovery in this case. We've
13 gotten some answers. Now we're going to have to
14 do more discovery, more depositions. That's
15 prejudicial to us.

16 We had no idea this was going to be
17 re-filed again. It was withdrawn in 2008,
18 12 years ago. Your Honor, Mr. Barr, I just don't
19 see where this meets the requirements of the
20 South Carolina Rules of Civil Procedure. It just
21 doesn't happen in this case.

22 If they were trying to file a separate
23 case and get a jury trial, that's totally up to
24 them. They'll be met with the same defenses, I
25 understand. But we're going to still have to do

1 discovery but it doesn't affect this case. It's
2 prejudicial to this case. It's not related.

3 And then, again, they asked for a jury
4 trial with regard to this, which doesn't let it
5 get tried together anyway. So if they want the
6 jury trial and they've asked for it, it's got to
7 be a separate matter. And let's focus on the
8 question of title. Thank you.

9 THE COURT: Before I hear further
10 exchanges, let me make a couple of observations
11 myself. I think that my decision is governed by
12 15(a) the language that says that a party may
13 amend its pleadings after the initial 30 days
14 only by leave of the Court or by written consent
15 of the adverse party. And here is the operative
16 language I think. And I don't think it has
17 anything to do with relating back.

18 A leave shall be freely given when
19 justice so requires and does not prejudice any
20 other party. I think that's the operative
21 language that governs my ruling on this issue. I
22 don't think that I -- I don't think it would be
23 proper for me to evaluate whether the statute of
24 limitations applies or whether there are any
25 viable defenses. I think that's the question.

1 And I'll say to you what is very, very
2 troubling -- and Mr. Whipper, I address this to
3 the plaintiff -- what's troubling is that the
4 case was filed in 2005. And so although the
5 amended complaint doesn't specifically allege
6 dates, I'm assuming that the amended complaint
7 intends to allege facts that existed at the time
8 of the original filing in 2005. And that was
9 15 years ago. And that's the troublesome part of
10 it for me.

11 If this case had been filed two years
12 ago and this amendment were before me now, I
13 think that the tone of it would be entirely
14 different. And so I'm troubled by that. I'm
15 troubled by the passage of 15 years in asserting
16 this amendment. And I did see as I looked at the
17 court findings the communications from
18 Mrs. Knight. I did not know what had happened to
19 them. And you can address that, Mr. Whipper, if
20 you want.

21 Mr. Altman says that that motion -- that
22 consortium request, whatever year it was, was
23 withdrawn by her. But I'm just troubled by the
24 lapse of time here in asserting this at this
25 stage.

1 So let me turn it back over to one more
2 exchange because what I'm interested in hearing
3 is, Mr. Whipper, your articulation of why this is
4 not prejudicial to the defendant and, Mr. Altman,
5 why you say that it is.

6 So let me turn the floor back over to
7 you, because I think that's the operative phrase.
8 I'm not here to weigh the question whether there
9 are any viable defenses but simply whether it
10 would be prejudicial. I think that's my
11 determining factor.

12 MR. WHIPPER: Okay. For that
13 part -- and I want -- again, I want to go back to
14 that Krupski v. Costa Crociere case, your Supreme
15 Court case that says, issue of undue delay is not
16 persuasive in an evaluation of relation back
17 under Rule 15(c).

18 THE COURT: Forgive me for
19 interrupting you. But do you recall in that
20 case -- that was a United States Supreme Court
21 one, right?

22 MR. WHIPPER: Yes, sir.

23 THE COURT: Do you recall what the
24 delay had been in that case?

25 MR. WHIPPER: Not entirely, Your

1 Honor.

2 THE COURT: Okay. Well, we can
3 look at it. But go ahead.

4 MR. WHIPPER: This is from an
5 earlier piece of research that I did, and I found
6 that case. But I think it had to do -- it maybe
7 must have dealt with some cargo or something like
8 that. But it did hold that fact. And I think
9 our state courts have never chastised folks
10 concerning what has happened with the passage of
11 time in our jurisprudence itself.

12 As a matter of fact, we -- a long time
13 ago, our courts took the statutes of limitations
14 out of certain causes of action because they
15 wanted the statute of limitations to only involve
16 the issue of maybe one report or to make sure
17 that people filed certain basic actions in a
18 timely manner.

19 So the statute of limitations here --
20 our statute of limitations is interpreted as not
21 being affected by the passage of time provided
22 that the cause of action arises out of the
23 conduct or occurrence or transaction part of the
24 original complaint. So now --

25 THE COURT: Let me -- again, that

1 goes to the merits of the statute of limitations.
2 But my only question is why is this not
3 prejudicial to the defendant to require her to
4 defend this 15 years after it arose?

5 MR. WHIPPER: All right. Now
6 fundamentally -- the fundamental reason why it's
7 not prejudicial is because when you file actions
8 regarding the title of property, those kinds of
9 claims -- and you deal with fraud and undue
10 influence and all kinds of things when you file
11 for title of property. That statute itself is
12 40 years.

13 So we are well within the statute for
14 challenging title. 40 years, Mr. Barr. So with
15 40 years to get this done, we find out -- not
16 only that but that in the 2008 case when motions
17 were filed to have it restored -- because it had
18 been -- it really had been accidentally dismissed
19 for failure to prosecute. And that's why Judge
20 Jefferson, who was the trial judge at the time
21 who dismissed it for failure to prosecute, she
22 heard the motion to restore it, and she
23 recognized that at that time the administrator,
24 they were doing things just to get stuff off the
25 docket and re-timely filed our motion to have it

1 restored back then.

2 And that's why we're here with 2008, the
3 original complaint. So you've got the 40-year
4 statute of limitations. You've got the fact that
5 we have the time in regards to when it was --
6 so-called dismissal for failure to prosecute.
7 And we were timely seeking to have it restored,
8 but we were -- and there's a case. I can't
9 remember the time or year of the case, but
10 there's a case called Hooper.

11 The Hooper case was tossed. When you're
12 doing all kinds of fighting and stuff and
13 litigation, you can't be held if something gets
14 moved a little later than you might like it to
15 move.

16 But now the prejudice issue. So now we
17 know from everything that we've heard including
18 when we talk with the other side about this case,
19 everybody knows what's been going on. So how are
20 they prejudiced? They are prejudiced in no way.
21 Everything that we need to defend against this
22 case is here. The offices of Social Services is
23 still functioning and active. You can get those
24 records.

25 The people, the main parties are alive

1 and well as the defendant and her sister and
2 others. Any documents that they need are still
3 available to make any points they want to make.
4 And so that prejudice that is anticipated is one
5 that says, number one -- now, primarily under the
6 15(c) the prejudice is do you have any reason --
7 do you have notice? Is this logically related
8 and is this something that really knocks you off
9 your boots? You don't have a chance to do
10 anything about it.

11 Well, no, they can't say that based on
12 just what we heard already in terms of some of
13 the argument. This thing has been going on.
14 They know what it's all about. They're not
15 prejudiced about it at all in terms of putting
16 together any defense they want to pull together
17 and dealing with this case to include -- and
18 so -- and we have -- I mean, this matter back
19 from '05 to '08 when the original matter was
20 going through whatever changes it was going
21 through, there was 40(j) that was a part of all
22 of this.

23 There was a couple of dismissals for
24 improper reasons. That's why the case kept
25 getting restored. And so here we are. And

1 that's all in the context of overall 40-year
2 statute of limitations. But we aren't relying
3 just on that because the original action has been
4 restored. And so now here we are.

5 They've got everything they need to go
6 forward. We said we have -- they have the
7 fundamentals to go forward. We think there's
8 some other things out there that we need to
9 develop because there is a big history in the
10 case. But we think we've got what we need to get
11 us started. And we think the law in terms of
12 what we pled is fair.

13 I think that we as -- and when you look
14 at that -- when Mr. and Mrs. Knight filed their
15 pro se -- both of them pro se. When they filed
16 their pro se motion to amend and they appeared,
17 if she was a trained attorney, she could say,
18 Judge, I'll just file a summons and complaint
19 because -- or I'll ask you now to make this a
20 permissive amendment.

21 And so that's what happened. And so
22 they withdraw because they didn't know what to
23 do. They're not lawyers. And so they are not
24 prejudiced. We think that -- oh, Your Honor,
25 relative to the jury trial issue, I think we -- I

1 pled that. I put that in there, but I think we
2 did it as a part of what -- the referral was to
3 you. I think we waived that jury trial, in fact.
4 I think we were willing to give up the jury trial
5 request in order to get to a special referee.

6 And so for the purposes of filing --
7 doing what we have claimed and what we have
8 alleged, we're the one that's working against
9 time. But everybody's here. Miss Tonney has to
10 be deposed. Miss Jones has to be deposed. Other
11 people around the case may have to be deposed.
12 They definitely have to do some more requests for
13 discovery.

14 You know, I'm the second or third lawyer
15 in this thing. There was bad blood between the
16 lawyers. When she filed this motion to include
17 this particular claim, it was like in February of
18 '08, maybe around there. It was some time not
19 long before Mr. Knight died. He died in '08. I
20 think it was March '08.

21 So it was all very timely. It just
22 didn't get done, and we got in some other things.
23 And we think that these matters need to be
24 processed completely.

25 And I think too -- and, again, I'll say

1 fundamentally, we're not outside the law in any
2 way. A 40-year statute of limitations. Relation
3 about the case has been restored. It's all
4 there. It's all on solid legal ground. And they
5 are, in fact, aware that they started a fight.

6 And by the way, Mr. Barr, you mentioned
7 what hadn't been pled. I think we corrected our
8 amended complaint. We served that on you-all on
9 August 12th. We corrected that. And in that,
10 sir, everybody will know in the corrected amended
11 complaint we talk about the dates, which are
12 consistent with dates in the original complaint.

13 The issue about returning this property
14 to start in '79 and all the way through '04 or
15 '03 -- through '79 -- 1979 to '03 -- 2003. And
16 so we talk about the fact that in '05 -- the
17 summer of '05 these -- a lot of this stuff
18 started happening in terms of challenging
19 Mrs. Knight's ability to manage her house and
20 take care of her husband.

21 June of 2004 there was a negligent
22 frivolous case re-filed against Bobby Knight.
23 And so we go on through that. And we pinpoint
24 the time periods.

25 I think -- and in talking about the

1 conspiracy -- that the conspiracy we think will
2 show -- we allege that in 2004 or so that they
3 got together with this DSS thing. And then there
4 are other times that we allege that this
5 happened.

6 I think they're all within that time
7 period, 2004 or 2003 through 2006 or so. And so
8 it's all there. And we have that in our
9 corrected amended complaint that we served in
10 terms of the proposed amendments. We served that
11 on August 12th, Mr. Barr.

12 THE COURT: I've got that.

13 MR. WHIPPER: So that's where we
14 are. I just don't think that there's any
15 prejudice. I think this has finally come
16 together and time to get it taken care of. And
17 we're the one that's on the rough side of the
18 mountain, but we're willing -- we think we've got
19 what we need to show what has happened here.

20 I think that the big thing is that the
21 conspiracy issue doesn't require known facts. It
22 requires behavior that is intended to cause
23 problems and this thing happened. And that's the
24 behavior that's here, in not turning over the
25 property. That was the understanding. And then

1 having it torn down. And see, there's where the
2 jury trial request came in.

3 I think that they were looking for a
4 jury trial on the issue of the damages and what
5 that would be involved originally because this
6 thing was originally filed on -- jury trial
7 request originally even back in '05 and '08. And
8 so I think they're not prejudiced at all in
9 responding to this case.

10 THE COURT: Let me ask you to
11 clarify something. I notice that you are
12 demanding -- in your proposed amended complaint
13 you're demanding a jury trial, correct?

14 MR. WHIPPER: Well, that -- I did
15 that. I think that was oversight on my part. We
16 did suggest -- we did say that we would not
17 require --

18 THE COURT: Don't misunderstand me.
19 Whether I decide it or a jury decides it is not
20 the point of my question obviously. So obviously
21 it relates to your motion. If it's a jury trial,
22 the case goes back over to the jury trial roster
23 rather than before a special referee.

24 MR. WHIPPER: Well, I think there's
25 some feelings about that. I think you're in

1 position to handle a jury trial. And I know it
2 would be more --

3 THE COURT: You say I am?

4 MR. WHIPPER: I think under the
5 rules I think you are.

6 THE COURT: I don't know that
7 that's correct.

8 MR. WHIPPER: Okay.

9 THE COURT: But anyhow, I'll still
10 address that later.

11 MR. WHIPPER: But I can tell you
12 now we -- it was our understanding -- and I pled
13 it. I wanted to make sure I was staying
14 consistent with what had been pled earlier. And
15 I also asked that someone be brought in as an
16 indispensable party. But yeah, if -- the jury
17 trial should not be something that we necessarily
18 have to have in the complaint. And so that's --

19 THE COURT: No. I'm not trying to
20 talk you out of it. I just -- I thought I heard
21 you say or suggest that maybe you're withdrawing
22 that. I don't want to pin you on that. I just
23 want to make the record clear as to what your
24 position is on a jury trial.

25 MR. WHIPPER: Well, my position is

1 that we're moving under the special referee
2 hearing the case sitting alone.

3 THE COURT: Okay. Well, let me
4 hear Mr. Altman --

5 MR. WHIPPER: And I'm on the record
6 on that.

7 THE COURT: What I'll really invite
8 at this -- these arguments to address is the
9 question of prejudice because I think that
10 that's -- it's not my job to decide whether the
11 proposed amended complaint is or is not valid but
12 whether it's barred by the statute of limitations
13 or whether it states a cause of action.

14 That's not before me on a motion to
15 amend. It's strictly a question of whether or
16 not it's prejudice -- it would be prejudicial to
17 amend the complaint at this stage. Mr. Altman?

18 MR. ALTMAN: Mr. Barr, I need the
19 clarification. Has Mr. Whipper specifically
20 waived the jury trial?

21 THE COURT: Let's not address that
22 right now. Let's get to that later. And I think
23 I need to hear about this prejudice issue, and
24 then I'll revisit that at the close.

25 MR. ALTMAN: Well, the reason I'm

1 asking is because that affects prejudice in my
2 opinion because my understanding of rulings is
3 that if you have -- if this amendment were
4 allowed, you would have to bifurcate and you
5 would try part of the case and the rest of the
6 case would be tried by a jury in the court before
7 a circuit court judge.

8 And that in and of itself would create
9 prejudice. Mr. Whipper talks about the 40-year
10 statute of limitations and dealing with title to
11 property. We're not talking about title to
12 property. We're talking about a case of loss of
13 consortium and a claim of conspiracy.

14 We talked when we had the status
15 conference several weeks ago about a scheduling
16 order, which I believe you prepared. And that
17 was based on a claim regarding the title for the
18 property. Now we're talking about a serious
19 expansion of what we have to do here. The
20 witnesses. Who are the coconspirators? How many
21 are there? How many depositions do we have to
22 take? What do we have to go through?

23 We're not talking about the same time
24 line or scheduling order. We're talking about a
25 much, much greater period of time to get this

1 done and much, much greater expense in this case.
2 The case that we are dealing with, the underlying
3 case dealing with title of the property, as you
4 pointed out was filed in 2005. This was after
5 Mr. Knight, Jr. was declared incapacitated.

6 So if there was a conspiracy to have
7 that done, if there was a loss of consortium
8 because of that, it happened in 2004 when he was
9 declared incapacitated, which was acknowledged by
10 Mr. Whipper in an order prepared which we've
11 provided to you where acknowledged it. Nobody
12 disagreed with that.

13 So now we're talking -- we've got these
14 orders in 2004, 2005, 2006 to talk about. So now
15 we're going back 15, 16 years ago as to when this
16 would have originated and tried to deal with it.
17 2008, the motion had been filed before and
18 withdrawn. We had every to reason to believe it
19 was gone.

20 12 years later the trial resurrected.
21 The case was dismissed two other times. The 2005
22 case was dismissed. The 2008 case that was
23 allowed to be re-filed was dismissed. And all of
24 a sudden they realized, oh, my goodness, we
25 didn't mean to allow it to be dismissed. And

1 fortunate for them Judge Dennis allowed it to be
2 reinstated. And now they want to come back and
3 add causes of actions that are totally unrelated
4 increasing the expense in this case tremendously.

5 So yes, we did not have any reason to
6 believe that this would be resurrected. We knew
7 it was gone 12 years ago -- over 12 years ago.
8 So to get the focus of this case done, we should
9 be focusing only with regard to the title, and we
10 will deal with that within the time lines that we
11 previously agreed to, not trying to figure out
12 more discovery, more time, more expense in
13 dealing with witnesses -- additional witnesses,
14 additional depositions.

15 And if we go back and look at the motion
16 as it was originally filed, which I have been
17 trying to figure out since I first saw it, it's
18 got a case caption as I said previously of one,
19 two, three, four, five different cases. And it
20 supposedly or alleges caption as follows: Irv
21 Condon, probate judge and Chloe Tonney,
22 petitioner versus Norman Robert Knight, Jr.
23 alleged incapacitated person, et al.

24 THE COURT: Are you referring to
25 the filing in the '08 case?

1 MR. ALTMAN: Yes, sir.

2 THE COURT: Go ahead.

3 MR. ALTMAN: Then it says Sean
4 Tundry, et al. He's an attorney. He was
5 involved in the case back then.

6 THE COURT: Right.

7 MR. ALTMAN: And there are other
8 attorneys. And it says, versus Mildred C. Knight
9 White and Bobby Knight, III, son of alleged
10 incapacitated person, appellants. Then it has
11 another caption. Mildred C. Knight White and
12 Bobby Knight, III, son of alleged incapacitated
13 person, plaintiffs, versus Wachovia Bank, N.A.,
14 and Wachovia Investments, Inc., defendants, with
15 our case number except 2008 says pending. What
16 does that mean?

17 The cost that will be incurred to allow
18 this amendment to go forward just are exacerbated
19 by allowing this. And we should not have to pay
20 those additional costs. Again, 2008 we have
21 every right to believe it was over with. There
22 was no further claim.

23 So I see a tremendous prejudice in
24 allowing an amendment at this late -- extremely
25 late stage considering our scheduling order and

1 what will happen if it's allowed and how we would
2 have to move forward. Thank you.

3 THE COURT: Okay. As I say, I'm
4 troubled by the lapse of time. And so here is
5 what I would like you to do, please. And try to
6 focus on it succinctly. There's no need to beat
7 it up too hard. But neither of you really
8 briefed the question of prejudice. And I think
9 that's the fundamental issue.

10 So, Mr. Altman, give me a two-page memo
11 on why there is prejudice, and tell me when you
12 can get that. And I'll give Mr. Whipper a time
13 to reply. And I think that's the only way to do
14 it rather than asking you each to tell me to
15 brief something as an issue.

16 I think it's up to you, Mr. Altman, to
17 show why there's prejudice. And then I would
18 like to give Mr. Whipper the opportunity to
19 reply. But I'm troubled by the passage of time.

20 MR. ALTMAN: Can I have 10 days,
21 please?

22 THE COURT: Yes. And Mr. Whipper,
23 how long do you want after the 10 days to get a
24 reply in?

25 MR. WHIPPER: I would ask for the

1 same of 10 days.

2 THE COURT: Say again?

3 MR. WHIPPER: Same. 10 days.

4 THE COURT: Another 10?

5 MR. WHIPPER: Yes.

6 THE COURT: Okay. So today is the
7 26th of August. And so the 10 days would be
8 Labor Day, September the 7th. So Mr. Altman,
9 yours would be due September 8th. Does that look
10 right?

11 MR. ALTMAN: Yes, sir.

12 THE COURT: And then so 10 days
13 after that, Mr. Whipper, would be on the 18th?

14 MR. WHIPPER: Yes, sir.

15 THE COURT: So Mr. Altman, if
16 you'll send me a memo on prejudice. And there
17 are cases that discuss it. And I don't want --
18 again, I don't want either of you to incur
19 unnecessary expense for this, but there are cases
20 that discuss the legal prejudice that's
21 contemplated in Rule 15.

22 And so Mr. Altman, get me a follow-up
23 memo by the 8th and Mr. Whipper by the 18th. And
24 I will have a ruling by the 25th, the following
25 Friday at least.

1 MR. ALTMAN: If I may, we have a
2 scheduling order. I don't remember what the
3 dates are, but I think we'll have to adjust the
4 dates on this.

5 THE COURT: I'll have to look at
6 that. Yes.

7 MR. WHIPPER: I don't think we have
8 a scheduling order. What I recall and remember
9 is that when we started thinking about the
10 scheduling order and I said, well, there's
11 motions outstanding, Mr. Barr and Mr. Altman, and
12 you said, let's stop because we wouldn't want
13 motions filed later on and then someone need to
14 reopen -- want to reopen discovery because they
15 didn't state certain kinds of claims.

16 And so we did not really establish a
17 scheduling order because we felt like we needed
18 to know what we would be dealing with as a basic
19 action so we could do a scheduling order. That's
20 what I recall.

21 THE COURT: I'll double check to
22 see. I can look.

23 (Off-the-record discussion.)

24 THE COURT: The order that I did
25 draft, and unfortunately never sent to you or

1 filed, provides that discovery will be completed
2 by December the 2nd. Mediation will be held on
3 or before January 8th, and if the case doesn't
4 settle, it would be tried February 11th and 12th
5 of 2021. So I don't know that what we're talking
6 about here would affect necessarily that. Any
7 response from you?

8 MR. WHIPPER: Yes, Your Honor. I
9 think that was one of the things that we were
10 concerned about now is that -- and what happened
11 was some of those dates that you mentioned, of
12 course, were based on the fact that two weeks ago
13 we made -- we probably planned to have this issue
14 argued and disposed of. But we knew that we
15 needed to deal with this particular issue before
16 we could say what we're doing.

17 But at any rate, however you do it,
18 Mr. Barr, is fine with me in terms of I just
19 think that this is litigation, and one of the
20 things we wanted to know was, well, what is it
21 we're going to be litigating? What issues are we
22 going to be litigating? And this is a part of
23 what we're trying to determine right now.

24 THE COURT: So you're suggesting
25 that schedule may not still pertain?

1 MR. WHIPPER: I'm suggesting that
2 that scheduling order you drafted it, but it had
3 to be put on hold until we decided this issue.

4 THE COURT: Okay.

5 MR. ALTMAN: I'll have to agree
6 with that. And I know I tried to schedule
7 Mr. Knight's deposition again for the 14th, but
8 we've got to postpone that pending this decision.

9 THE COURT: We'll table that.
10 Let's address this motion to amend. And let's
11 refine it. Let's decide as Mr. Whipper suggests,
12 what is it that we're going to be -- what am I
13 going to hear? What are you going to litigate?
14 And I think that has to be determined by the
15 nature of the complaint.

16 So let me hear from you on this -- on
17 the briefing on this prejudice issue, and I'll
18 promptly rule on it. And at the conclusion of
19 that, once I get that in, I'll schedule another
20 conference -- status conference so we can discuss
21 the schedule going forward.

22 MR. ALTMAN: Thank you.

23 MR. WHIPPER: Thank you, Your
24 Honor.

25 (The hearing was adjourned at 11:10 AM.)

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4 I, MacKenzie Allen, Court Reporter
5 and Notary Public for the State of South Carolina
6 at Large, do hereby certify that the witness in
7 the foregoing deposition was by me duly sworn to
8 testify to the truth, the whole truth and nothing
9 but the truth in the within-entitled cause; that
10 said deposition was taken at the time and
11 location therein stated; that the testimony of
12 the witness and all objections made at the time
13 of the examination were recorded stenographically
14 by me and were thereafter transcribed by
15 computer-aided transcription; that the foregoing
16 is a full, complete and true record of the
17 testimony of the witness and of all objections
18 made at the time of the examination; and that the
19 witness was given an opportunity to read and
20 correct said deposition and to subscribe the
21 same.

22 Should the signature of the witness
23 not be affixed to the deposition, the witness
24 shall not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

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

Witness my hand, I have hereunto
affixed my official seal on September 15, 2020 at
Charleston, Charleston County, South Carolina.



MACKENZIE ALLEN

My commission expires
August 30, 2029

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

TRANSCRIPT OF PROCEEDINGS
NOVEMBER 24, 2020

JUDITH A. BROWN, ET AL,

Plaintiffs,

vs.

CASE NO. 2019-CP-10-03042

CHLOE KNIGHT TONNEY,

Defendant.

BEFORE SPECIAL REFEREE CAPERS G. BARR, III

TIME: 10:00 AM

LOCATION: REMOTE VIDEOCONFERENCE

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A P P E A R A N C E S

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ALSO PRESENT: BOBBY KNIGHT

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INDEX

(No exhibits were marked)

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2 MR. BARR: We're here in the case
3 of Judith A. Brown, et al, versus Chloe,
4 C-H-L-O-E, Knight Tonney, T-O-N-N-E-Y. Case
5 number 2019-CP-10-03042 on the motion of the
6 plaintiffs to alter or amend the order filed by
7 the special referee in this case on October 28,
8 2020 denying the plaintiffs' motion to amend
9 their complaint.

10 Present today are Seth Whipper and
11 his attorney -- I mean his client, Mr. Bobby
12 Knight, for the plaintiffs, and Charles Altman
13 for the defendant, Chloe Knight Tonney.

14 Having now published the hearing, I'm
15 going to put my microphone on mute, and, Mr.
16 Whipper, ask you to address your case,
17 please.

18 MR. WHIPPER: All right, sir. All
19 right. The caption that we did send, though,
20 does include all the parties in the action, but
21 at any rate, I'm J. Seth Whipper for the
22 plaintiffs in this case. J. is my first initial,
23 and everybody knows me as Seth.

24 I think the issue presented -- and
25 I put together a little quick memo as well for

1 guidance -- the issue presented here is whether
2 or not the defendant would be prejudiced by
3 amending the original complaint of the
4 plaintiffs.

5 In addressing the order, I think I
6 need to say that the order is certainly measured
7 and insightful. My concern, though, is that the
8 order seems to say that a delay of any length --
9 I'll say substantial length -- is per se
10 prejudicial to a defendant -- or to a party. And
11 I kind of think that's the summary.

12 The Court does -- Mr. Capers, you
13 do conclude that there's undo delay; that this
14 undo delay presents prejudice for the defendants.
15 Well, as I put under my memo, when we scheduled
16 the discussions about amending this complaint,
17 the defendants were able to obtain transcripts of
18 a 2008 hearing, and they argued quite
19 persuasively. And, in fact, they did shed some
20 light on the status of this motion to amend that
21 was filed pro se by my decedent.

22 And so they're able to do that
23 because I'll find the clerk of court has done a
24 magnificent job in recording all kinds of
25 proceedings, all kinds of documents are

1 available. And so delay of time -- let's just
2 say time -- the passage of time, and as we
3 operate the court system now, does not have the
4 same impact as it used to have.

5 Clearly we see these cold cases
6 that are resolved after more than 50 years.
7 People are found to be innocent because there are
8 documents available from the archives. We have
9 an archival unit here for our court system. So
10 you can get documents if you need them.

11 And, moreover, particularly when we
12 look at the defendant's access to persons and
13 material, that 2008 transcript -- we've even
14 shared transcripts in our discovery that went
15 back, I think, at least as far as 2006. So
16 documents are available to substantiate what's
17 going on in this case.

18 And as a little aside to that, I
19 mean, that's one of the reasons I -- you know,
20 when you, Special Referee, when you asked us to
21 prepare memorandums on this point, you said,
22 well, you know, limit your presentations to two
23 pages. And I think we didn't always -- we didn't
24 get that in some cases, but we should have. And
25 I think that's something that I need to note,

1 that I think there's a need for part of your
2 order to be amended; that all this material that
3 was beyond what you requested probably should be
4 struck from the record. That's one of the things
5 we're going to ask for as a part of altering or
6 amending your order.

7 It was clearly your directions to
8 us, was that we should prepare something about
9 two pages. And, of course, I only added two
10 documents because of what my opposing party did.

11 But nonetheless, I think when we
12 look at the fact that the passage of time,
13 especially now, is not an automatic challenge to
14 somebody -- court cases -- litigant in a court
15 case being able to defend themselves and be
16 prepared to meet the thrust of any arguments put
17 forth in the forum, in the court.

18 And so I think that is a part of --
19 a major part of your ruling that I think, Judge,
20 that you might want to reconsider.

21 And I think that, too, when you
22 look at what the federal rules and what our
23 lawyers filed, you know, I still think that it's
24 worth -- a concern that even with the case that
25 you discussed, which is thorough in a lot of ways

1 of Justice Few -- I think I made mention of it in
2 Patton v. Miller. Justice John C. Few cites
3 3 Cyclopedia of Federal Procedure Section 8.2,
4 third edition, revised in 2017. And he says,
5 "The spirit of the rules is to settle
6 controversies upon their merits, rather than to
7 dismiss actions on technical grounds; to permit
8 amendments liberally, and to avoid, if possible,
9 depriving a litigant of a chance to bring a case
10 to trial." And I think this is an important
11 standard that Justice Few cites in his analysis
12 of a 15(a) amendment, which that's what's going
13 on here.

14 I'm -- my first amendment is under
15 15(a), and that's why we mention this issue of
16 prejudice. The 15(a) amendment under our rule
17 says, well, that the court has to consider
18 whether there's going to be prejudice.

19 Well, what we do in our 15(a)
20 amendment, because the rule says, you know, where
21 there's the conduct, when we're dealing with
22 relation back -- where there's the same conduct,
23 it can cause this dispute, then there will be
24 relation back. The statute of limitations will
25 not be a bar, and that's all we did. We only

1 asked to amend the complaint to include all the
2 conduct that was involved in this whole dispute
3 about the property and its ownership and who was
4 going to make the last decision, who should be
5 doing what.

6 All of that is just one smorgasbord
7 of litigation, and some of that litigation, I
8 might add, is still going on today. There's a
9 rule to show cause set up regarding these
10 parties. They're just finishing up an appeal of
11 that estate. That estate is still open. The
12 Estate of Norman R. Knight, Jr, the father, is
13 still open. The Estate of Mildred C. Knight is
14 still open because of litigation that's been
15 going on. There are costs that are involved with
16 it, of course.

17 And so the defendant is dearly
18 apprised of what's going on with this estate and
19 what is going on with a lot of these issues.

20 So it's not going to be a surprise
21 to the defense that they're going to have to
22 answer for what happened. And I think that's
23 what's critical, too, about Justice Few's cite to
24 3 Cyclopedia of Federal Procedure because it
25 says, "If possible, avoid depriving a litigant of

1 a chance to bring a case to trial" because as we
2 said earlier, but for the behavior of the
3 defendant and her co-conspirators, we would not
4 be here.

5 So should, at this point in time,
6 we walk away when the case can be argued? In
7 this case, we have the surviving heir. We have
8 both estates. There are issues involved with a
9 lot of the allegations, and they will yield -- in
10 our opinion, they will yield some recompense that
11 is a part of a just resolution to this matter.
12 We're not making it up.

13 I might add that Justice Few, in
14 the same Miller case, concludes his discussion on
15 rule 15(a) saying that because the record
16 contains no basis for a conclusion, the defendant
17 would have been prejudiced by allowing the
18 plaintiffs to amend their complaint.

19 We find the circuit court erred in
20 not allowing the amendment. And I say that --
21 that was at 420 S.E. 493. I think that's the
22 page, Mr. Barr. Page 493. 420 S.E. 493. Or
23 page 263 of the 804 volume of the South Eastern,
24 2d.

25 And I kind of wanted to mention

1 that when he concludes -- he says, "For the
2 conclusion --" I'm sorry, I coughed. He says,
3 "Because the record contains no basis for
4 conclusion, the defendant would have been
5 prejudiced." That's the word he used in
6 concluding. So he's still standing on the
7 standard that we have in South Carolina that's
8 about prejudice. And then, you know, in South
9 Carolina, we define prejudice.

10 So although Mr. Few talks about --
11 and you got to accept that he talks about -- I
12 think it's the Foman case, the Supreme Court
13 case. It's the Foman case. And it laid out a
14 number of other considerations that you might
15 have for why you might not grant an amendment. I
16 think in South Carolina, even despite Justice
17 Few's descriptive language, prejudice in South
18 Carolina does not include delay.

19 And you look at my memo, the case
20 of Lee v. Bunch, it's a 2007 case. It may be a
21 -- yes, it's a 2007 case, I think. "The
22 prejudice that would warrant denial of a motion
23 to amend the pleadings is a lack of notice that a
24 new issue is to be tried and a lack of
25 opportunity to refute it."

1 Then in Stanley v. Kirkpatrick --
2 that's 357 S.C. 169, and it's in my memo.

3 "Prejudice as envisioned by rule 15(a) is a lack
4 of notice that the new issue is to be tried and
5 lack of opportunity to refute it." And I just
6 don't think we have that here in this situation.

7 Our case -- number one, our case is
8 recognized and bedded in the original claim,
9 which carries a 40-year statute of limitation.
10 40 years. So that means that, yes, parties
11 involved in these cases might open up Pandora's
12 box as a part of deciding what will happen with
13 the title of property. I understand it says, you
14 know, relative to claims for title to property,
15 but it says 40 years. So that means a lot of
16 stuff is going to be touched on, and you're going
17 to go a long way back a lot of times in dealing
18 with that.

19 And so that's a part of the
20 scenario that we're operating in, and I kind of
21 think that it's also a reason why, you know,
22 these claims are -- should be recognized because
23 we're not -- it's anticipated that, yeah, you
24 deal with some old stuff when you're talking
25 about title of property, but we're going -- we're

1 saying -- and I think this is another thing, too,
2 Mr. Barr, with all respect, you know, the idea of
3 15(c) and the relation back and the fact that it
4 begins with the same conduct, transaction or
5 occurrences, you know, in either area of the law,
6 either federal or state, it's clear that, yeah,
7 what that is about is circumventing statutes of
8 limitations. It's not foisting -- it's not
9 foisting a new claim on the defendant. It's
10 about a claim that, in fact, gets life because it
11 comes out of what you've been arguing about all
12 along. Have you been getting along -- this
13 thing, yeah, it goes back to 2005. And as I said
14 to you, we just turned over in discovery to the
15 defendants a transcript that went back to 2006
16 because it was relevant.

17 So here we are. We're not -- we're
18 just finally getting to a point where justice can
19 be offered to these parties. And so, you know,
20 this litigation is ongoing. As I said earlier,
21 the defendant is involved in all of this stuff,
22 so this is not a surprise to anybody what we're
23 doing. And I just don't think the defendant can
24 demonstrate the kind of prejudice that says that
25 this amendment should not be allowed.

1 Now, relative -- I asked for -- in
2 my motion, I asked for some clarification on the
3 issue of futility. And I think it's a real -- we
4 really need to deal with it. I mean, futility,
5 as I read the law, again has to do with whether
6 or not you qualify for the relief.

7 So that in the James case, the -- I
8 think it was the plaintiffs wanted to add a
9 defendant and it was denied. The motion to add
10 the defendant was denied on the grounds of
11 futility because that defendant, who was a lawyer
12 in the case, who had gotten some e-mails, but he
13 got them through discovery or something, he
14 didn't get them by listening illegally to
15 somebody -- I'm sorry, hacking illegally
16 somebody's portals or accessing their e-mail
17 directly.

18 So he as a proposed defendant
19 didn't have the right character to be covered by
20 the statutes. So they said, look, that's -- that
21 would be futile. And it's a futile amendment.
22 It may involve the same transaction occurrence,
23 but this particular defendant doesn't have the
24 character that you need in order to be included.

25 And the same thing goes for

1 grounds. When you read that case -- that skydive
2 case; it's the same thing. What kicked out, I
3 think, that amendment was the argument over
4 whether or not some -- these respondents -- the
5 City people were covered under the Tort Claims
6 Act. And Justice Few did that case, and there
7 was a lot of discussion about, well, are they
8 covered under this particular section of the Tort
9 Claims Act or this other section of the Tort
10 Claims Act? Did what they do amount to what
11 needs to be characterized as the kind of
12 intentional behavior and determine that, well,
13 wait a minute, you can't include them because
14 they're not a part of the suspect class or
15 something similar to that.

16 Because part of, you know, that
17 skydive case started out as a 12(b)(6) case and
18 so they failed to allow the amendment even though
19 there had been a 12(b)(6) ruling throwing the
20 case out, but then they said, wait a minute --
21 the court said, wait a minute, 12(b)(6) doesn't
22 stop you from recognizing an amendment even at
23 the time of requesting reconsideration.

24 So I think that's what futility is
25 all about. Futility doesn't -- and it's

1 definitely -- I mean, both in the federal rules
2 and the state rules, relative to whether some
3 case is going to be a winner or not is not a part
4 of the court's considerations; does it state a
5 claim of cause of action? Does it satisfy the
6 pleading requirements in terms of the elements
7 and parties? That's what is touched on. Not
8 even -- and of course, the statute of limitations
9 is not a part of it.

10 Now, in my earlier memo, I did
11 refer to the Krupski case, which was about -- it
12 was about a cruise company that had a bunch of
13 names. And it's interesting that -- now, looking
14 at Krupski -- and the Supreme Court is saying,
15 well, wait a minute now. The statute under 15(c)
16 doesn't say anything about delay.

17 And so guess what? Common
18 occurrence -- common conduct, common occurrence,
19 common transaction, that's the hook. And I
20 think, you know, that's really nothing new
21 because there's a case -- and when you talk about
22 -- I think it's our case, Forrester versus Smith
23 & Steele Builders, Inc., and you look at that
24 case, which is, I think -- again, we've got some
25 fine judges. Judge Jasper Cureton did that

1 decision, joined by I think Judge Goolsby and
2 some others.

3 But in that particular case, they
4 recognized a ninth circuit case; *Howey v. United*
5 *States*, 481 F.2d 1187. I think the *Howey* case
6 was even mentioned in *Patton v. Miller*. But the
7 *Howey* case says, "Denial of a motion to amend
8 offered five years after the action commenced,
9 and on the second day of trial was improper in
10 the absence of prejudice. And that case, of
11 course, is a single case dealing with 15(c)
12 relating back -- and 15(a) in amendments. *Howey*
13 *v. United States*, 481 F.2d 1187. It's a ninth
14 circuit case, but it's mentioned in a lot of
15 different decisions on this point.

16 And so, Judge, I think we're there.
17 I think we just -- I just think it's a fair thing
18 to do to have a final resolution to this case on
19 the merits because that's what we're talking
20 about. We can do discovery. We're doing --
21 we've got depositions planned. There's documents
22 everywhere. I mean, we are lacking our
23 decedents, but we have an heir, we have a
24 personal representative, and we have these
25 documents and the records and we're not, you

1 know, we're -- I mean, again, we're pleading
2 based on the conduct that everybody knows about.

3 I mean, Mr. Altman in another
4 presentation even said this case is involved --
5 it's been going on for a long time involving
6 everything that we have here.

7 And so we're not -- we're just
8 finally getting a chance to bring it to a
9 conclusion, and that's only because -- I'm saying
10 one of the reasons that we have to accept, again,
11 as I mentioned in my motion, is that, you know,
12 what happened with Ms. Knight -- she just buried
13 her husband. She's pro se. I mean, I got three
14 years of law school and a law license. I'm going
15 to do things a little different than her. She's
16 trying to represent herself. And so you have
17 that.

18 Then you look -- as we look at how
19 this thing works in terms of the logical
20 relation. "The logical relation depends on the
21 facts pled and not the legal theory." That's out
22 of the Civil Rules Handbook, Steven -- that's a
23 part of my motion, Mr. Barr, my motion to alter
24 or amend. It's there in the last paragraph.
25 Civil Procedures Handbook, page 554. That's also

1 a part of -- Mr. Flanagan talks about that
2 particular fact as well in South Carolina's 1985
3 book. It's about the legal theory. It's about
4 the facts, not just what you're talking about in
5 terms of how you assess them.

6 And so I think that's where we are.
7 I think it's a fair go. I understand knowing --
8 and what I said about Mr. -- Justice Few's
9 language, I mean, he proposes some examples. He
10 says that, you know, one of the problems might be
11 is that somebody might have to do something now
12 that they didn't have to do -- wouldn't have had
13 to do earlier. But I don't think that's an
14 accurate description.

15 The fact of the matter is you're
16 doing it later, and that's all there is to it.
17 You're doing what's relevant. You're not doing
18 anything new. And even if you are getting a
19 little deeper in it, it's about the truth. It
20 isn't about convenience. It's about the truth.
21 And that's what the Court is supposed to be.

22 And that's why I think he also
23 looked at that 3 Cyclopedia and says, yeah, it's
24 about getting to the merits of action. And
25 that's all we're trying to do is get to the

1 merits of action because the impacts of what
2 happened are still having their consequences now.
3 That's what we're talking about. And so we want
4 to see a fair day in court for these parties.

5 I think that's where I am, Mr.
6 Barr. I just think that there's not enough
7 prejudice there to deny it. I think there's all
8 kinds of availability for both parties to
9 litigate this thing fairly. Yes, it's
10 unfortunate to be doing it now because we all
11 would like it to be done, but we're still
12 fighting this thing. And that happens in the
13 law. You get cases that go on a long time
14 because of the kind of cases they are and the
15 kind of things that happened. And here we are.
16 Thank you, sir.

17 MR. BARR: Thank you, Mr. Whipper.
18 Before I hear from Mr. Altman, let me see if I
19 can get a better understanding of this logical
20 relation back --

21 MR. WHIPPER: Yes.

22 MR. BARR: -- what position that you
23 take. As I read the primary -- the principal
24 complaint, the plaintiff alleges adverse
25 possession, and the plaintiff alleges that the

1 defendant wrongfully demolished the house on the
2 property. And so you argued that the logical
3 relation depends upon the facts that are pled.
4 That's how I read the facts that are pled in the
5 principal initial complaint.

6 The proposed amended complaint is
7 alleging the defendant's collusion with others --
8 conspiracy with others and with the Department of
9 Social Services somehow intervening in the
10 relationship between the two decedents in this
11 case, the late Mildred Knight and her late
12 husband.

13 So what I'm having trouble with is
14 how -- how did the facts pled in the original
15 complaint -- that is to say relating only to
16 adverse possession and the demolition of the
17 house. How do they relate? How do the present
18 allegations of intervention with DSS, how does
19 that relate back to those facts?

20 MR. WHIPPER: See -- and I'm
21 probably putting a barrier up for me, but I got
22 to shoot you straight. Our amendment of the
23 original complaint is really under 15(a) because
24 what we're doing is we're including the
25 conduct -- see the same conduct, I admit, has to

1 be in the complaint in order to support anything
2 else that might be happening, but we're saying
3 that the conduct is there. We're alleging
4 misconduct because what was pled about -- I think
5 in the original complaint about getting Mr.
6 Knight -- I think that's in the original
7 complaint about getting Mr. Knight off the
8 property and destroying the property and, of
9 course, denying the title -- the rightful
10 ownership; all of that was a part of the pressure
11 being put on the decedents to keep control of the
12 property and get control of more of what was
13 involved.

14 And that's so -- in terms of -- I
15 think they talk about allegations that were --
16 all of the abuse, having Mr. Knight, Bobby Knight
17 the III, moved off the property when he was only
18 working on it with his father, and that involved
19 some other behaviors.

20 And so what we are doing is -- and
21 I'm not looking at it. You have it -- all we're
22 doing -- I have to admit what we're saying is
23 that this is all a part of the same conduct. And
24 you look at the timing of all of it, it's right
25 around -- it's the same time, and it began to get

1 worse because of a revocation of some powers of
2 attorney. And all of that's in there. And
3 that's when things really got rancorous, and they
4 continued all the way through 2008 until Mr.
5 Knight dies.

6 And so that's what the timeline
7 will show. And so we're saying, yep, we're not
8 -- we're recognizing that -- we're asking that
9 this conduct be included because it should have
10 been included to begin with, that it is logically
11 related to her behavior that this -- burning the
12 house down, a totally wood structure; having
13 people accosted by law enforcement, that's --
14 there's a process on that; doing notices to quit
15 for no reason at all; failing to turn the title
16 over in resistance to what the decedents were
17 doing with calling in some powers of attorney and
18 asking for the property to be returned. All of
19 that is the same conduct, and that's where we
20 are. And I don't think it's anything new to
21 them. It's no surprise. It's all there.

22 And once you do that, then I think
23 we have to be willing to look at what the
24 consequences of all that -- that kind of
25 behavior, what were the consequences? The

1 consequences were the loss of consortium, to the
2 extent that it does come into play. And it
3 certainly reflects abuse of process and it
4 reflects conspiratorial acts to destabilize the
5 family and keep control of the property. It's
6 all there in our reasoning -- in our point of
7 view.

8 So that's 15(a). And so are they
9 prejudiced by having to do that? I don't think
10 so because, there again, we think -- everybody
11 knows about that stuff and they know that they
12 did it.

13 And then -- so once we're there --
14 and we said, well, we want to add a couple of
15 other causes of action; they're based on the same
16 behavior, same conduct, same transaction, same
17 occurrences. Seems to me that it's really fair
18 on all square -- I mean, fair on all fours, I'm
19 sorry, Ms. Clark -- in terms of your concerns.

20 But I do understand that's where I
21 have to argue persuasively, but I think it's
22 there, and so liberally -- duty with amendments
23 liberally, no prejudice -- I mean, I understand
24 not -- Mr. Altman not wanting to have to deal
25 with it because, yeah, I would try to protect my

1 clients from exposure on some claims. Yeah, I
2 would do that, but that's not one of the factors
3 to be concerned with, that somebody doesn't want
4 to have to litigate something. That's not
5 prejudice. So that's --

6 MR. BARR: Okay. Thank you very
7 much, Mr. Whipper.

8 Mr. Altman, let me -- let's hear
9 from you in response.

10 MR. ALTMAN: Thank you, Mr. Barr.
11 I see the argument that is being made in three
12 areas. One is rule 15(c). And rule 15(c) is
13 very clear. It says that the amendment must
14 "arise out of the same conduct, transaction, or
15 occurrence set forth, or attempted to be set
16 forth in the original pleadings."

17 And loss of consortium claim versus
18 a title to property; totally unrelated. I think
19 your order -- your October order clearly states
20 that. There is no relationship.

21 Unfortunately, the relationship
22 between Mr. Knight, III, one of the plaintiffs in
23 this case, and his sister -- and, in fact, I
24 believe his sisters -- is a very poor
25 relationship. And maybe I'm giving it more

1 credibility than it deserves. They just don't
2 like each other, and that's unfortunate.

3 But there is no relationship
4 between the title to the property in a loss of
5 consortium claim, which candidly to claim, which
6 I'll get to in a moment, is totally ridiculous
7 from where we stand.

8 Mr. Whipper talks about prejudice.
9 There's extreme prejudice in trying to deal with
10 this case at this point in time. First of all,
11 who are the witnesses? Obviously the perfect
12 witness would be Mrs. Knight. She's deceased.
13 It's her claim, if there is one. Of course, it
14 was withdrawn 12 years ago by her, and she made
15 that decision. A pro se litigant goes into
16 court, they're stuck with what they've done. But
17 that claim was dismissed. We have every right to
18 believe it was not going to be re-brought. It
19 was not part of the filing in 2019.

20 If it was that important and if it
21 was part of that, why wasn't it incorporated into
22 the 2019 complaint? It wasn't. It was not
23 brought up until later. We had every right to
24 believe it was not there.

25 Again, they talk about witnesses.

1 Mr. Knight, III, one of the plaintiffs, hearsay
2 would bar him from testifying. Dead man's
3 statute would bar him from testifying. Judith
4 Brown, she's the PR of Mrs. Knight's estate.
5 I've said I wanted to take her deposition. I've
6 got to be able to take a live deposition with
7 this person. In writing doesn't do me any good.
8 You cannot follow up with your questions. It's
9 not a realistic way to do a deposition of a party
10 litigant who is going to be an important witness
11 or could be an important witness in the case as
12 it's indicated.

13 This claim arose -- if it did, if
14 there was one -- 16 years ago. If we had to
15 litigate it now, we've got to go find DSS
16 records. We've got to find medical records.
17 We've got to find medical personnel. We've got
18 to find the DSS personnel. Chances are these
19 people have moved on. The records are going to
20 be hard to find. Yeah, they may be there
21 somewhere.

22 Mr. Whipper refers to turning over
23 a transcript of a hearing. Well, he turned over
24 the partial transcript and could not turn over
25 the balance of the transcript. He didn't have

1 it. Yes, we had the transcript of the hearing
2 from Judge Dennis, but we had that. The files
3 that we have in these cases are long and
4 involved. It's been going on a long time.

5 But, again, 2005 to 2008 and 2009
6 to 2019; they sit on their rights; they sit on
7 themselves, and then they want to bring it all
8 back up and say it's all realistic to come
9 forward. The prejudice here is just monumental.

10 Again, the issue of surprise.
11 Yeah, we have a right to get things over with,
12 and we were defending one issue.

13 Futility, which you refer to in
14 your order. Mr. Knight had Alzheimer's disease.
15 Did that affect the relationship between him and
16 his wife? Certainly it did. Tremendously. Mr.
17 Whipper even acknowledges it in a proposed order
18 to a judge from a hearing. The order wasn't
19 signed, but Mr. Whipper specifically says we
20 didn't challenge it.

21 Then, the little bit of
22 relationship that these people had, these people
23 being Mr. and Mrs. Knight, Jr., Mrs. Knight was
24 appointed conservatory guardian by the probate
25 court in Charleston County, and because of her

1 actions, she was removed from that position. She
2 lost the relationship. She lost that
3 relationship because of that.

4 They disobeyed the court order so
5 regularly and to such an extent and didn't return
6 money to the estate of Mr. Knight under that --
7 they ended up in jail by court order. They ended
8 up in jail until they found a way to replace the
9 money.

10 What's the reason for the loss of
11 consortium? Not because of anything that my
12 client did but because of their own actions. And
13 that makes this case -- this claim futile.

14 So we don't have a relationship
15 back. The fact that these litigants don't like
16 each other does not give us a relationship back.
17 There is none. The fact that we don't -- we
18 can't -- we're going to have a hard time finding
19 witnesses because of the length of time and the
20 fact that the cause of this problem by the facts
21 that the Court has in front of it -- we provided
22 the Court with copies of all of the probate court
23 orders, which demonstrate that any problem that
24 caused a loss of consortium was the fault of none
25 other than Bobby Knight, Jr. -- the III. And

1 that's our position.

2 I think your order of October hits
3 the nail on the head. It's absolutely correct.
4 It should not be modified at all. Thank you.

5 MR. BARR: Thank you, Mr. Altman.
6 Mr. Whipper?

7 MR. WHIPPER: Yes, sir. I don't
8 know about this order where I acknowledge
9 anything about Mr. Knight's mental capacity. I'd
10 have to see that because I wasn't -- I mean, I
11 was like the third or fourth lawyer involved with
12 the family on certain parts of it.

13 But let me say this, the portion of
14 the 2006 transcript was actually the first part
15 of the hearing. The second part did not take
16 place. So it wasn't an incomplete transcript.
17 It was the transcript of the first hearing.
18 There was no second hearing, so we didn't have a
19 second transcript. Mr. Altman may have gotten
20 that a little confused.

21 And then secondly, he is clear that
22 what I'm saying, I think, has taken place. It's
23 the conduct of the parties that has caused all of
24 these problems. To the extent that there may be
25 some considerations for some comparative

1 negligence or contributory negligence, that can
2 be considered. That's fine, but I can tell you
3 this case would not have gone this far but for
4 the behavior of the defendant and her cohorts.

5 And I want to say too that, again,
6 these cases -- portions of this stuff is still
7 around being set to be heard and argued.

8 The concern that I have about Mr.
9 Altman's position is that he wants -- he needs to
10 file his own motion, and he needs to do it in a
11 timely fashion, because he's free to file a
12 motion for summary judgment. He's free to file a
13 motion to strike things. I mean, there's a lot
14 of litigation that needs to take place. And he's
15 free to compel any witness to testify orally at
16 the proper time.

17 I mean, my God. Who knew that we
18 were going to be dealing with a pandemic? I
19 mean, I know sometimes you get trapped with
20 procrastination by the pandemic. This is
21 something unprecedented, as you've heard so many
22 times. And so we had to deal with what we have.
23 We have some sick parties who are up in age, but
24 they're cognizant of their times, place, and
25 manner, and they're able to testify truthfully, I

1 do believe.

2 And then -- and so I'm renewing,
3 again, my objection to all of that stuff that was
4 beyond the two pages that you asked for, Judge
5 Barr. And I say it should be a part of the
6 altering of this order that it -- in respect for
7 what else happened, that that be stricken because
8 that was not -- it's not a part of the
9 consideration on the amendments. It's clear the
10 law says that that's not what the court is to do.

11 I can tell you -- just one second.
12 I'll give you the cite. And a matter of fact, in
13 the skydive case, one of the holdings is this.
14 "A court's decision to deny a motion to amend
15 should not be based on the court's perception of
16 the merits of an amended complaint." That's the
17 skydive case, 426, 182-183.

18 So, I mean -- and there are other
19 cases, federal cases, that talk about that
20 standard as well. And it's about the facts that
21 I pleaded. Do they make out a case? Do they
22 make out a cause of action? You know, it's not a
23 matter of you assessing whether or not we're
24 going to win or lose. But certainly when talking
25 about these transcripts and the archives, the

1 people, everybody that's here to assume that Mr.
2 Knight's only testimony is going to be hearsay?
3 Wow. That's amazing. Because he attended
4 hearings, he was present, he was involved with
5 the case. He knows firsthand what happened in a
6 lot of these situations.

7 So I just think we need to have a
8 full hearing of these issues, and maybe we can
9 get to the point where, yes, it will be over
10 because it will be just and fair and appropriate,
11 rather than to have something happen and let it
12 go unlitigated.

13 So I would suggest there is no
14 prejudice. I just don't see the prejudice.
15 Judge, I respect your analysis tremendously. A
16 great piece of writing, but when I look at the
17 idea that we have undue delay -- it can't be
18 undue when we are going back and forth the whole
19 time about everything trying to get things -- oh,
20 and by the way, when I talked about that
21 transcript that says that Ms. Knight withdrew her
22 amendment -- see, when we filed our complaint, we
23 were under the impression and recollection that
24 the amendment had been filed and hadn't been
25 argued.

1 And then you go back -- because we
2 thought it was outstanding based on our
3 recollection when we, you know, started to think,
4 well, what else is involved in this case? And so
5 it came up because there is a lot of paper
6 involved here.

7 And so it was determined -- Mr.
8 Altman was able to put his hand right on the
9 transcript that shows that she had withdrawn.
10 And that put me in the position of having to
11 re-file it because of what was going on. We knew
12 that this was coming from the same common
13 occurrences, conduct, and transaction. Thank
14 you, sir. Thank you.

15 MR. BARR: Let me ask you one -- a
16 question, Mr. Whipper. The first time I thought
17 I misheard you, but I don't think I misheard you
18 the second time. Are you suggesting that
19 something that I've received should be stricken?
20 Did I understand you to say that?

21 MR. WHIPPER: Yes, sir. And, sir,
22 you --

23 MR. BARR: And, but -- I want you
24 to answer, but you also made some reference to my
25 holding you and Mr. Altman to two pages for

1 something, which I frankly don't remember. Would
2 you refresh me on your position there?

3 MR. WHIPPER: Yeah --

4 MR. BARR: A about what you're
5 asking to be withdrawn, and B, which two pages
6 are you referring to.

7 MR. WHIPPER: All right. Just one
8 second, sir. Let me get to the page, please,
9 sir, Mr. Barr. Okay. So as you know, we
10 initially argued the motion to amend -- I
11 think -- on the 26th of August of this year.

12 MR. BARR: October.

13 MR. WHIPPER: Oh, 26th of October?

14 MR. BARR: Right. I'm looking at
15 it right now.

16 MR. WHIPPER: Okay. 26th of
17 October. And so in arguing that -- no, Mr. Barr,
18 it was August 26th when we first argued our
19 motion to amend. I have a transcript of the
20 proceedings. August 26, 2020. Are you
21 there?

22 MR. BARR: Let me interrupt you. I
23 lost the signal for a few seconds.

24 MR. WHIPPER: Sure.

25 MR. BARR: So let's go back. You

1 were talking about something in August 2020 --

2 MR. WHIPPER: Yes, sir.

3 MR. BARR: -- to amend. What are
4 you referring to from August?

5 MR. WHIPPER: On August 26th, we
6 argued the idea of amending the complaint. We
7 argued my motion to amend.

8 MR. BARR: Okay. You're talking
9 about the initial hearing.

10 MR. WHIPPER: Yes, sir.

11 MR. BARR: Okay. Yes, I agree with
12 you. That was August 26th.

13 MR. WHIPPER: Yes, sir. And so
14 during the wind-down of that, you say to us --
15 you say, "Okay. As I say, I'm troubled by the
16 lapse of time, and so here's what I would like
17 you to do, please. And try to focus on it
18 succinctly. There's no need to beat it up too
19 hard, but neither of you really briefed the
20 question of prejudice. I think that's the
21 fundamental issue." This is you speaking, Mr.
22 Barr. "So Mr. Altman, give me a two-page memo on
23 why there is prejudice, and tell me when you can
24 get that. And I'll give Mr. Whipper the
25 opportunity to reply."

1 But you do say you're troubled by
2 the passage of time.

3 And so that's why I'm saying --
4 because Mr. Altman, I think almost -- I think he
5 sent in -- I don't know -- close to 52 pages or
6 something.

7 MR. BARR: All right. So what are
8 you asking that --

9 MR. WHIPPER: I'm asking that all
10 of these exhibits be stricken from the record
11 because they are outside of your instructions.
12 They're improper in response to a motion to
13 amend. They're not a part of the consideration
14 of a motion to amend, whether somebody's going to
15 win or lose, and it's not accurate as to -- you
16 can't do that because you can't look at anything
17 that's there and determine the levels of harm
18 that may have been experienced by the parties,
19 specific kinds of compensation that might need to
20 be made.

21 All of these things are a part of
22 this action that we are bringing. And so if he
23 wants to file something at the appropriate time,
24 he can do that, but as a matter of looking at
25 amending the complaint, all of that stuff is

1 superfluous. It was not directed, not requested,
2 and so I'm asking that as a part of altering this
3 order, that the order should address those
4 issues, and all of those exhibits and stuff, they
5 need to be stricken from the record and
6 returned.

7 MR. BARR: Mr. Whipper, I don't
8 have it in front of me right now, but in your
9 response to Mr. Altman's filing --

10 MR. WHIPPER: Yes.

11 MR. BARR: -- did you make that
12 argument, that he was more than two pages and
13 that he submitted stuff?

14 MR. WHIPPER: No, I don't think I
15 did. But I think prior to in an oral argument, I
16 think mentioned -- that I objected to the way
17 that he was approaching that.

18 MR. BARR: Okay. All right. Well,
19 I didn't want to get too sidetracked there.

20 MR. WHIPPER: I understand. I just
21 wanted to make a record of that.

22 MR. BARR: Yeah, I follow where you
23 are. Okay. Well, I received your -- Mr.
24 Whipper, I received your --

25 MR. WHIPPER: My memorandum --

1 MR. BARR: -- your second
2 memorandum --

3 MR. WHIPPER: Yes.

4 MR. BARR: -- this morning, only a
5 few minutes before we started, and I would like
6 to read -- I would like to study what you say
7 there --

8 MR. WHIPPER: That's fine.

9 MR. BARR: -- and reflect on my
10 notes, and then I will issue an order. I will
11 say that I'm not inclined to alter the order, but
12 I do want to study very carefully what you've
13 argued.

14 MR. WHIPPER: I appreciate it.

15 MR. ALTMAN: May I add a few
16 additional statements.

17 MR. BARR: Say again.

18 MR. ALTMAN: I would like to add a
19 few additional statements, if I may, concerning
20 our argument for your consideration. I realize
21 where you are, and I agree with what you're
22 saying, but Mr. Whipper says he does not remember
23 the court order that I referred to. He made a
24 statement it was in 2006.

25 Judge Goode was hearing an appeal

1 from a probate court matter. On the first page,
2 at the very bottom -- again, this order was not
3 signed, and it was prepared by Mr. Whipper. This
4 section is entitled: Norman Robert Knight, Jr.'s,
5 Incapacity. "The court is constrained to accept
6 the probate court's findings as to the incapacity
7 of Norman R. Knight, Jr., since the record does
8 not contain a contest of the issue. The Court
9 finds it noteworthy that there was a 2001
10 diagnosis of Alzheimer's, and nearly three years
11 later then the appointment of conservators and
12 guardians." They've acknowledged the
13 Alzheimer's.

14 Last statement very simply is, Mr.
15 Whipper wants to talk about this is ongoing. The
16 2005 case, which became the 2008 case because it
17 had been dismissed and then restarted by motion,
18 was also dismissed and sat there until 2019,
19 11 years later. We had no reason to believe
20 anything was going to continue to go on. They
21 have sat on their rights, and they're trying to
22 bring up stuff. The fact is that this has not
23 been ongoing. It's been sitting. That's all I
24 have. I have nothing further.

25 MR. BARR: Okay. Yeah, I think

1 we're getting far afield here, and I thank you
2 both for your comments. I follow everything, and
3 I thank you all for your time.

4 And administratively, let me remind
5 you -- well, let me issue an order and then when
6 I issue it, I will remind you about what we need
7 to do to get back on a schedule here.

8 And then, Mr. Whipper, I'll remind
9 you you need to contact the Master and have them
10 unwind that order dismissing this case.

11 MR. WHIPPER: Will do it.

12 MR. BARR: Because it's been
13 referred out.

14 MR. WHIPPER: Yeah. All right.

15 MR. BARR: Okay. Rachael, is there
16 anything you need from us before we close?

17 COURT REPORTER: No, sir. I've got
18 the e-mail.

19 MR. BARR: You've got it all.

20 COURT REPORTER: Yes, sir.

21 MR. BARR: Okay, gentlemen. Thank
22 you all for your time. And Mr. Knight, I can't
23 see you. Thank you for being here. And I wish
24 everyone a very happy Thanksgiving.

25 (The hearing was adjourned at 11:08 a.m.)

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF KERSHAW

4 I, RACHAEL CLARK, Certified Verbatim
5 Reporter and Notary Public for the State of South
6 Carolina at Large, do hereby certify that the
7 foregoing proceedings were recorded by me and
8 were thereafter transcribed by computer-aided
9 transcription; that the foregoing is a full,
10 complete and true record of the testimony of the
11 and of all objections made at the time of the
12 proceedings.

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

16 Witness my hand, I have hereunto affixed
17 my official seal on January 13, 2021, at Kershaw
18 County, South Carolina.
19
20
21
22
23
24
25

RACHAEL CLARK
CERTIFIED VERBATIM REPORTER
CVR (South Carolina)
My Commission expires
September 23, 2030

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JUDITH A. BROWN, as Personal)
Representative for the Estate of)
MILDRED C. KNIGHT, and)
NORMAN R. "BOBBY" KNIGHT, III,)
Plaintiffs,)
versus)
CHLOE KNIGHT TONNEY,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2019-CP-10-03042

MEMORANDUM IN SUPPORT OF
AMENDING THE COMPLAINT

ISSUE PRESENTED

May Plaintiff, Judith A. Brown, amend her original Complaint (2008-CP-10-02537) to include two additional causes of action where the original Complaint was filed in 2005 and never tried?

ARGUMENT

"Rule 15 of the South Carolina Rules of Civil Procedure now governs amendments to pleadings. Under this rule, as under Rule 15 of the Federal Rules of Civil Procedure," delay alone, regardless of its length, is not enough to bar [a proposed amendment] if the other party is not prejudiced." J. MOORE, 3 MOORE'S FEDERAL PRACTICE, 15.08 at 15-76 (2d ed. 1987); see H. LIGHTSEY & J. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 288 (1985) (while there is no time limit for making a motion to amend, the court should consider the prejudice to the other party). Potomac Leasing Co. v. Bone, 294 S.C. 494, 497, 366 S.E.2d 26, 28 (Ct.App. 1988). Prejudice as envisioned by Rule 15(a) is a lack of notice that the new issue is to be tried and lack of opportunity to refute it. Stanley v. Kirkpatrick, 357 S.C. 169, 592 S.E.2d 296 (2004), reh. den. The court has the power to amend pleadings beyond time allowed for

amendment when to do so does not prejudice another party. Berry v. McLeod, 328 S.C. 435, 492 S.E.2d 794 (Ct. App. 1997) reh. den., cert. den.

A seminal case on the standards for applying Rule 15, Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 369 S.E.2d 156 (1988), recounts the development of Rule 15(a) and surveys pre-rule South Carolina precedents. The Court examines the issue of prejudice in that case and determines that the Defendant failed to demonstrate prejudice or manifest injustice resulting from the proffered amendment. The Court ruled that "The trial court abused its discretion in denying the motion to amend." Forrester at 295 S.C. 511, 369 S.E.2d 160.

In our case, the Defendant can not demonstrate any prejudice or manifest injustice from the proffered amendment. This amendment is pretrial and early, relative to the discovery process. None of the allegations involve facts that surprise the Defendant or are new to this ongoing conflict. Documents and persons are available for defending and prosecuting the claim. The timing of this amendment brings no lawful disadvantage to the Defendant.

Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019) - citing Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 127 S. Ct. 1955, 1965, 167 L. Ed.2d 929, 940-941 (A well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely) - held that "A court's decision to deny a motion to amend should not be based on the court's perception of the merits of an amended complaint." Skydive at 426 S.C. 182-183. Further, the court made clear that "If a proposed amendment is not clearly futile, then denial of leave to amend is improper." Id., 426 S.C. at 182.

"Futility" as related to the issue of prejudice and amendments refers to the capacity to appear and/ or qualify for relief under a given cause of action.

See, Jennings v. Jennings, 389 S.C. 190, 209,697 S.E.2d 671, 681 (Ct.App.2010); Higgins v. Medical University of South Carolina, 326 S.C. 592, 602-605, 486 S.E2d 269, 274-275 (Ct.App.1997).

The Deadman's Statute does not establish per se futility, especially in this case.

CONCLUSION

In Whitfield Const. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207,525 S.E.2d 888 (Ct.App. 1999), the court held that an amendment to a pleading relates back to the date of the original pleading "whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings. Further, the issue of undue delay is not persuasive in an evaluation of 'relation back' under Rule 15(c). Krupski v. Costa Crociere, S.p.A., 560 U.S. 538, 130 S. Ct. 2485, 177 L.Ed.2d 48 (2010).

There is no prejudice to this Defendant created by these amendments. But for Defendant's actions, Plaintiffs would not have grounds to take action.

WHIPPER LAW FIRM
Attorney for Plaintiffs

September 14, 2020

S/ J. Seth Whipper
J. Seth Whipper, Esquire (S.C. Bar 6061)
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-3042
Judith A. Brown, as Personal	)	
Representative for the Estate of	)	
Mildred C. Knight, and Norman R.	)	
"Bobby" Knight, III,	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Chloe Knight Tonney,	)	
Defendant.	)	

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO
AMEND THE COMPLAINT**

TO: J. SETH WHIPPER, ESQUIRE, ATTORNEY FOR PLAINTIFFS:

This matter is before the Court on the Motion of Plaintiff(s) to be allowed to Amend the Compliant. The Defendant, Chloe Knight Tonney, ("Tonney") opposes the Motion on the grounds set forth herein.

The history of the matter before the Court is long and tortured. For purposes of this Motion we shall only refer to the pending case and the Motion to Amend. In 2005 Mildred C. Knight ("Mildred"), individually and as duly appointed legal guardian¹ for Norman R. Knight, Jr. ("Norman"), sued her daughter, Tonney claiming property titled in Tonney's maiden name was held by her for her father, Norman (Case No. 2005-CP-10-02764). This case was dismissed. In 2008 a Motion was filed requesting the 2005 case be reopened, which was granted by Judge Dennis (Case No. 2008-CP-10-02537). The 2008 case was likewise dismissed but restored by Order in 2019. The 2008 case was then consolidated with the captioned matter.. At the hearing on the Motion to Restore the 2008 case, Judge

¹ By Order dated August 25, 2005, Mildred was removed a Norman's legal guardian for cause.

Jefferson recommended that 2008 case and the 2019 case be consolidated as they dealt with the same subject matter, title to property which was titled in Tonney's name. The consolidation was finalized by Order of Judge Price filed July 24, 2020 and referred the matter to Capers G. Barr, III, as Special Referee.

The instant Motion to Amend's sole purpose appears to be the addition of a cause of action for loss of consortium, a matter totally unrelated to the claims in this matter. The pending case is related to the ownership of property located at 3831 Rivers Avenue, North Charleston, SC (the "Property"), which was transferred by fee simple deed to Tonney by her grandmother in 1979 without any limitations or conditions. The proposed amended complaint provided by email on August 10, 2020, adds a third cause of action for conspiracy against Tonney alone. The proposed amendment lacks clarity and specificity, as it refers to "decedents," but does not identify them and also mentions "wrongful and negligent acts" and "wrongful and malicious negligence," but also does not identify those acts.

However, based on the tormented history between one of the Plaintiffs, Norman R. "Bobby" Knight, III ("Bobby") and his sister, Tonney, and the numerous cases involving them and their mother, Mildred, it is presumed the claim is based on the supposed loss of consortium between Mildred and her husband, Norman, as a result of the Court finding Norman incapacitated in 2004. This response to the Motion is based on that presumption.

As a starting point, Rule 1, SCRPC provides in part that the Rules "shall be construed to secure the just, speedy and inexpensive determination of every action." See *Royster Co. v. Eastern Distribution, Inc.*, (378 S.E. 2d 71, Ct. App. 1989) (Reversed on other grounds). Additionally, Rule 15, SCRPC, states that while amendments will be freely allowed, they should only be granted "when justice so requires and does not prejudice any other party." For the reasons set forth below, in addition

to the Motion's lack of clarity and relation to the instant action, allowing the proposed amendment at this stage will delay a speedy determination of this action and will increase the expense of the case and prejudice Tonney without even the possibility of a favorable outcome for the Plaintiffs, which would be in contravention of the Rules and therefore significantly prejudicial to Tonney.

The Plaintiff(s) in the Motion suggest that the actions of Tonney caused the "decedents" to "suffer, loss of consortium, loss of society, affection, assistance, and conjugal fellowship,..." As a practical matter, though, the loss of the marital relationship between Mildred and Norman had nothing to do with any action of Tonney or any other person other than Mildred or Bobby, and certainly had nothing to do with the subject of this cause of action: title to the Property. A major cause² instead was her husband's incapacity due to his Alzheimer's disease, a fact that is not in contest as admitted by the Plaintiffs. In a separate but related appeal from the Probate Court (Case Number 2005-CP-10-3573), Plaintiffs submitted a proposed Order to Judge Good on January 17, 2006, which while not signed by Judge Good, clearly acknowledges the situation related to Norman and the relationship with not only Mildred but with everyone. In the draft Order, Plaintiffs state:

The court is constrained to accept the Probate Court's findings as to the incapacity of Norman R. Knight Jr. since the record does not contain a contest on this issue. The court finds it noteworthy that there was a 2001 diagnosis of alzheimer's and nearly three years later, then the appointment of conservators and guardian.

See Exhibit A. Clearly, the reason for the loss of the normally expected husband and wife relationship had nothing to do with any action of Tonney or the issue of title to the Property, but instead, Norman's medical condition.

Also, this claim would be additionally prejudicial due to the fact that as the appointed Guardian and Co-Conservator of Norman, Mildred had the ability to maintain the marital relationship and it was

²Other causes were because of the actions of Mildred and Bobby as discussed herein.

only by her own actions that she lost this position. Mildred was appointed as Guardian and Co-Conservator on November 8, 2004. On May 19, 2005, the Probate Court removed Mildred as Guardian and Co-Conservator, after determining that Mildred was uncooperative with her Co-Conservator and the appointed Temporary Conservator, denied access to Norman as required by Court Order, wrote checks and spent expenses in knowing violation of previous Court Orders, withdrew funds knowingly without necessary Court approval, and failed to turn over all financial records, credit cards, etc. as required by previous Court Order. *See* Exhibit B, Order by Hon. Tamara C. Curry, August 23, 2005. In the same Order, she was required to turn over all financial records as well as the proceeds from a UBS account she liquidated in May 2005 in the amount of \$42,957.99 within five (5) days, or would be found in Contempt of Court and subject to a \$100 fine per day. *Id.* Mildred also failed to comply with this Court Order, and on January 31, 2006, Norman was placed in the physical and legal custody of the Court appointed guardian, with help of the Charleston County Sheriff's Office, if necessary. *See* Exhibit C, Order by Hon. Tamara C. Curry, January 31, 2006. Mildred had *still* failed to comply with the Court Order by not turning over the financial records and liquidated funds by June 2, 2006, and on that date she and Bobby were held in Contempt by Order of the Probate Court and detained in a Charleston County detention facility until their compliance with prior Order of the Probate Court. *See* Exhibit D, Order by Hon. Tamara C. Curry, June 2, 2006. As evident under these facts, Mildred's own actions led to any loss of consortium, as her repeated violations of clear court orders directly caused her loss of Norman's guardianship and inability to be there for her husband and maintain their relationship. Plaintiffs have already wasted much of the Court's time, expenses, and patience, and allowing this requested amendment would be a further waste of time, expense, and would cause further prejudice to the Defendant.

Further, any testimony regarding the facts of the loss of consortium claim will not be available to the Court. The only people who could have testified regarding the claim would have been Mildred and Norman, however, Mr. Knight died in 2008 and Mrs. Knight in 2010. Further, the Deadman's Statute, SC Code §19-11-20 (1976, as Amended) prohibits either of the Plaintiffs from testifying due to the fact that they stand to gain in the event of a finding against Tonney.

Additionally, Plaintiffs attempt to add a claim for conspiracy.³ As a practical matter, Tonney, acting alone, could not have given rise to the breakdown of the relationship between Mildred and Norman; rather, as Plaintiffs seem to allege, she must have acted in concert with others. The existence of these other actors that would need to be involved to support or dispute this claim would create further undue delay and expense in that it extends the scope of discovery beyond that which is necessary to determine title to the Property. Depositions of these supposed actors about issues wholly unrelated to the instant action would have to be conducted, prejudicing Tonney in the just, speedy, and inexpensive resolution of the instant action.

Further, any claims based on loss of consortium or conspiracy are barred by the Statute of Limitations, SC Code §15-3-530 (1976), (as Amended) which states any claims of the types proposed to be asserted here would have to be filed within three (3) years of the time the claim arose or the person entitled to make the claim became aware of the claim. The only person who would have the right to make the claim, Mildred, died in 2010.⁴ As stated above, Norman died in 2008 and Mildred

³The instant Motion to Amend Complaint does not request the right to add a claim for conspiracy; however, if the court were to deny this attempt, Tonney believes it would just engender another motion from Plaintiffs. As such, we will address the claim as if it were properly asserted in the Motion in the interest of efficiency, as the arguments are the same.

⁴Mildred filed a motion to amend a 2005 complaint to add the claim for loss of consortium in 2008 and withdrew the motion at a hearing before Judge Dennis on April 14, 2008.

in 2010. The Probate Court matter related to Norman's conservator and guardianship action was filed by Tonney in 2004 under Case Number 2004-GC-10-99; therefore, the claim, if one existed at all, would have arisen when the 2004 case was filed. In the alternative, even if the Court were to consider the latest possible date the cause of action could have arisen, which would be immediately before Norman's death in 2008, the claim is still barred. Under either scenario, the statute of limitations has long since expired for these claims.

Lastly, Plaintiffs' Prayers for Relief are also insufficient and the Motion to Amend therefore must also fail on this ground. First, in the most recent version of the proposed Amended Complaint, Plaintiffs seem to request a jury trial on the same issues to which Plaintiffs have previously consented to refer to the Special Referee; therefore, Plaintiffs have specifically waived their right to a jury trial on those factual issues. Second, no allegations exist in any version of the Complaint that would be the basis on which to add the Estate of Norman R. Knight, Jr. as a necessary party. Finally, there are also no allegations in any version of the Complaint which would support the Court awarding title of the Property to Bobby.

For the reasons stated the Motion to Amend should be denied.

Law Offices of Charles S. Altman, LLC.

s/ Charles S. Altman
Charles S. Altman (SC Bar No. 351)
575 King Street, Suite A
Charleston, South Carolina 29403
Tel.: 843-853-9907
Fax: 843-572-7702

August 12, 2020

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The Vincent Law Firm

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Chole Knight Tonney and
Norman Robert Knight, Jr,
(an Incapacitated Person),

Respondents,

vs.

Bobby Knight and Mildred
Knight(wife of Norman Robert
Knight, Jr.),

Appellants,

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2005-CP-10-3573

ORDER

THIS MATTER came before the court on the notices of intent to Appeal of Bobby Knight and Mildred Knight. Bobby Knight filed ground for appeal pursuant to his notice of intent to Appeal filed in August, 2005. All parties were duly notified and present to argue. Appellant Mildred appeared pro se and Appellant Bobby Knight were presented by J. Seth Whipper; Respondent Linda Jones appeared pro se and Respondent Chloe Tooney were presented by Thad Vincent.

This court has been asked to rule on the status of an earlier filed Notice of intent to Appeal but declines to consider any matters on appeal that are not before me nor scheduled to be heard at this date and time.

Appellant Bobby Knight has enumerated seven separate grounds on appeal; the court heard substantial argument on five of the grounds and did a record review on those not argued by counsel.

After reviewing the record and considering argument of counsel, this court makes the following findings and rulings:

Norman Robert Knight Jr's Incapacity

The court is constrained to accept the Probate Court's findings as to the incapacity of Norman R. Knight Jr. since the record does not contain a contest on this issue. The court finds it noteworthy that there was a 2001 diagnosis of alzheimer's and nearly three years later, then the appointment of conservators and guardians.

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No Order Appointing GAL

The record does not contain a petition for appointment of a Guardian Ad Litem. The record does not contain an Order appointing a Guardian Ad Litem. This court concludes that any person acting in that role is acting without authority and his or her actions or reports can not be the basis for any orders of the Probate Court. This entire case must be remanded to the Probate Court for rehearing consistent with the Court's findings and this ruling.

Asset Distribution Agreement

The record does not contain any accounting or Return listing the devolution of assets according to the agreements regarding the individual assets of Norman Robert Knight Jr. and Mildred Knight. This issue is remanded to the trial court for resolution consistent with the finding and ruling.

"Joint Property" and Norman Robert Knight Jr.

The record reflects that Norman Robert Knight Jr. intends for any property deemed his to pass to his wife. Norman Robert Knight Jr. and Mildred Knight have been married for more than fifty-five years. The equitable distribution of the marital estate certainly requires an equal division of all marital property. This is not a divorce action, however; This matter concerns the ongoing relationship of two people united for a common purpose: the successful and beneficial completion of their agreement to stay together and care for each other until life ends. At this point their relationship is not in question and is an ongoing purposeful relationship and most typically reflects a joint enterprise or joint venture. See *Spradley v Houser*, 247 S.C. 208, 146 S.E.2d 621 (S.C.T. 1966).

The record does not reveal malfeasance by Mildred Knight during the litigation or before. Challenges to Mr. and Mrs. Knight controlling their assets should be taken in the light that Mrs. Knight takes control against all others; this in light of the diagnosis of alzheimers. See *Carolina Production Credit Association v. Rogers*, 282 S.C. 184, 318 S.E.2d 357 (S.C.T., 1984).

Adult Visitation

No court can force Norman Robert Knight Jr. to visit with his daughters if he does not want to see them. The majority of the conflict in this matter revolves around the issue of visitation. The trial court ordered that visitation be conducted according to consultations with Dr. F. Carl Derrick, III, M.D. The record does not indicate a finding as to the desires of Norman R. Knight Jr. The issue of visitation is remanded for a determination consistent with this holding. Dr. Derrick should assist in any determinations.

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Conclusion

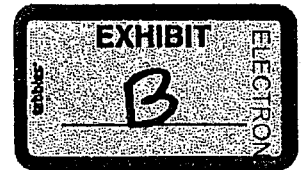
The trial court's rulings are subject to reversal where there is no evidence to support those rulings or where the rulings are manifest errors of law. The above discussed rulings satisfy the appellate standard of review and are hereby the order of this court.

And it is so ordered.

Honorable Kenneth G. Goode
Presiding Judge

_____, 2006
Charleston, S. C.

ELECTRONICALLY FILED - 2020 Aug 12 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2004-GC-10-0099

NORMAN ROBERT "BOBBY" KNIGHT, III,)
Petitioner,)

ORDER

versus)

NORMAN ROBERT KNIGHT, JR., an)
incapacitated person, and Mildred Knight,)
Linda K. Jones and Chloe K. Tonney, his next)
of kin,)

Respondents.)

Date of Hearing: July 20, 2005
Presiding Judge: The Honorable Tamara C. Curry
Petitioner: Norman Robert Knight, III
Guardian: Mildred Knight
Charles Molony Condon, Esquire
Temporary Conservator: Family Services, Inc.
Guardian *ad Litem*: Glenn P. Churchill, Esquire

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This matter came before the Court on the Petition for Removal of Allan Bolden as Co-Conservator for Norman Robert Knight, Jr., submitted by Norman Robert "Bobby" Knight, III; Motion for Attorney's Fees filed by Jack Sinclair, III, Esquire; Appointment of permanent Conservator, and investigation of expenditures by the previous Co-Conservators.

Present at the hearing were Glenn P. Churchill, Esquire in his capacity as Guardian *ad Litem*; Mildred Knight, wife of Norman Robert Knight, Jr., represented by Charles Molony Condon, Esquire; Norman Robert "Bobby" Knight, III, son of Norman Robert Knight, Jr., who represented himself *pro se*; Chloe Knight Tonney, daughter of Norman Robert Knight, Jr., represented by Thad. H. Vincent, Esquire; Linda K. Jones, daughter of Norman Robert Knight,

ELECTRONICALLY FILED - 2020 Aug 12 4:34 PM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

Jr.; previous Co-Conservator, Allan Bolen, represented by Wendi Freeman, Esquire and Iris Albright and Jean Kennedy, representatives of the Temporary Conservator, Family Services, Inc.

This Court finds that venue is proper, that the required notices have been given or waived; that the protected person, Norman Robert Knight, Jr., is a resident of the County of Charleston, and that Norman Robert Knight, Jr. has assets requiring protective proceedings.

Prior to beginning the hearing, the Petitioner, Norman Robert "Bobby" Knight, III, advised the Court that he was withdrawing his petition for removal of Allan Bolden as Co-Conservator and would not be seeking any further legal action against the former Co-Conservator while serving in that capacity. Mr. Bolden also informed the Court that he no longer desired to serve as Co-Conservator and requested that the Court permanently remove him as Co-Conservator.

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This Court has been advised that there was a misprint in the previous Order of this Court dated May 19, 2005, wherein Norman Robert Knight, III was referred to as "Bobby Knight, Jr." or "Norman Robert Knight, Jr." This Court stipulates that Norman Robert Knight, Jr., the protected person in these proceedings, shall hereinafter be referred to as Norman Robert Knight, Jr. and further stipulates that Norman Robert "Bobby" Knight, III shall hereinafter be referred to as Bobby Knight, III.

PROCEDURAL HISTORY

Norman Robert Knight, Jr. was declared incapacitated by this Court per Orders dated November 9, 2004, appointing his wife Mildred Knight as his Guardian and Mildred Knight and Allan Bolden as his Co-Conservators.

By Order of this Court dated January 28, 2005, the children and grandchildren of Norman Robert Knight, Jr. were granted visitation. The visiting parties were required to give the Guardian, Mildred Knight two (2) hours notice of the visit, and Bobby Knight, III, was not to remain in the area of the visit or was required to remain upstairs. The Order also required the Guardian, Mildred Knight, to retain the services of an elder care professional and submit a plan for the care of Norman Robert Knight, Jr. The assessment was completed and a report was submitted by Maureen Maguire, a licensed geriatric nurse with Seniors Choice.

Subsequently, this Court issued an Order for a Rule to Show Cause on February 17, 2005, ordering all parties to abide by the Court Orders. A further Rule to Show Cause Order was issued on May 19, 2005, wherein a specific visitation schedule and procedures were given for the children of Norman Robert Knight, Jr. At this hearing, it was agreed by all parties that the family members would allow the Court to set the visitation schedule with the assistance of Norman Robert Knight, Jr.'s private physician, F. Carl Derrick III, M.D. The Order further required Maureen Maguire, of Seniors Choice to make bi-weekly visits to the home of Norman Robert Knight, Jr. and to assess his in-home care and report her findings to the Court.

A status conference was held with the Co-Conservators on May 19, 2005. The Court determined that credit cards had been used in violation of this Court's Orders, that the Co-Conservators were not cooperating with each other and checks had been written to various parties without each Conservator's knowledge. Based on this information, the Court immediately removed Mildred Knight and Allan Bolden temporarily as Co-Conservators and appointed Family Services, Inc. as Temporary Conservator for Norman Robert Knight, Jr. The Order required the latter named parties to immediately turn over any and all checkbooks, money market accounts, credit cards, ATM cards, and any and all records of accounts and assets

belonging to or in the name of Norman Robert Knight, Jr. to Family Services, Inc. This Order also froze and restricted all credit cards usage in the name of Norman Robert Knight, Jr.

An Amended Order followed the May 19th Orders correcting the date at which Mildred and Norman Robert Knight, Jr. inhabited their home and the name of their grandson John Paul Jones, Jr.

FINDINGS OF FACT

At the hearing held July 20, 2005, Glenn Churchill, Esquire, reported that he had been denied access to Norman Robert Knight, Jr. in his capacity as Guardian *ad Litem*; therefore he could not submit a current Visitor's report.

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Iris Albright and Jean Kennedy of Family Services, Inc. testified as to their representation while acting as Temporary Conservator for Norman Robert Knight, Jr. Ms. Albright testified that her investigation had been difficult to complete, because of lack of cooperation and lack of access to records in the name of Norman Robert Knight, Jr. Ms. Albright testified that several appointments had been cancelled by Mildred Knight; and that Mrs. Knight refused to turn over all of Norman Robert Knight, Jr.'s past and present bills or to establish a budget.

Ms. Albright testified that she established a household budget of \$200.00 based on the limited information she had secured. She had advised Mrs. Knight to contact her should additional funds be needed or required. Weekly checks in the amount of \$200 have been mailed to Mildred Knight to pay for food and other necessities; however they have not been cashed. Ms. Albright also testified that she had made arrangements to pay all other routine monthly bills that she had access to.

Ms. Albright further testified regarding a UBS account that had been held in the names of Norman Robert Knight Jr. and Mildred Knight. Ms. Albright gave account information for Norman Robert Knight, Jr. and stated that his UBS account had been all but closed, and a check had been disbursed from the account totaling the \$42,957.99. She was unable at that time to testify as to who had made the withdrawal, but had requested a copy of the withdrawal form from UBS. This withdrawal came after all assets had been ordered to be turned over to Family Services, Inc., as the Temporary Conservator.

Daughter Chloe Knight Tonney testified that she last visited her father, Norman Robert Knight, Jr., on June 5, 2005, but has since been unable to reach her father or mother, Mildred Knight, by telephone. Ms. Tonney testified that her phone calls have not been answered during the scheduled visitation times.

Daughter Linda Jones testified that she last visited her father, Norman Robert Knight, Jr., on June 5, 2005, but has since been denied access to him. Ms. Jones testified that she has gone by the home during scheduled visitation times and no one has answered the door or telephone calls made during the scheduled visitation times.

Mildred Knight, wife of Norman Robert Knight, Jr., testified that she has violated previous Court Orders, and admitted to being somewhat uncooperative with the Co-Conservator Allan Bolden, because he had written some checks without her permission. Mrs. Knight also testified that she withdrew/spent funds from the banking accounts and credit cards after the Court Orders directed her not to for household expenditures.

Mrs. Knight testified that she was holding onto the weekly checks mailed to her by Family Services, Inc., and had no plans to cash them until she needed them. Mrs. Knight further testified that she hired an additional accountant to handle household finances without the Court's

knowledge. She testified that Bobby Knight, III pays expenses on both her behalf and Norman Robert Knight Jr.'s behalf, but has not submitted verification of such payments.

Mrs. Knight further testified that she along with Norman Robert Knight, Jr. or Bobby III, withdrew the funds from the UBS investment/savings account, and the funds are currently held in a sole account in the name of Bobby Knight, III. She further testified that she knowingly withdrew the funds without Court approval.

When queried as to why she denied Mr. Churchill access to Norman Robert Knight, Jr., Mrs. Knight stated that he upset her when he stated that he needed to see Mr. Norman Knight, Jr. in his home; she stated "that it is our home". Mrs. Knight was also unwilling to allow Mr. Churchill, as Guardian *ad Litem*, any unscheduled visitation.

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Mrs. Knight stated that she does not want her daughters Chloe Knight Tonney and Linda Jones in the house because they have caused problems and cost her money by bringing this action. Mrs. Knight stated that she did not believe her daughters should be allowed visitation and that she had removed Norman Knight Jr. from the home on the dates & times for scheduled visitation with the daughters. When queried as to her relationship with her daughters, Mrs. Knight stated there was no chance of reconciliation.

Lastly, Mrs. Knight further admitted that she has failed to turn over all requested records to the Temporary Conservator, Family Services, Inc. Mrs. Knight has refused to obtain homeowners insurance on the properties owned by Norman Robert Knight, Jr. because they have not done so in the past.

The Court also heard testimony regarding Bobby Knight, III request for approval for attorney fees that he has incurred as a result of this action.

CONCLUSIONS OF LAW

Based on the testimony and evidence presented, this Court has determined it would be in the best interest of Norman Robert Knight, Jr., that Walter Kaufmann, Esquire be appointed as Guardian for Norman Robert Knight Jr. This Court does not take lightly the institution of marriage. However considering Norman Robert Knight Jr.'s substantial health care needs, the continuous problems with visitation, the previous violations of this Courts Orders and the refusal of the parties involved to cooperate, that an independent person should be appointed Guardian.

This Court has further determined that it would be in the best interest of Norman Robert Knight, Jr. that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator for Norman Robert Knight, Jr.; it is therefore

ORDERED that Mildred Knight be removed as Guardian for Norman Robert Knight, Jr., and Walter Kaufmann, Esquire be appointed as Guardian; and it is further

ORDERED that Mildred Knight and Allan Bolden be permanently removed as Co-Conservators; and it is further

ORDERED that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator of the estate of Norman Robert Knight, Jr.; and it is further

ORDERED that Walter Kaufmann be present as long as needed for scheduled visitation times per the Courts previous orders to ensure that visitation is properly carried out. Mr. Kaufmann shall utilize all measures to ensure that the Court's visitation schedule is followed; it is further

ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday

of each month between the hours of 1pm to 4pm; or any other times agreed upon with the Guardian; it is further

ORDERED that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance; and it is further

ORDERED if the visitation schedule is violated by either Mildred Knight or Bobby Knight III, that the Guardian, Walter Kaufmann, with the assistance of Family Services, Inc., shall locate a residential care facility or nursing home to house and care for Norman Robert Knight, Jr., and this shall be done immediately or as soon as a facility can be located; and it is further

ORDERED if Norman Robert Knight, Jr. is ultimately removed from the home, and placed in a nursing home or residential care facility, the visitation schedule with his daughters Chloe Knight Tonney and Linda Jones shall be held every Sunday between 11am and 3pm and every Tuesday and Thursday evening between 4pm and bedtime. Both Chloe Knight Tonney and Linda Jones are permitted nightly telephone conversations with Norman Robert Knight, Jr.; and it is further

ORDERED if Norman Robert Knight, Jr. is removed from the home, that both Mildred Knight and Bobby Knight, III shall be permitted to visit Norman Robert Knight, Jr. every day except during the hours of visitation reserved for daughters, Chloe Knight Tonney and Linda Jones; and it is further **ORDERED** that the Guardian, Walter Kaufmann is permitted to visit Norman Robert Knight, Jr. whenever necessary to fulfill his duties, but must call one (1) hour in advance; and it is further

ORDERED that the Guardian, Walter Kaufmann, shall keep all family members informed as to Norman Robert Knight, Jr.'s care and that Mildred Knight must be consulted regarding major medical care decisions, however the final decision is that of Walter Kaufmann; and it is further

ORDERED that the Conservator shall consult Mildred Knight regarding major financial decisions; and it is further

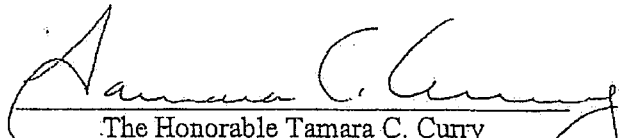
ORDERED that Mildred Knight shall turn over any and all financial records to Family Services within five (5) days of the execution of this Order or she shall be found in Contempt of Court and subject to a fine of \$100 per day. If Mildred Knight fails to comply within 15 days of this Order, a hearing will be set to determine further sanctions; and it is further

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ORDERED that Mildred Knight and Bobby Knight, III, shall turn over the proceeds of the UBS Account liquidated May, 2005, in the amount of \$42,957.99, to the Conservator Family Services, Inc., within five (5) days of the execution of this Order or they shall be found in Contempt of Court and subject to a fine of \$100 per day per person. If Mildred Knight and Norman Robert "Bobby" Knight, III, fail to comply within 15 days of this Order as directed, a hearing will be held to determine further sanctions; and it is further

ORDERED that the Petitioner's request for attorney fees is denied.

AND IT IS SO ORDERED.

This 25 day of August 2005.
Charleston, South Carolina


The Honorable Tamara C. Curry
Associate Judge of Probate

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
OF CHARLESTON COUNTY
Case No: 2004-GC-10-0099

CHLOE KNIGHT TONNEY
Petitioner,

-vs-

NORMAN ROBERT KNIGHT, JR.
an alleged incapacitated person
MILDRED KNIGHT and
NORMAN ROBERT KNIGHT III

Respondents.

**EMERGENCY
ORDER**

(On Petition of Guardian)

This matter came before the Court on the Petition for Emergency Order submitted by Walter R. Kaufmann, Esquire, the Guardian in this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Based on the Petition of the Guardian, and the accompanying affidavits of the Guardian *ad Litem* in this matter, Glenn P. Churchill, Esquire, and of Elisabeth Spencer, and based on the Court's own extensive knowledge of the procedural history of this case, the Court finds that the granting of Guardian's petition is appropriate. The Court finds that, because of the continuing contempt of orders of this Court, and of the Circuit Court, by Mr. Norman Robert "Bobby" Knight III and Mrs. Mildred Knight, exigent and emergency circumstances make this action appropriate. The Court finds that, based on the belief and petition of the Guardian, that it is the best interest of the ward that the ward be in the custody of the Guardian. The Court has directed the Guardian to take custody of the ward, Mr. Knight. The Court finds that it is necessary for law enforcement personnel to be involved in this matter in order to best ensure the safety of all involved, and to accomplish the transfer of custody from the Respondents to the Guardian. The Court



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finds that the actions of the Respondents make it necessary for the Court to authorize the potential use of forcible entry, if the same be necessary, to the ward's own home in order to determine whether the ward is there or elsewhere.

It is therefore

ORDERED that the physical and legal custody of the person of Mr. Norman Robert Knight, Jr., is granted to his Guardian, Walter R. Kaufmann, and it is further

ORDERED that the Charleston County Sheriff's Office (or any other law enforcement agency or agencies, as may be appropriate) provide all means available and necessary to assist the Guardian in both in ascertaining the whereabouts and in gaining custody of the ward, Mr. Norman Robert Knight, Jr., and it is further

ORDERED that entry may be gained, by the use of force if necessary, to the ward's own home at 3940 Hottinger Avenue, N. Charleston, Charleston County, to ascertain whether or not the ward is on the premises, and it is further

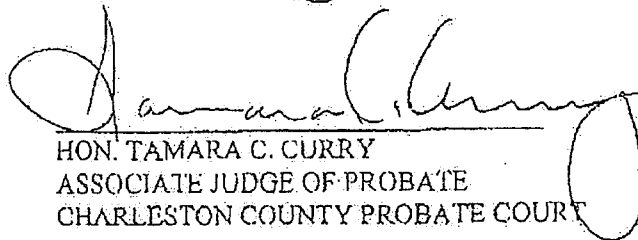
ORDERED That any law enforcement agency may take custody of the ward, Norman Robert Knight, Jr., subject to the further directions and instructions of the Guardian, and it is further

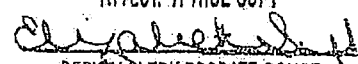
ORDERED that the Guardian has the sole authority as to who, if anyone, including any of the parties (with the exception of the Guardian *ad Litem* as provided below) is permitted to have visitation with the ward, and that such visitation is subject to any restrictions (including supervision of the visitation) imposed by the Guardian, including the denial of visitation to anyone, pending further order of this Court. The costs of any such restriction (e.g. supervision) shall be borne by the parties upon whom the Guardian places any such restriction, and it is further

ORDERED that the Guardian *ad Litem* shall have free access to visit the ward at any time upon reasonable notice to the Guardian.

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SO ORDERED this the 31st day of January, 2006, at Charleston, South
Carolina.


HON. TAMARA C. CURRY
ASSOCIATE JUDGE OF PROBATE
CHARLESTON COUNTY PROBATE COURT

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA
 CHARLESTON COUNTY
 IN RE THE ESTATE OF:
 NORMAN ROBERT KNIGHT, JR.
 An Incapacitated Person

FAMILY SERVICES, INC., AS
 CONSERVATOR,

Petitioner,

vs.

NORMAN ROBERT KNIGHT, III, and
 MILDRED KNIGHT,

Respondents.

IN THE PROBATE COURT

CASE NO.: 2004-GC-10-099

ORDER

WHEREAS, this matter came before me today on a Petition for Rule to Show Cause why the Respondents Norman R. Knight, III (also known as Bobby Knight) and Mildred Knight have failed to comply with an Order of this Court, dated August 25, 2005. Present before me today were Thad H. Vincent, Esquire, attorney for Chloe Knight Tonney and Linda Knight Jones, daughters of the incapacitated person; Glen P. Churchill, Esquire, Guardian Ad Litem for the incapacitated person; Walter R. Kaufmann, Esquire, Guardian for the incapacitated person; Iris Albright, Director of the Conservatorship division of Family Services, Inc., the Conservator for the incapacitated person; J. Seth Whipper, attorney for Norman Robert Knight, III; and Mildred Knight, the wife of the incapacitated person, who appeared *pro se*. After hearing testimony from the parties, arguments from counsel, and reviewing the file in this matter, I make the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT and CONCLUSIONS OF LAW

1. I find that on August 25, 2005, I issued an Order that Norman R. Knight, III and Mildred Knight must turn over the proceeds of the UBS Account liquidated May, 2005, in the amount of \$42,957.99, to the Conservator, Family Services, Inc., within five (5) days of the execution of that Order or they would be found in Contempt of Court and subject to a fine of \$100 per day;

2. I further find that on August 25, 2005, I ordered that Respondents turn over any and all financial records to Family Services within five (5) days of the execution of that Order or they would be found in Contempt of Court and subject to a fine of \$100 per day;

3. I further find that on August 25, 2005, I ordered that if Respondents failed to comply within 15 days of the August 25, 2005 Order, as directed, a hearing would be held to determine further sanctions;

4. I further find that Respondents testimony today directly contradicted testimony given to this Court on July 20, 2005 related to the whereabouts of these funds;

5. I further find that Respondents, Norman R. Knight, III, and Mildred Knight have willfully failed to comply with my Order and have therefore given me no other choice than to place them in Contempt of Court and to Order that they be placed into the custody of the Charleston County Sheriff's Department;

6. I further find that Respondents are to be incarcerated in the Charleston County deteniton facilities until such time as they have complied with the Order of August 25, 2005 and have paid over \$42,957.99 to Family Services, Inc. The Court

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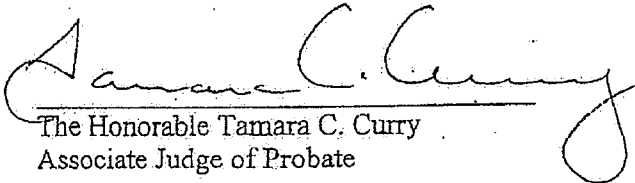
Ordered fines in the amount of \$100 per day, per person, having accrued since September 1, 2005, shall be paid within 60 days of their release;

7. I further find that Respondents can be released from their incarceration upon complying with the directives of paragraph six (6) of this Order.

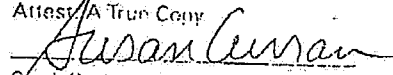
NOW, THEREFORE, IT IS ORDERED THAT Norman Robert Knight, III, and Mildred Knight are held in Contempt of Court and shall be held in a Charleston County detention facility until such time as they shall comply with the directives of this Order.

IT IS SO ORDERED!

This 2nd day of June, 2006
Charleston, South Carolina.


The Honorable Tamara C. Curry
Associate Judge of Probate

Attest: A True Copy


Susan Curran
Clerk, Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
Judith A. Brown, as Personal)	CASE NO.: 2019-CP-10-3042
Representative for the Estate of)	
Mildred C. Knight, and Norman R.)	
"Bobby" Knight, III,)	
Plaintiffs,)	
vs.)	
Chloe Knight Tonney,)	
Defendant.)	

**DEFENDANT'S SECOND MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
MOTION TO AMEND THE COMPLAINT**

This matter is before the Court on the Motion of Plaintiff(s) to be allowed to Amend the Compliant. A hearing on the Motion was held on August 26, 2020, wherein the Special Referee, Capers G. Barr, III, Esquire requested that each party submit a memorandum exploring the question of prejudice, and in response, the Defendant, Chloe Knight Tonney, ("Tonney") submits this Memorandum.

Motions to amend pleadings are "within the sound discretion of the trial judge," and leave to amend under Rule 15 should be granted "when justice so requires and does not prejudice any other party." *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286 (2005). Otherwise, no such leave shall be given. *Id.* "Prejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action." *Holland ex rel Knox v. Morbark, Inc.*, 407 S.C. 227, 235 (2014). There are two types of prejudice relevant in this case: futility and undue burden.

PREJUDICE BECAUSE OF FUTILITY. Prejudice to Tonney is based on the undeniable futility of the proposed amendments. “[A] trial court may deny a motion to amend if the amendment would be clearly futile.” *Skydive Myrtle Beach, Inc. v. Horry Cty.*, 426 S.C. 175, 182 (2019); *see also, Jennings v. Jennings*, 389 S.C. 190, 2019 (Ct. App. 2010), *rev’d on other grounds*; *see also, Foman*, 371 U.S. at 182 (allowing for denial of leave to amend on futility of proposed amendment). A trial court normally does not consider the merits of an amended complaint, but may do so in a determination of futility. *Skydive*, 426 S.C. at 183. In the instant case, the proposed claims for loss of consortium and conspiracy are clearly futile for various reasons, including their failure to relate back to the original pleading and their lack of factual basis.

Futility due to no relation back to original pleadings. Plaintiffs commenced their argument on the Motion to Amend by claiming that the proposed claims related back to the filing of the original pleadings without stating a basis. The only basis that can be surmised is that unless there is a relation back the statute of limitations has run on these claims, Plaintiffs have no case for amending the pleadings. Rule 15(c) requires that any proposed claim “relate back” to the original pleading. “Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.” Rule 15(c). The test for relation back is clear in the rule: “whether the claim asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth in the original pleading.” *Patton v. Miller*, 420 S.C. 471, 496–497 (2017).

The requisite relation back simply is not present in this case. Neither the conduct, transaction or occurrence suggested in the proposed amendment is related in any way to the pending case as

required by Rule 15(c). The original pleadings *only* deal with the issue of title to the Property, which was deeded to Tonney by her grandmother in 1979. The proposed amendments, on the other hand, involve alleged conduct involving the breakdown in the marital relationship between Mildred Knight ("Mildred") and Norman Knight Jr. ("Norman"), beginning with the outset of Norman's Alzheimer's Disease, which commenced sometime before the declaration of his incapacity in 2004, and lasted until his death in 2008. Loss of consortium and conspiracy as alleged in the Motion to Amend have nothing to do with the title to the Property. While the parties may be the same, Rule 15(c) is a question of related facts, which are simply not present here, as the time period, alleged actions, and transactions at issue are completely unrelated. In the hearing on Mildred's Motion to Amend in 2008, in which she similarly sought to add a loss of consortium claim to Case No. 2005-CP-10-2674, the Court implied that there is no relation between the loss of consortium and the title to the property at issue, the same question before the Court here: Judge Dennis stated,

Ms. Knight, all I have right now is an action that was filed and this is the basis of this action. [The original pleading] appears to be an effort to have a deed either reformed to vest title in yours and Mr. Knight's name by virtue of being declared to be a resulting trust or a mutual mistake or something to that effect. So all we're talking about is actions that deal with – with the deed.

See Exhibit A (Motion to Amend), and Exhibit B, at Page 15, Lines 5–13 (Transcript of Hearing on Motion to Restore and Motion to Amend). Mildred then withdrew her Motion to Amend and Judge Dennis replied, "That's what I thought would be the best thing to do." *Id.* at Page 15, Lines 16–17.

Allowing Plaintiffs to amend to add the claims of loss of consortium and conspiracy claims would be in contravention of the purpose of Rule 15(c) and would therefore unfairly result in significant prejudice to Tonney. "The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations" and is "based on the concept that once litigation involving

particular conduct or a given transaction or occurrence has been instituted, the parties are not entitled to the protection of the statute of limitations against the later assertion by amendment of defenses or claims that arise out of the same conduct, transaction, or occurrence as set forth in the original pleading.” *Thomas v. Grayson*, 318 S.C. 82, 88 (1995). Therefore, the requirement of relation back protects against prejudice by only salvaging *related* claims – allowing new claims to enjoy the benefit of avoiding the statute of limitations that have nothing to do with original claim would not only violate the purpose of Rule 15(c), but also of statutes of limitation in general. Here, it is clear that the loss of consortium and conspiracy claims are outside the statute of limitations, which is three (3) years. SC Code §15-3-530 (1976, as Amended). Norman and Mildred both died over ten (10) years ago, and any loss of consortium or conspiracy occurred prior to the death of Norman who died in 2008. Further, Mildred recognized that these claims may exist long ago in 2008 when she brought the Motion to Amend to add the loss of consortium claim. See Exhibit A and Exhibit B, at page 15. If an action for loss of consortium ever existed, which is denied by Defendant, the latest date recognized by Mildred was when she filed the Motion to Amend in 2008. The statute of limitations, in the light best for the Plaintiffs, began to run in 2008 and it has long since expired.

Additionally, there is no one to testify to these facts as to how the supposed actions of the Defendant affected Mildred or Norman, as both Mildred and Norman are dead and any other witness testimony would be hearsay. Further, the Plaintiffs, Bobby Knight and Judith Brown, are precluded from testifying under the Deadman’s Statute¹. Forcing Tonney to defend against these futile claims would be extremely prejudicial, as it would lead to additional costs and stale evidence, in addition

¹SC Code §19-11-20 (1976, as Amended) prohibits either of the Plaintiffs from testifying due to the fact that they stand to gain in the event of a finding against Tonney.

to the Plaintiffs' undue delay. Their attempt to amend strips Tonney of the comfort knowing that the claim was withdrawn twelve (12) years ago and the assurance it would not be reinstated due to the statute of limitations. Since the statute of limitations ran long ago and if it had not, there would be no one to testify as to damages, the Motion to Amend should be denied because of the prejudice to the Defendant and the futility of the effort.

Futility due to the meritless nature of proposed claims. An analysis of the underlying facts clearly refutes the Plaintiffs' claims based solely on a review of numerous Court Orders dealing with Norman's incapacity and the actions of Mildred and Norman R. "Bobby" Knight, III, ("Bobby"), and compelling Tonney to defend against them would be prejudicial due to cost when the facts make it clear the proposed claims are futile. The spousal relationship began to deteriorate when Norman began exhibiting symptoms of Alzheimer's Disease sometime before 2004. Norman then became incapacitated due to his disease, a fact not in controversy as admitted by Plaintiffs.² He was judicially declared incapacitated in 2004. Whatever relationship that existed in 2004 was lost because of Mildred's own actions, and the actions of her son, Bobby, as can be seen by review of the attached Court Orders. *See Exhibit D*³. Mildred was initially appointed Norman's Guardian and Conservator, however, she lost those privileges by repeated violations of these Orders, to the point where Norman was removed from the home because of the violations, and ultimately she and Bobby were held in Contempt of Court and sent to a detention facility. As a result of these continued

²In a separate but related appeal from the Probate Court (Case No. 2005-CP-10-3573), Plaintiffs submitted a proposed Order to Judge Good on January 17, 2006, which states, "The court is constrained to accept the Probate Court's findings as to the incapacity of Norman R. Knight Jr. Since the record does not contain a contest on this issue." *See Exhibit C*.

³This Exhibit contains several Court Orders dealing with the actions of Mildred and Bobby which place the fault on Mildred and Bobby for any loss of consortium.

violations, she not only lost her custody of Norman, but also his companionship. *See id.* The set of facts outlined simply by the attached Court Orders is indisputable and make the claims for loss of consortium and/or conspiracy clearly futile on the merits. As such, Tonney should not be forced to expend time and money on the defense of such claims.

PREJUDICE BECAUSE OF UNDUE BURDEN. As stated, “[p]rejudice occurs when the amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail in the amended action.” *Holland ex rel Knox v. Morbark, Inc.*, 407 S.C. 227, 235 (2014). The need for additional discovery, including further depositions, is considered when assessing prejudice. *Id.* Undue delay is also a consideration, especially when the facts giving rise to the amendment are known to the moving party long before the amendment is sought. *Id.*; *see also, Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating undue delay gives rise to denial of leave to amend).

If the Motion to Amend was granted bringing in entirely unrelated claims, discovery would be expanded tremendously, including the need more depositions, in an amount unknown, as it is impossible to glean from the Motion to Amend or proposed amendment the specific basis for the conspiracy or loss of consortium or who was involved in the supposed conspiracy. Additionally, based on statements of Plaintiffs’ counsel, Plaintiff Judith Brown will be unavailable for an oral deposition, and by nature of the proposed claims, she is the claimant based on her status as the Personal Representative. This presents added prejudice to Tonney, as a written deposition on these facts would be extremely ineffective. Further, as discussed under the Deadman’s Statute, Plaintiff Bobby Knight would not be able to testify to these facts either. SC Code §19-11-20 (1976, as Amended).

Further, the undue delay of Plaintiffs in bringing these claims is staggering: Norman died in 2008, and Mildred in 2010, meaning that Plaintiffs have been aware of the alleged facts giving rise to these claims for, at least, twelve (12) years. Additionally, as discussed, Mildred recognized that a cause of action for loss of consortium may exist in 2008 when she brought the claim in the underlying case. Taken together, the additional claims requiring completely different evidence and the undue delay causes prejudice to Tonney and the Motion to Amend should also be denied on these grounds.

The actions of Plaintiffs now and Mildred in the past demonstrate an intent to harass the Defendant. The claim related to the title to the property was originally filed in 2005 and dismissed for lack of prosecution. In 2008 there was a motion to restore and a motion to amend to add the loss of consortium claim. The Court restored the case but the Motion to add the loss of consortium claim was withdrawn. What then became the 2008 case, without the loss of consortium claim was then dismissed for lack of prosecution and sat for eleven (11) years until a motion to restore was filed in 2019 without a Motion to add a claim for loss of consortium. The case was restored, but for some reason a new case was filed in 2019, again without a loss of consortium claim and consolidated with the then restored 2008 case. If the claim was real it would have been prosecuted from the beginning not over ten (10) years after the deaths of Norman and Mildred.

The supposed conspiracy claim is prejudicial because there is no way to tell what it is based on or who the Defendant conspired with to do whatever the conspiracy was related to. As a result the costs to deal with this supposed claim will be substantial in order determine from the beginning was it being defended against.

Finally, another potentially prejudicial issue is the request contained in the Motion to Amend asking for a jury trial on the proposed claims. Despite the fact that at the hearing on this Motion to Amend, Plaintiffs' counsel was asked several times whether he was going to waive this request, he never gave an answer. If Plaintiffs insist on a jury trial, then further prejudice would exist to Tonney, as the issue of title to the Property and the proposed claims would have to be bifurcated. This would involve added expense, additional and unrelated evidence, and further delay in this case, all resulting in the prejudice that would be suffered by Tonney.

For the reasons stated the Motion to Amend should be denied.

Law Offices of Charles S. Altman, LLC.

/s/ Charles S. Altman
Charles S. Altman (SC Bar No. 351)
575 King Street, Suite A
Charleston, South Carolina 29403
Tel.: 843-853-9907
Fax: 843-572-7702

September 4, 2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mildred C Knight & Bobby Knight III, Appellants

☒ Plaintiff

v.

Irv Condon, Probate Judge, Et Al, Respondents

☒ Defendant

IN THE COURT OF COMMON PLEAS

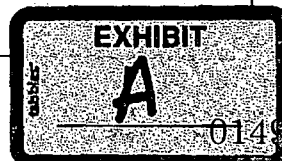
CASE NO.

2007-CP-10-4141

2005-CP-10-2674

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Mildred C Knight & B Knight III, Bar No. Pro Se Address: 3940 Hottinger Avenue phone: 200-9449 fax: 576-4477 e-mail: other:	Defendant's Attorney: See Certificate Of Service For Motion, Bar No. Address: phone: fax: e-mail: other:
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: RULE 42a Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter:	
☒ Other: Motion for Leave to file First Amended Complaint pending Rule 42a & 82 a -b	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE: _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	



**IN THE COURT OF COMMON PLEAS
FROM THE NINTH JUDICIAL CIRCUIT**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	CIVIL ACTION No. 2007-CP-10-4141
Irv Condon, Probate Judge &)	an APPEAL FROM PROBATE COURT
Chloe Tonney Petitioner vs)	FROM THE PROBATE COURT CHAS SC
Norman Robert Knight Jr. alleged)	CIVIL ACTION No. 2004-CP-0099
incapacitated person, et al)	
Respondent(s);)	
Sean Trundy, ET AL)	FROM THE FAMILY COURT CHAS SC
Defendants,)	CIVIL ACTION No. 2006-DR-10-3999
Vs.)	&
Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	Case No. 2005-CP-10-2674
incapacitated person,)	&
Appellant(s).)	IN THE COURT OF COMMON PLEAS
	Case No. 2007-CP-10-5683

&

Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	
incapacitated person,)	
Plaintiff(s).)	Case No. 2008-CP-10- (Pending)
Vs.)	
Wachovia Bank, N.A. and)	
Wachovia Investments, Inc.)	
Defendant(s).)	

2008-3092

2008 MAR -4 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

MOTION FOR LEAVE to file the FIRST AMENDED COMPLAINT(s)¹

Notice to all the Attorneys, Respondents and Defendants above:

The Plaintiffs and Appellants, captioned above, NOW in addition to their previous Causes of Actions, and timely move for leave of the Court to structure their First Amended Complaint (Petition and Extraordinary Writ Complaint) to include the following paragraph as the damages and causation accrues daily in these cases.

¹ CIVIL ACTION No. 2007-CP-10-4141; Case No. 2005-CP-10-2674; Case No. 2007-CP-10-5683

Cause No. (draft) **LOSS OF CONSORTIUM**

The Plaintiffs, husband and wife, notoriously known as Mr. and Mrs. Norman R Knight, Jr. incorporate by reference all the above, w paragraphs and pleadings as though fully set forth herein.

1. . At all times pertinent to the events complained of in the Plaintiffs Rule 42a Consolidation Motion (pending before the Charleston County Court) and the COMPLAINT (pending Court of Common Pleas Rule 82a and b Decisions) , (are the sole and proper Plaintiffs in Case 2005-CP-10-2764) were married and that these Plaintiffs continue to be married to this very day; and
2. That as a result of the wrongful and negligent acts of the Defendants, and each of them, the Plaintiffs were caused to suffer, and will continue to suffer in the future, loss of consortium, loss of society, affection, assistance, and conjugal fellowship, all to the detriment of their marital relationship; and
3. That all the aforesaid injuries and damages were caused solely and proximately by the wrongful and malicious negligence of the Defendants.

WHEREFORE, the Plaintiffs jointly as husband and wife, demand judgment against the Defendants and Respondents, jointly and severally, in the amount of TEN MILLION SIX HUNDRED FIFTY THOUSAND DOLLARS (\$10,650,000.00) each spouse, plus costs, prejudgment interest, post judgment interest, and any other costs this court deems appropriate.

Affidavits/Pleadings of Mildred C. Knight = undisputed fact, the Plaintiffs, Norman R Knight, Jr and Mildred C. Knight are married 58 years.

Respectfully submitted this 21st day of February 2008,

Mildred C. Knight

Mildred C. Knight (wife)
3940 Hottinger Avenue
North Charleston, SC 29405
(843) 576-4477 FAX *

Bobby Knight III

Bobby Knight III (Son)

*Also FAX is a one page message and about whom to call. This as our ADA alternative to not having a voice mail box. Please respect this choice. ©

Via FAX 843 762-6119 as a courtesy & Via Registered Mail to Mr. C. William (Bill) Trawick Exec. Dir.

Saturday, March 01, 2008

LETTER OF INTENT

TO:

Bishop Gadsen aka Episcopal Diocese, and General James A. (Alex) Grimsley, Chairman, Mr. Benjamin (Ben) A. Moore, Jr., Mr. Michael (Mike) G. McShane Mr. G. Mark Phillips, Mr. Paul (Put) Putman, Mr. John G. Boatwright, Mr. Stephen (Steve) Skardon, Mr. Thomas (Tommy) Thornhill, Ms. Sue Mariotti, Mr. Henry (Hal) L. B. Ravenel, Mr. D. Maybank Hagood, Mr. C. William (Bill) Trawick, Ms. Polly Blackmer, Ms. Cornelia Pelzer and Mr. Richard W. Salmons, Jr.

FROM: Mildred C. Knight, (wife & true and willed Guardian of her husband Norman R. Knight, Jr.) and Bobby Knight, III (Son).

Dear Bishop Gadsen, Episcopal Diocese and Committee Members;

AS you should be aware, there is extensive pending litigation against Walter Kauffman, and Iris Albright, and Thad Vincent and Chloe Toonney and Linda Jones, Family Services, Inc., ET AL:

The active civil actions can be found in the following cases at the office of our Clerk of Court, Julie Armstrong. The No's are as follows with a motion for consolidation: 2007-CP-10-4141 per SCRCF 6.1.3. SC Code of Law §62-1-308(c) and §62-1-401 routine and habitual violations of due processes. The Probate Court case is 2004-GC-10-0099 and again 2006-DR-10-3999 was filed a necessity for my personal sustenance and a breach of the agreement read into the record on October 20, 2004; there is a civil action for property possession wherein both my husband and I executed against our daughter, Chloe Toonney and is filed as 2005-CP-10-2674 and pending. The attorney in that case, Sean Trundy, is being sued among other things his legal malpractice and deceit. His case is 2007-CP-10-5683.

The persons that kidnapped my husband from me are listed in my ~148 page brief and exhibits in case #4141. These self-serving people, clearly, without any defense now and with unclean hands, have habitually violated and continue to violate against me and my husband via an abuse of Probate Authority, a habitual breach of their duty to the SC Laws known as **SC Code §15-75-60 et seq.** and **§15-75-20** along with Rule 11 violations of Appellant **SCRAP 225a**. The entire situation has now made each of you, as representatives of the Episcopal Diocese and Bishop Gadsen, accomplices for destroying our family and marriage. Charlie Condon himself filed our first appeal and the Hon. Seth Whipper still has our Motion for a New Trial pending since January 17 2006. The Probate Court violated R.225a then when [it] gave Mr. Condon a release from our representation after the appeal was scheduled and then left me at the alter of the appeal process abandoned unlawfully.

The essence of our Complaint and Appeal, by the Knight's, and yes I am including my husband, Norman; is that the Court will make us whole again and

*mck
BK*

Via FAX 843 762-6119 as a courtesy & Via Registered Mail to Mr. C. William (Bill) Trawick Exec. Dir.

find that since I am the wife and suffered my Loss of Consortium along with Norman having lost his; §15-75-20; we will be awarded damages as demanded in our pleadings. As for the Sham Litigation detailed as §15-75-60, there is additionally legislated to seek Punitive Damages in addition to the list of other mounting Damages. All perpetrated by Thad Vincent, Walter Kauffman and Glen Churchill and these others (see docket sheets with the Clerk, as the list of Attorneys are now named as Defendants and Respondents').

The rest is all on the record and accruing daily. I am writing to each of you and to Bishop Gadsen to inform you that I will not be extorted to pay Kauffman \$140/hour to visit my husband, while he interrogates me and violated the authority of law limitation set upon him by Judge Young in September 2005. Simple, had Kauffman won that appeal – then why did they manufacture the Probate Order of January 31 2006 and kidnap Norman from me? It is prohibited to go to the lower court and get any order without written permission and due process of the Appellant Court. Especially, when the obtained results equaled the same subject matter that is being appeal from, this, by statute, prohibited; see the Motion for Sanctions filed on February 6, 2006, again still pending a hearing. You likely have been told God only knows what! I am here to tell you the consistent truth and facts. I am attaching for your personal benefit two letters. One is to Glen Churchill and the other letter is on file at court and sent to all Attorneys. If any of you are truly the kind of organization that you profess to be, then you will do the right thing and stop being used as accomplices to kidnapping and yes the propensity for wrongful death is only a whisper away! Again, Norman Last Will and Testament appoints me, his wife, Mildred C. Knight, his lawful Guardian. That marital duty has not lawfully be taken away from me by any court or any judge. This solemn duty is reinforced by SC Code §62-5-301(b) and that will prevail in Case 2007-CP-10-4141 as it escalates to the highest court in our country.

You might ask me how we keep getting denied timely and proper access to the Charleston County Court, well go ask Julie Armstrong, she has spent the last four months correcting the dockets of errors and misfiled pleadings. It was NOT any Harmless Error, but an Obstruction of Justice.

We have Moved to join the Wachovia N.A. for their illegal participation with the Probate Orders that were issued without Hearings and Notices.

In fact, anyone or any fiduciary that fails to validate a Probate Order to see if it is 10 days old, if it had a hearing scheduled, if it had been lawfully Noticed and had not been otherwise Automatically Stayed via a timely §62-1-308(c) Appeal Process it too just as guilty of violating the rights of these Appellant's.

Again, a crime, as these are not Rules broken but the Codes of Law, a blatant abuse of authority and judicial power over citizens. I am thinking that with this Letter of Intent, Bishop Gadsen will conform to their Religious beliefs and the

*mck
B. Knight*

Via FAX 843 762-6119 as a courtesy & Via Registered Mail to Mr. C. William (Bill) Trawick Exec. Dir.

Law and open it's doors to Mrs. Norman R. Knight, Jr. immediately. One note I received from our friend, Mrs. Ruppel, at our North Charleston Presbyterian Church, is that our Pastor, who came by our home regularly, soon learned that Norman was at Bishop Gadsen. He went there of his own accord and diligence. He was turned away by your staff, which were following vindictive reasoning and motives of the Defendants and Respondents captioned with the Clerk of Court. I am not begging to see my husband and be with him. **This is a Demand for you and your organization to cease and desist being accomplices of the accruing violations of SC Code §15-75-20.**

With this case growing like a cancer through the legal system and the Damage limitations of a non-profit, aside from the negative publicity and expenses of having no excuse to violate the State sanctity of a lawful marriage, it should only take each of you a few seconds to wash your hands of criminals, even if they are filling your pockets with the 'blood money'. They argue that Norman is in good care. He was in good care in the protection of our home. It was always "our choice". Not that of adult children, whom sheepishly stole our trust and abused a power of attorney. We paid to have that PoA revoked. They paid us back with a DSS Investigation. They lost as it was unfounded. Then they lied and filed a Probate. Doctors Derrick and Smith, both wrote letters, after ~~to~~ speaking to all the attorneys that Norman was not incapacitated and should stay in our home. These letters were sent to Charlie Condon. On that same day, the Probate wrote orders to beat out the obvious dismissal of the Probate case. And we again appealed. Charlie abandoned me in violation of R225a. Why?

Final note; SC has a cause of action called Loss of Consortium. It does not and our Legislature declined to allow a Loss of Filial Consortium. For the layperson; any adult child or even the minor child can not prevail for damages OR can any SC Court have the authority at law to order adult child to impose on the parent and supersede the spouse.

All of you should immediately do the right thing right now! Come join the court arguments in favor of marriage, the SC Code of Laws, be with Norman and I and truly represent the residents at Bishop Gadsen. Or, make the wrong choice now! I am 81 and Norman is 82. Our time is just too, too precious, to haggle with the Devil and his partners, who are hiding behind the Episcopal Alter their evil deeds!

Mildred C. Knight

The Knights:

Mildred C. Knight (Wife of Norman R Knight, Jr.)

Bobby Knight

Bobby Knight, III (Son)

3940 Hottinger Avenue

North Charleston

(843) 576-4477 FAX only.

Enclosures: (2) Letter to All Attorneys & a Letter to Glen Churchill GAL/NRK Jr.

Feb 21 08 06:07p

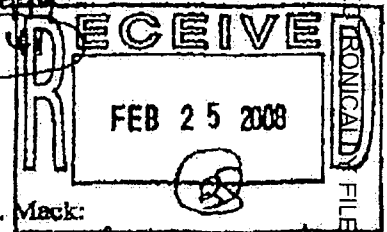
B. Knight

8435764411

P.1

PLEASE COPY TO:
BONNIE
% JULIE LEWISTON

Case 2:2006-DZ-10-3999
2007-CP-10-4141



Thursday, February 21, 2008

MEMO to all Attorneys,

Subject: Norman, Jr. and Mildred Knight and the litigation plan give Mr. Mack:

Dear Mr. Mack, Ms. Hall, and Mr. Schwartz, and the Courts

Please review my letter about how I have been treated and billed by Mr. Schwartz in his certified letter No. 7179 7504 2890 2201 7191 which was sent out and received by his offices 11 Oct 2007. If you do not have your copy, let me know and I will send you a new one.

Mr. Schwartz needs to check with the limitations of a court appointed GAL. He is not my husband's attorney. I am the one who asked the court to appoint a fresh person for the DR case. A case that was only necessary because of incompetence and negligence of other attorneys. See the Motion for Sanctions filed and now part of the Probate Appeal 2007-CP-10-4141.

In the letter to Mr. Schwartz, I complain that since he did not know the parties he was charged with, had not complied with the provisions of the order from March 2007 that appointed him, and had served only the wishes of the daughters and Walter Kaufman, and Schwartz became biased - all the while billing me 100% for his time.

I will ask the Family Court Judge, on Monday, to replace Mr. Schwartz and to give me back my \$500 paid in good faith effort to be with my husband again!

Bobby and I did not steal any money, you all have the UBS document from May 2005 signed by both Norman and I and the Bank representative and manager. The details of the faults of my husband's kidnapping are detailed perfectly in my pleadings with the courts.

For all the Probate laws broken and rules ignored and the harmful malicious errors of professional attorneys, like those errors of Mr. Schwartz's (see my letter) It is like the more mistakes attorneys make and the more times you can make excuses to go to court; the more of our money you can put into your pockets. This is wrong! The law allows you carry the honey jar. You are not allowed to trip and stumble each other so you can lick your fingers until our lives are completely empty! And pay yourself for sloppiness?

For you attorneys to say things like "Well they are 80 years old and the life expectancy is only 6 months" is salt poured on our injuries. You all have been saying that since 2003. To think that when all the resources are gone and all the attorneys are paid - Norman and I can go on Medicaid - is fleecing the taxpayers and you are suffering an enrichment that is uncalled for! You have been checked. We would have never been without resources!

Not one of you can raise your hand and tell any Court what you have done lawfully or ethically to keep this married couple together or to make them whole. Every choice you attorneys make is one that makes you money only!

The Knights, (Enclosed: attachment letter from Mr. Mack yesterday)

Mack

EXHIBIT #1
CAUSE OF ACTION: Loss of Consortium

0155

ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

Bobby Knight

From: "Bobby Knight" <constgrp@comcast.net>
 To: "Elected Judge Irv Condon" <irvcondon@charlestoncounty.org>; <gpclaw@bellsouth.net>
 Cc: "SETH WHIPPER" <JSW@SCHOUSE.ORG>; <ncookchas@aol.com>; "Burley Michell" <BMitchell@wcsr.com>; "Ben Mack" <BMackLaw@aol.com>; "Mildred Knight" <mildred.knight@comcast.net>; <intake4aclusc@aim.com>; "Charlie Condon" <charliecondon@comcast.net>; <SCtaxlawyer@msn.com>
 Sent: Friday, February 22, 2008 7:02 PM
 Attach: Motion for Leave to file First Amended Complaint 21 FEB 2008.pdf
 Subject: Norman R Knight Jr has been kidnapped and his marriage destroyed unlawfully.

Hello Mr Glen Churchill,

I am sending you this email so you won't wonder why I am contacting you later.

Biggest thing is the affidavit you provided the Probate Court January 2006, after Whipper's still pending Motion for New Trial. Your Harmful Affidavit via the Walter Kaufmann's violation of the Automatic Stay Judge Young put on him while you were standing right beside him, which unlawfully used your statements of the denied visitation - (what would have been appropriate is a Rule to Show how you had been denied any visits, but you already know what was the right thing to do as Mom was at the doctors that morning and you waited three weeks to conspire with others) that kidnapped my father from our home has two major flaws in professional conduct. The SC Supreme Court case of Stephan v Stephan prohibits any court to give the authority of the court to one attorney (that would be you) who then tell the second attorney (that would be mine, Seth Whipper) who then tells his client by FAX on a Sunday night (that would be me) to tell another party (that would be my Mother) to perform under the provisions of a court order your demand for a visit the next morning, Ha! AS you refused to recall on that dreadful day; your affidavit says this third party hearsay story of how these daughters have a right to visit their father? Again you were and still are so sadly mistaken. You see that concept is defined in SC Courts as a loss of filial consortium. The SC Supreme Court and the State Legislature do not allow for the courts to litigate such matters. You see only spouses between each other and a parent over a minor child. The reverse is not lawful and you have helped these others to harm your 'charge' and 'both of my parents' and they both have rights to be compensated for their loss of consortium, a damage and injury which does exist at law in SC, a injury by you and the others named in our case at Probate Appeal. Too, pursuant to Rule 6.1.3 scrutiny, you will be asked to take the witness stand. As life is short and your duty as an GAL and to the Court, it would be best interest of my parents for you to start now by mending you errors and reducing your personal damages.

I would hope to hear from you very soon on a more positive change of your position. Until then we will be moving forward to Petition your removal as anyone's GAL and seek damages against you and your law firm accordingly.

I am copying all the folks I have emails for and I have been told that you along with Irv Condon have a "continuing duty" to the Probate Code and of course to both of my parents and the people of South Carolina and the law.

I am paraphrasing some text for you to research because you trust me so much: Now you know and yes you should have known the following applications before you aided in the loss of consortium between my parents since August 2004. Unless you wish to ask the SC S Court to Reverse almost 100 years about the legislated "declined-rights of adult children", then I suggest you get ready to comply immediately with the standard expectation of professional person(s) in your capacity as an officer of the court and to the elected Probate Judge, Irv Condon.

EXHIBIT #2a
 CAUSE OF ACTION: loss of Consortium 0156

Quoted from S.C. Code Ann. § 15-75-20 (2005), to allow both spouses the right to recover for loss of consortium.

Loss of Consortium: At common law, a father possessed the right to maintain an action for the injuries of his minor child. See *Hughey v. Ashborn*, 249 S.C. 470, 476, 154 S.E.2d 839, 841-42 (1967). This right was based upon the concept that a father was entitled to compensation for the loss of services and earning capacity of his minor child. *Id.* Additionally, the father could recover for other pecuniary losses, including medical expenses incurred as a result of the injury. *Id.* Conversely, the common law right of a husband to recover damages for loss of consortium resulting from the injury of his wife was more encompassing. A spousal loss of consortium claim was based upon the husband's right to the companionship, aid, society, and services of his wife. *Cook v. Atlantic Coast Line R. Co.*, 196 S.C. 230, 243-44, 13 S.E.2d 1, 7 (1941). This common law right belonged only to the husband, and therefore, a wife could not recover similar damages resulting from the injury of her husband. In 1969, the South Carolina legislature adopted Code § (56) 615, which is now codified at S.C. Code Ann. § 15-75-20 (2005), to allow both spouses the right to recover for loss of consortium.

In *Taylor v. Medenica*, this Court held that the determination of which relationships may give rise to a loss of consortium claim in South Carolina is one best left to the discretion of the legislature. 324 S.C. 200, 222, 479 S.E.2d 35, 47 (1996) (declining to recognize a cause of action for loss of parental consortium). The United States District Court for the District of South Carolina adopted the *Taylor* analysis in finding that South Carolina law did not provide a cause of action for loss of consortium of a child or for filial consortium. *Kirkland v. Sam's East, Inc.*, 411 F.Supp.2d 639, 641 (D.S.C. 2005). Today, we extend our *Taylor* analysis in holding that South Carolina law does not recognize claims for loss of filial consortium. Such rights did not exist under the common law, and the legislature has not provided such a right by statute.

The dissent would find that parents have a common law right to sue for loss of filial consortium despite the clear distinctions between a parent's claim for loss of services and a spouse's claim for loss of consortium found in our previous jurisprudence. The cases which the dissent utilizes to support its conclusion that filial consortium claims existed at common law directly address parental claims for loss of services, not loss of filial consortium. See *Wright v. Colleton County*, 301 S.C. 282, 289, 391 S.E.2d 564, 569 (1990) (providing that a parent's claim for loss of services and medical expenses resulting from the injury of a minor child is within the tort claims act statutory definition of "loss"); see also, e.g., *Berger v. Charleston Consol. Ry. Gas & Elec. Co.*, 93 S.C. 372, 76 S.E. 1096 (1913) (addressing a father's action for medical expenses and loss of services of his injured child). As discussed above, our common law only allowed a parent to maintain an action for the loss of a child's services and earning capacity. These common law claims did not include the intangible losses of aid, companionship, and society which have traditionally defined loss of consortium claims. Accordingly, in absence of some action from the legislature, this Court has no authority upon which it could rely in finding that South Carolina law recognizes claims for loss of filial consortium.

mediated transcript
BK
EXHIBIT #26
Loss of Consortium 0157

HP Officejet 7410
Personal Printer/Fax/Copier/Scanner

Log for
B Knight
8435764477
Mar 01 2008 8:41PM

Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Mar 1	8:37PM	Fax Sent	7626119	3:44	6	OK

ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

EXHIBIT #2c
; loss of Consortium

IN THE COURT OF COMMON PLEAS
FROM THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CIVIL ACTION No. 2007-CP-10-4141
COUNTY OF CHARLESTON)	an APPEAL FROM PROBATE COURT
Irv Condon, Probate Judge &)	
Chloe Tonney Petitioner vs)	FROM THE PROBATE COURT CHAS SC
Norman Robert Knight Jr. alleged)	CIVIL ACTION No. 2004-CP-0099
incapacitated person, et al)	
Respondent(s);)	
Sean Trundy, ET AL)	FROM THE FAMILY COURT CHAS SC
Defendants,)	CIVIL ACTION No. 2006-DR-10-3999
Vs.)	&
Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	Case No. <u>2005-CP-10-2674</u>
incapacitated person,)	&
Appellant(s).)	IN THE COURT OF COMMON PLEAS
)	Case No. 2007-CP-10-5683

&

Mildred C. Knight (wife) &)	IN THE COURT OF COMMON PLEAS
Bobby Knight III (son) of alleged)	
incapacitated person,)	
Plaintiff(s).)	Case No. 2008-CP-10-__ (Pending) __
Vs.)	
Wachovia Bank, N.A. and)	
Wachovia Investments, Inc.)	
Defendant(s).)	

CERTIFICATE OF SERVICE for:

I, Mildred C. Knight and Bobby Knight III, herein certify that the following were mailed a copy of this **MOTION to file First Amended Complaint with Rule 42 Consolidation** with first class postage affixed on this day:

Hon. Irv Condon, Probate Judge
100 Broad St Ste 469
Charleston, SC, 29401-2273

Paul Schwartz, "David & Schwartz, P.A." Attorney
757 Saint Andrews Blvd
Charleston, SC 29407-7164

2008 MAR -4 AM 10:44
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Glen Churchill, Churchill Law Firm Attorney
174 E Bay St
Charleston, SC 29401-2132

Thad Vincent, Vincent Law Firm, individual and as the
Attorney for C. Tonney & L. Jones
834 Savannah Hwy
Charleston, SC 29407-7270

Meredith Coker Finkle & Altman LLC, Attorney
PO Box 265
Charleston, SC 29402-0225

Sean K Trundy, Keith McCarty, Roy & Amanda Maybank
PO Box #'s
Chas SC

David A. GA. Greer III, "Family Services, Inc.",
Registered Agent and Conservatorship -
Iris Albright -employee
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North Charleston, SC 29406-6510

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Honorable Seth J. Whipper, Whipper Law Firm
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N Charleston, SC 29405-5211

C MacGibson, Jr.
764 St. Andrews Blvd
Charleston, SC 29407

Mary Hall
3 Broad Street
Charleston, SC 29401

BY: 3 *March 2008*
Respectfully submitted this 21st day of ~~February~~ 2008.

Mildred C. Knight Mildred C Knight (wife), Plaintiff & Appellant

Bobby Knight III Bobby Knight III (Son) Plaintiff & Appellant

ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
2005-CP-10-2674

MILDRED KNIGHT,
PLAINTIFF,
VS.
CHLOE KNIGHT TONNEY,
DEFENDANT.

TRANSCRIPT OF RECORD

April 14, 2008
Charleston, South Carolina

B E F O R E:

THE HONORABLE R. MARKLEY DENNIS, JR., Judge

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

MILDRED KNIGHT
Pro se Plaintiff

MEREDITH L. COKER, Esquire
CHARLES S. ALTMAN, Esquire
Attorneys for the Defendant

Tina F. Behles, ACR, CVR
Circuit Court Reporter

EXHIBIT

B

0161

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
Opening Statements	
by Ms. Coker	8, 15
by Ms. Knight	14
by Mr. Countryman	12
Ruling of the Court	
Motion to Restore Granted	11
Motion of Refusal to Restore (not heard)	10
Motion to Amend Withdrawn by Ms. Knight	15
Motion to be Relieved as Counsel Granted	17
Certificate	20

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>
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No Exhibits Introduced

1 PROCEEDINGS

2 THE COURT: This is the matter of Mildred Knight
3 versus Tonney and others. This -- appears there are
4 motions filed pro se. There are three motions filed pro
5 se and then a Motion to be Relieved as Counsel, which I
6 think pre-dates -- goes back some time. Pre-dates the
7 40(j) that was taken.

8 Ms. Knight, this is your motion; is that correct?
9 Sir? Mr. Trundy?

10 MR. TRUNDY: Your honor, all I was going to say was
11 that mine to be relieved is the oldest if that matters to
12 the Court.

13 THE COURT: Mr. Trundy, it's really kind of a moot
14 issue as far as I'm concerned, because the 40(j)
15 terminates a action. I take the position that's
16 something that continue -- whether you continue or not,
17 that's up -- that's up to the parties. I don't think
18 there's any obligation that you do anything unless you
19 have a contract that says you got to restore it. But you
20 hadn't moved to restore it. So that's where we are. So
21 I -- your motion -- your Motion to be Relieved at this
22 joint (sic) -- if you want me to hear that first, I'm
23 going to deny it. Now, if you want me to hear the
24 Plaintiff's motion and then hear your motion, I'll be
25 happy to do that. Okay?

1 MR. TRUNDY: Okay.

2 THE COURT: Thank you, sir. Sir, and I assume --
3 your name for the record, please?

4 MR. KNIGHT: I'm Bobby Knight.

5 THE COURT: Yes, sir. You're not a lawyer?

6 MR. KNIGHT: No.

7 THE COURT: I understand that. And I understand Ms.
8 Knight has some physical impairments. I see that. And
9 I'm aware of that. But I can't allow you to speak on her
10 behalf because that would be practicing law, and you're
11 not -- I cannot permit that.

12 MR. KNIGHT: The first three motions are ours.

13 THE COURT: Well ---

14 MR. KNIGHT: And I hired Mr. Trundy to represent my
15 mom and dad. I paid him.

16 THE COURT: I understand that. But the party to
17 this lawsuit is Mildred Knight, not you.

18 MR. KNIGHT: And my dad. Yes.

19 THE COURT: Well, she's individually and as Guardian
20 ad Litem, which she was appointed to handle that -- to be
21 on his behalf. I can hear her motion pro se. I can't
22 hear yours because you're not a lawyer, and you're not a
23 party, okay?

24 MR. ALTMAN: Your honor, for the record, Mr. Knight
25 has passed away.

1 THE COURT: All right, sir. So Mildred Knight is
2 the only -- Mildred Knight apparently filed this case
3 individually and as Guardian ad Litem?

4 MR. ALTMAN: Understand I believe this was filed
5 subsequent to Mr. Knight's death.

6 THE COURT: That's fine. But she filed
7 individually. I -- I don't know what -- folks, we really
8 are -- we're creating a tempest in the teapot, because
9 there are all sorts of issues, legal issues, that arise
10 after what the Court does today, tons of them. I mean,
11 you want to talk about it, we can probably talk for about
12 30, 40 minutes I would think. Don't need to because each
13 party has a right to file anything they want to file if
14 the Court restores it.

15 Ms. Knight, I'm going to do this for you, please do.
16 not -- if you want to hand me something, certainly Mr.
17 Knight can pass it to me, but you don't have to stand,
18 ma'am. Just you remain seated, please. If you'll -- if
19 you can pull that mic -- Is there a mic over there?

20 CLERK OF COURT: Yes, sir.

21 THE COURT: If you could pull -- Mr. Knight, if you
22 could assist me and get that mic so it's comfortable for
23 her to speak in -- into. All right. For the sake of the
24 motions, Ms. Knight, you filed a Motion to Restore your
25 case.

1 MS. KNIGHT: Yes.

2 THE COURT: Okay. And that's what -- that's the
3 first issue, because there's also a Motion to File an
4 Amended Complaint as I understand it. Well, that's --
5 the cart's before the horse. You can re-file that Motion
6 to Amend, or I can just simply move that forward. But,
7 clearly, the first item of business is to have the case
8 restored because as it presently -- as it's presently
9 postured, it's not an active case. Therefore, there is
10 no motion that the Court can entertain until the case is
11 restored. Okay?

12 MS. KNIGHT: Uh-huh. I'd like to have it restored.

13 THE COURT: Ma'am? You'd like to have it restored?

14 MS. KNIGHT: Yes, sir.

15 THE COURT: And you are proceeding individually now
16 in this matter?

17 MS. KNIGHT: Yes.

18 THE COURT: And no longer as a Guardian of Norman
19 Knight; is that correct?

20 MS. KNIGHT: That's correct. My husband -- I've
21 just had to bury my husband.

22 THE COURT: I understand.

23 MS. KNIGHT: Very sad.

24 THE COURT: Okay. All right, I'll hear anyone on
25 behalf of the Defendant opposing the Motion to Restore.

1 And if you'll give me your name, full name, for the
2 record, please.

3 OPENING STATEMENTS FOR THE DEFENDANT BY

4 MS. COKER: Yes, your honor. My name for the record
5 is Meredith Coker. I'm here on behalf of Chloe Tonney.
6 I have also filed a -- I had filed a Memorandum in
7 Opposition to several of the motions. I have a courtesy
8 court -- copy for the Court. And I wasn't sure the
9 appropriateness of -- of hand-delivering it to the pro se
10 Defendant with Mr. -- I didn't know the issues there. So
11 I'm happy to give them a copy if you say that's okay.

12 THE COURT: That's fine.

13 MS. COKER: Okay. And, your honor, may I approach --

14 --

15 THE COURT: Sure.

16 MS. COKER: --- and provide you with a courtesy
17 copy? Your honor, I've kind of struggled with how to
18 address this matter, so I'm just going to address the
19 simple procedural issue first with regard to the Motion
20 to Restore. This case, which originally filed in 2005 by
21 Ms. Knight and Ms. Knight as GAL, there's some question
22 as -- as to whether that was appropriate, but I'm going
23 to avoid that for now because I believe that issue is
24 moot. However, with regard to the filing record, it --
25 there's some question as to when this was filed. It's --

1 the Motion to Restore -- the filing was canceled on
2 November 2nd, '07 and actually filed January 18th '08,
3 which brings it out of the year allowed to restore.

4 THE COURT: No, it wouldn't. See that's -- I
5 appreciate all of that, and that's precisely what I was
6 reversed on. I -- perfect judge to hear this issue
7 because I ruled that way. Said you have to comply with
8 the rule; you don't file within a year, it's gone. The
9 Supreme Court reversed it and said, no, that's not so.
10 In fact, the Court of Appeals reversed it, then Supreme
11 Court further elaborated on it. No question she has a
12 right to re-file her case, because it's without
13 prejudice. She can re-file her case. That's not a
14 problem. And the Court said so. And frankly, if you
15 want to know, I think she made an attempt to do that and,
16 for whatever reason, they refused it. Maybe because
17 there was something pending, but she clearly made an
18 attempt. But that's an issue that's going to be to the
19 next level and that may or may not -- I don't know when --
20 -- I don't know when the statute of limitations ran in
21 this case. But, clearly, that case that reversed me said
22 precisely what I just said to everybody: she can re-file
23 it. Then you file -- if the statute of limitations has
24 run, you file a Motion to Dismiss because the statute of
25 limitations has run. And that's the way it's resolved.

1 You -- you don't play -- what I tried to do -- and I
2 think the Court said we're not going to use rules to
3 defeat people from coming into court. But if the time
4 lapses, then they suffer the consequences of the
5 failures. So I'm not going to hear your Motion of
6 Refusal to Restore it because she didn't do it within a
7 year. She can do it within a year -- states -- that case
8 said so. And I think she tried to do it within a year.

9 MS. COKER: And, your honor, I absolutely agree with
10 your statement that you just made about not using rules
11 to bully people basically ---

12 THE COURT: Right -- well, it's not bully. It's
13 just to stop them from filing their cases.

14 MS. COKER: Sure. And I, for the record, and we can
15 address it now or we can address it later. The fact of
16 the matter is that, while Ms. Tonney's participation in
17 the above captioned case 05-CP-10-2674 is a limited one
18 and, quite frankly, I think is right for a Motion to
19 Dismiss anyway, there have been many, many lawsuits in
20 this case. And in terms of -- I as a lawyer have not
21 attempted to bully, restrain or do anything to the pro se
22 Defendants ---

23 THE COURT: I'm not suggesting anybody's attempting
24 to do anything, Ms. Coker. You misinterpreted what I
25 said. You're defending something that you don't need to

11

1 defend yet, because nobody's accused anybody of that. I
2 just simply said the rules are not meant to prevent
3 people from filing lawsuits. It's not a bully; it's just
4 simply to use that as a means of -- of thwarting some
5 action. Why? Because we have other -- other means of
6 stopping an action that has no basis. They're
7 innumerable. So, from this standpoint, there's no
8 question that she has a right to have her case restored.
9 There's no question she tried to do that. I think the
10 motion to -- I think there was an interpretation of
11 counsel of record, and I -- this issue I don't think has
12 been ruled on. I'm not -- if it has, I've failed to see
13 that case of what -- what the responsibility is. There
14 may be some issue concerning the contractual issue. But
15 as to who can re-file a case, she can re-file a case.

16 MS. COKER: I understand. And ---

17 THE COURT: And so, from that standpoint, her Motion
18 to Restore this case is granted. Now, having said that,
19 and now, Ms. Knight, you need to understand something. I
20 don't know when the statute of limitations ran. I don't
21 know whether the Court's going to have to make a
22 determination as to whether the -- because I'm not making
23 a determination at this juncture as to whether or not it
24 was timely restored. All I have is her right to pro se
25 restore this case. So she has done that. Her Motion to

1 Restore is granted. The Motion to Amend, we'll just
2 allow that to continue -- will be addressed when you have
3 an opportunity to respond.

4 MS. COKER: I'm happy to respond to that motion
5 today, your honor.

6 THE COURT: The Motion to Amend?

7 MS. COKER: Yes, sir.

8 THE COURT: All right. So you're -- And you filed a
9 Motion to Dismiss the action because it hadn't restored
10 yet, so ---

11 MS. COKER: No, your honor. However, I believe that
12 the -- the Motion to Amend has nothing to do with this
13 case at bar. I -- I believe that the Knights are
14 attempting to consolidate several different actions at
15 several different levels in several different courts with
16 this case that's a very simple equitable matter.

17 THE COURT: All right. That's fine. I'll hear the
18 Motion to Amend then.

19 MR. COUNTRYMAN: Your honor, I'm Andy Countryman.
20 I'm sorry to interrupt, but I think I need to put this on
21 the record. I represent Mr. Trundy in a civil suit
22 brought by the Knights in which they are suing Mr. Trundy
23 based on his representation in this case.

24 THE COURT: I understand.

25 MR. COUNTRYMAN: They filed multiple motions, two of

1 which are before you today and purport to all be under
2 this caption, which includes five different -- five
3 different cases.

4 THE COURT: Well ---

5 MR. COUNTRYMAN: I was not copied or served in any
6 of these motions. I found out looking online. And to
7 the extent ---

8 THE COURT: I'm not hearing any motion in that case.

9 MR. COUNTRYMAN: Just ---

10 THE COURT: All I'm hearing any motion in is the
11 case that's before me today, and that is 2005-CP-10-2674,
12 a Motion to Restore.

13 MR. COUNTRYMAN: Yes, sir. And I would ask that the
14 Motion to Consolidate not be ---

15 THE COURT: I'm not hearing that.

16 MR. COUNTRYMAN: Yes, sir.

17 THE COURT: --- because it can't consolidate
18 something that just became. Because, first of all, it
19 may be nothing to consolidate. I don't know what the
20 status is going to be on the rulings on -- and whether
21 the statute of limitations has run or not. I don't know.
22 All I know is that there are issues to be -- to be
23 addressed.

24 MR. COUNTRYMAN: Yes, sir. Thank you.

25 THE COURT: All right, Ms. Knight, you've filed a

1 Motion to Amend. Counsel says -- Ms. Coker says she's
2 prepared to argue that. I'll be happy to hear from you.

3 OPENING STATEMENTS FOR THE PLAINTIFF BY

4 MS. KNIGHT: Okay. Let's go back to case 4141.

5 THE COURT: No, ma'am. We can go back to only one
6 case, your Motion to Amend your complaint in this case,
7 which is 2005-2674. That's all we can amend, the
8 complaint that's in this case.

9 MS. KNIGHT: Judge, I'd like to call Bobby as a
10 witness, please.

11 THE COURT: No, ma'am. We're not -- there's no
12 witness necessary.

13 MS. KNIGHT: Okay.

14 THE COURT: I want to hear about your Motion to
15 Amend your complaint.

16 MS. KNIGHT: So 4141, okay?

17 THE COURT: Ma'am, I -- I don't -- Is there a Motion
18 to Amend in this case?

19 MS. KNIGHT: I think so.

20 CLERK OF COURT: I think it was -- Her case numbers
21 were listed. I think there were several case numbers
22 listed on one ---

23 THE COURT: All right.

24 CLERK OR COURT: --- amended motion, and it was
25 filed in all five of her cases, sir.

1 THE COURT: I see, okay. Okay.

2 MR. COUNTRYMAN: I have a copy of the motion.

3 THE COURT: I found it.

4 (Off the record bench discussions.)

5 THE COURT: Ms. Knight, all I have right now is an
6 action that was filed and this is the basis of this
7 action. 2005-2674 appears to be an effort to have a deed
8 either reformed to vest title in yours and Mr. Knight's
9 name by virtue of being declared to be a resulting trust
10 or a mutual mistake or something to that effect. So all
11 we're talking about is actions that deal with -- with the
12 deed. And your Motion to Amend is what concerning this --
13 - this particular action?

14 MS. KNIGHT: I'd like to withdraw my Motion to Amend

15 ---

16 THE COURT: Thank you, ma'am. That's what I thought
17 would be the best thing to do. There is no Motion to
18 Amend. The case is restored, but the -- now you may file
19 any necessary responses that may be required by law.
20 Okay?

21 MS. KNIGHT: Thank you.

22 MS. COKER: And, your honor, I have one more issue
23 to address before the Court ---

24 THE COURT: Okay.

25 MS. COKER: --- this morning that has to do with

1 2674. And if -- I go in depth in my memorandum, which I
2 will need the Court to address, but it's become clear in
3 this case that -- and the many, many cases that have been
4 filed in this case, that, while Mrs. Knight may have
5 issues to address or facts that she wishes to allege,
6 it's -- it's our understanding that Mr. Knight, i.e.
7 Norman R. Knight, III, is actually drafting these
8 documents assisting her in her legal representation and
9 so forth. And it's become an incredible encumbrance on -
10 --

11 THE COURT: This is a matter for administrative
12 judge. This is not -- nothing that this judge is going
13 to deal with. I'm sorry. Frustrated, you think you're
14 frustrated?

15 MS. COKER: Yes, your honor. But I just ---

16 THE COURT: They're ---

17 MS. COKER: --- wanted to address it for the record,
18 your honor.

19 THE COURT: --- they're frustrated. The Court's
20 frustrated. The problem is is we have, and I've just --
21 I will -- if it's before me, Mr. Knight, I'm going to
22 assure you, sir, you all -- you're going to get to a
23 point where you're not going to be able to proceed
24 because Ms. Knight -- it's obvious here today that you've
25 been telling her everything to say. The Court is not

1 going to allow that.

2 MR. KNIGHT: As soon as I can give him \$20,000 ---

3 THE COURT: Sir, all -- I don't -- that's something
4 that's outside -- I was a lawyer for 21 years. All I'm
5 saying to you, sir, is the Court is not going to allow
6 what on ---

7 MR. KNIGHT: I understand.

8 THE COURT: --- the surface is really you handling
9 your -- a case. So please understand that. I permitted
10 it today because ---

11 MR. KNIGHT: Yeah, I understand.

12 THE COURT: All right. Thank you, sir. Thank you.
13 The case will be restored. Mr. Trundy, now ---

14 MR. TRUNDY: My only question, your honor, is have I
15 been relieved of ---

16 THE COURT: You are relieved.

17 MR. TRUNDY: Thank you, sir.

18 THE COURT: Yes, sir. Because she filed it pro se,
19 you are no longer counsel. And we'll just simply state
20 in that that Mr. Trundy is relieved as counsel. Ms.
21 Knight has elected to proceed pro se. Okay? Thank you,
22 Mr. Trundy.

23 MR. TRUNDY: Thank you, sir.

24 MS. KNIGHT: Thank you, judge.

25 THE COURT: Thank you.

1 (Off the record).

2 THE COURT: Mr. Knight, there will be a new filing
3 fee that has to be paid at the Clerk's office.

4 MR. KNIGHT: With that paperwork?

5 THE COURT: Excuse me?

6 MR. KNIGHT: When she fixes her papers?

7 THE COURT: She ---

8 MR. KNIGHT: For her to do?

9 THE COURT: It requires there be a filing and that
10 there -- that you'll have to have a filing fee that's got
11 to be filed before the case will be assigned a new
12 number. See, it will be given a new number.

13 MR. KNIGHT: We -- we've had to spend a long time --
14 we didn't have any cash to hand somebody to show up.
15 They got a hearing in a couple of days; we've been
16 waiting three years.

17 THE COURT: I appreciate that, sir ---

18 MR. KNIGHT: I'm ---

19 THE COURT: --- All I'm saying to you is, under the
20 rules, that before this case is finally restored, there
21 has to be a new filing fee, okay?

22 MR. KNIGHT: Do we pay that now, or do we ---

23 CLERK OF COURT: They'll receive a copy of the order
24 once the order's filed.

25 THE COURT: All right. Once you -- once you get

1 your order, then you -- then you come back, you pay that
2 --

3 MR. KNIGHT: She'll have a lawyer by then, sir.

4 THE COURT: That'd be fine.

5 MR. KNIGHT: You'll be rid of me, I promise.

6 THE COURT: Well, it -- I don't need to be rid --
7 you're fine. I understand what you're doing. I don't
8 fault you. I just -- understand what the rules are.

9 MR. KNIGHT: Yes, sir.

10 MS. KNIGHT: May I say one more thing, sir?

11 THE COURT: Yes, ma'am.

12 MS. KNIGHT: He has taken care of me for the last
13 several years, since December 2003. He's done a very
14 good job. He's used his own funds to do this.

15 THE COURT: Yes, ma'am.

16 MS. KNIGHT: Because of -- family services moved in
17 and cleaned out our bank accounts, took all our CDs,
18 everything. We have nothing left.

19 THE COURT: Well, I'm sorry to hear that, ma'am.
20 Thank you.

21 MS. KNIGHT: It was real sad.

22 THE COURT: I'm sure it was. Thank you, ma'am.

23 --- END OF TRANSCRIPT OF RECORD ---
24
25
26

CERTIFICATE

I, the undersigned Tina F. Behles, certified verbatim official court reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the above captioned case in the Circuit Court for Charleston County, South Carolina, this the 14th day of April 2008.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

April 18, 2008



Tina F. Behles, CVR
Circuit Court Reporter

Lexington, South Carolina
My commission expires January 4, 2010

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002

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

Chloe Knight Tonney and
 Norman Robert Knight, Jr.,
 (an Incapacitated Person),

Respondents,

vs.

Bobby Knight and Mildred
 Knight(wife of Norman Robert
 Knight, Jr.),

Appellants,

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2005-CP-10-3573

ORDER

THIS MATTER came before the court on the notices of intent to Appeal of Bobby Knight and Mildred Knight. Bobby Knight filed ground for appeal pursuant to his notice of intent to Appeal filed in August, 2005. All parties were duly notified and present to argue. Appellant Mildred appeared pro se and Appellant Bobby Knight were presented by J. Seth Whipper; Respondent Linda Jones appeared pro se and Respondent Chloe Tooney were presented by Thad Vincent.

This court has been asked to rule on the status of an earlier filed Notice of intent to Appeal but declines to consider any matters on appeal that are not before me nor scheduled to be heard at this date and time.

Appellant Bobby Knight has enumerated seven separate grounds on appeal; the court heard substantial argument on five of the grounds and did a record review on those not argued by counsel.

After reviewing the record and considering argument of counsel, this court makes the following findings and rulings:

Norman Robert Knight Jr's Incapacity

The court is constrained to accept the Probate Court's findings as to the incapacity of Norman R. Knight Jr. since the record does not contain a contest on this issue. The court finds it noteworthy that there was a 2001 diagnosis of alzheimer's and nearly three years later, then the appointment of conservators and guardians.

ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042



No Order Appointing GAL

The record does not contain a petition for appointment of a Guardian Ad Litem. The record does not contain an Order appointing a Guardian Ad Litem. This court concludes that any person acting in that role is acting without authority and his or her actions or reports can not be the basis for any orders of the Probate Court. This entire case must be remanded to the Probate Court for rehearing consistent with the Court's findings and this ruling.

Asset Distribution Agreement

The record does not contain any accounting or Return listing the devolution of assets according to the agreements regarding the individual assets of Norman Robert Knight Jr. and Mildred Knight. This issue is remanded to the trial court for resolution consistent with the finding and ruling.

"Joint Property" and Norman Robert Knight Jr.

The record reflects that Norman Robert Knight Jr. intends for any property deemed his to pass to his wife. Norman Robert Knight Jr. and Mildred Knight have been married for more than fifty-five years. The equitable distribution of the marital estate certainly requires an equal division of all marital property. This is not a divorce action, however; This matter concerns the ongoing relationship of two people united for a common purpose: the successful and beneficial completion of their agreement to stay together and care for each other until life ends. At this point their relationship is not in question and is an ongoing purposeful relationship and most typically reflects a joint enterprise or joint venture. See *Spradley v. Houser*, 247 S.C. 208, 146 S.E.2d 621 (S.C.T. 1966).

The record does not reveal malfeasance by Mildred Knight during the litigation or before. Challenges to Mr. and Mrs. Knight controlling their assets should be taken in the light that Mrs. Knight takes control against all others; this in light of the diagnosis of alzheimers. See *Carolina Production Credit Association v. Rogers*, 282 S.C. 184, 318 S.E.2d 357 (S.C.T. 1984).

Adult Visitation

No court can force Norman Robert Knight Jr. to visit with his daughters if he does not want to see them. The majority of the conflict in this matter revolves around the issue of visitation. The trial court ordered that visitation be conducted according to consultations with Dr. F. Carl Derrick, III, M.D. The record does not indicate a finding as to the desires of Norman R. Knight Jr. The issue of visitation is remanded for a determination consistent with this holding. Dr. Derrick should assist in any determinations.

Jan 17 06 02:47p

The Vincent Law Firm

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Conclusion

The trial court's rulings are subject to reversal where there is no evidence to support those rulings or where the rulings are manifest errors of law. The above discussed rulings satisfy the appellate standard of review and are hereby the order of this court.

And it is so ordered.

Honorable Kenneth G. Goode
Presiding Judge

_____, 2006
Charleston, S. C.

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Jan 17 06 02:47p

The Vincent Law Firm

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FAX TRANSMISSION

S. C. HOUSE OF REPRESENTATIVES
4502 DURANT AVENUE
NORTH CHARLESTON, SC 29418
843-740-7777
FAX: 843-740-8106

To: Honorable Kenneth G. Goode Date: JANUARY 17, 2006
Fax #: 803-635-3762 Pages: 4, including this cover sheet.
From: J. Seth Whipper, Esq.
Subject: Bobby Knight III

COMMENTS: Find attached our proposed order in the above referenced case:
05-CP-10-3573 Tooney, et.al v. Knight et.al Hard copy to follow immediately.

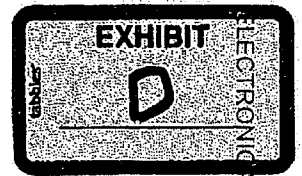
xc: Thad Vincent, Esquire (843-402-0119)
Glen P. Churchill, Atty. (843-853-9377)

Provided the car checks out satisfactorily, I will accept your offer to sell for
\$4,000.00. I can be reached at the following numbers:

744-1976 (home)
224-3113 (mobile)
740-9175 (office)

*Judge is buying
a car from the judge?!*

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ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
CHLOE KNIGHT TONNEY,)
Petitioner,)
vs.)
NORMAN ROBERT KNIGHT, JR.)
an alleged incapacitated person,)
MILDRED KNIGHT and)
NORMAN ROBERT KNIGHT, III)
Respondents.)

IN THE PROBATE COURT
CASE NO.: 2004-GC-10-0099

**AMENDED
ORDER**

Date of Hearing:
Presiding Judge:
Attorney for Petitioner:
Attorney for Respondent Mildred Knight:
Attorney for Respondent Norman R. Knight, III:
Visitor, Attorney and Guardian *ad Litem*:

April 20, 2005
Honorable Tamara C. Curry
Thad H. Vincent
Charles Molony Condon
John Sinclair, III
Glenn P. Churchill

ICC
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This Order was previously executed on May 19, 2005. However, the Court incorrectly stated two facts concerning Mr. Knight's estate. The Knights' have currently been residing in their home since 1949 and Mr. Knight's grandson's correct name John Paul Jones, Jr.

This matter came before the Court on the Petition for a Rule to Show Cause filed by the Petitioner, Chloe Knight Tonney who was represented by Thad H. Vincent, Esquire. By previous Orders of this Court, Glenn P. Churchill was appointed Visitor and Guardian *ad Litem* for Respondent Norman Robert Knight, Jr. Respondent Mildred Knight was represented by Charles Molony Condon, Esquire and Respondent Norman Robert "Bobby" Knight, III was represented by John Sinclair, III, Esquire. Prior to the

commencement of the hearing, the parties to this action submitted to the Court a proposed resolution of the issues in this matter. The Petitioner agreed to withdraw her Rule to Show Cause Petition, and the Court advised the attorneys that this would be the final opportunity to hear testimony regarding visitation of the incapacitated person by any interested party.

The Court finds that venue is proper, that the required notices have been given or waived. That the proposed protected person Norman Robert Knight, Jr. is a resident of the County of Charleston, and that Mr. Knight has assets requiring protective proceedings. Pursuant to the evidence presented and in accordance with the proposed settlement of the parties, this Court finds the following facts concerning the nature and degree of incapacity of Norman Robert Knight, Jr.:

FINDINGS OF FACT

Mr. Knight is an eighty-year-old Caucasian male who currently resides with his wife Mildred and their son, Bobby at 3940 Hottinger Avenue in North Charleston, South Carolina. Mr. and Mrs. Knight have been married for fifty-seven years and have been living at their current address since 1949.

Mr. Knight has a long history of physical illness dating back to 1972. His history includes esophageal surgery, a splenectomy, polyp removal, chronic pancreatitis, hip replacement and several other medical conditions that require on-going medications and visits to the doctor. Mr. Knight was diagnosed with Alzheimer's disease in 2001, and his medical records reflect only symptomatic improvement of this condition while on Namenda. There have been a number of problems regarding visitation among the family members since the first hearing. The family members have agreed to allow the Court to

set the visitation schedule with the assistance of Mr. Knight's private physician, F. Carl Derrick III, M.D.

Based on the testimony heard:

IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday of each month between the hours of 1pm to 4pm.

IT IS ORDERED that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance.

IT IS ORDERED that Maureen Maguire must make bi-weekly visits at Mr. Knight's home and provide the Court a bi-weekly update of his health and daily care. The estate of Mr. Knight is responsible for such cost.

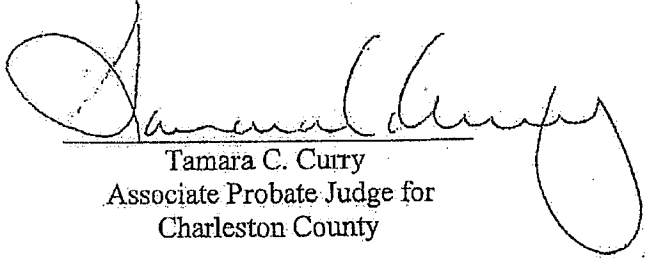
IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed weekly calls to Mr. Knight on the second and fourth Sundays of each month between the hours of 1pm to 4pm.

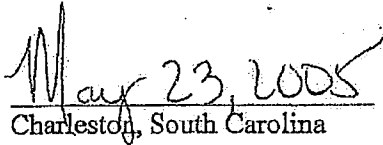
IT IS ORDERED that John Paul Jones, Jr. is currently denied visitation at the residence of Mr. Knight and is restricted from making any attempts to contact the residence without further Order of the Court.

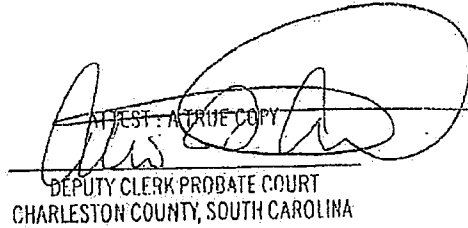
IT IS ORDERED that Bobby Knight, Jr. shall not be present during any visitation or drop off of Mr. Knight.

IT IS ORDERED that the failure by any party to adhere to this Order shall be considered Contempt of Court and appropriate sanctions shall be rendered.

AND IT IS SO ORDERED.


Tamara C. Curry
Associate Probate Judge for
Charleston County


May 23, 2005
Charleston, South Carolina


ATTEST - A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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5/23/05

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2004-GC-10-0099

CHLOE KNIGHT TONNEY,)
Petitioner,)
vs.)
NORMAN ROBERT KNIGHT, JR.)
an alleged incapacitated person,)
MILDRED KNIGHT and)
NORMAN ROBERT KNIGHT, III)
Respondents.)

**AMENDED
ORDER**

Date of Hearing: April 20, 2005
Presiding Judge: Honorable Tamara C. Curry
Attorney for Petitioner: Thad H. Vincent
Attorney for Respondent Mildred Knight: Charles Molony Condon
Attorney for Respondent Norman R. Knight, III: John Sinclair, III
Visitor, Attorney and Guardian *ad Litem*: Glenn P. Churchill

April 20, 2005
Honorable Tamara C. Curry
Thad H. Vincent
Charles Molony Condon
John Sinclair, III
Glenn P. Churchill

WHEREAS an Order was issued May 19, 2005 setting out the below facts. An Amended Order was issued May 23, 2005, correcting the year Mildred Knight and Robert Norman Knight, Jr. had been inhabitants of their residence, followed by a correction to the name of their grandson. This Court has since been advised that there was a misprint in the previous orders of this court dated May 19, 2005 and May 23, 2005, where Bobby Knight was listed as Bobby Knight, Jr., instead of Bobby Knight or Robert Norman Knight, III. This Court stipulates that Norman Robert Knight, Jr. shall hereinafter be referred to as either Norman Robert Knight, Jr. or Mr. Knight. This Court

living at their current address since 1949.

Mr. Knight has a long history of physical illness dating back to 1972. His history includes esophageal surgery, a splenectomy, polyp removal, chronic pancreatitis, hip replacement and several other medical conditions that require on-going medications and visits to the doctor. Mr. Knight was diagnosed with Alzheimer's disease in 2001, and his medical records reflect only symptomatic improvement of this condition while on Namenda. There have been a number of problems regarding visitation among the family members since the first hearing. The family members have agreed to allow the Court to set the visitation schedule with the assistance of Mr. Knight's private physician, F. Carl Derrick II, M.D.

Based on the testimony heard:

IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday of each month between the hours of 1pm to 4pm.

IT IS ORDERED that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance.

IT IS ORDERED that Maureen Maguire must make bi-weekly visits at Mr. Knight's home and provide the Court a bi-weekly update of his health and daily care. The estate of Mr. Knight is responsible for such cost.

IT IS ORDERED that Chloe Knight Tonney and Linda Jones are allowed weekly calls to Mr. Knight on the second and fourth Sundays of each month between the hours of 1pm to 4 pm.

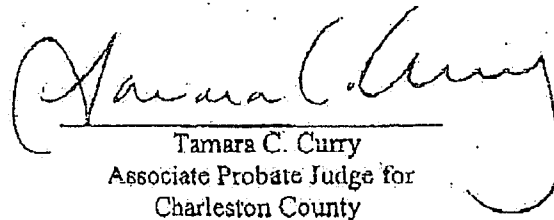
IT IS ORDERED that John Paul Jones, Jr. is currently denied visitation at the residence of Mr. Knight and is restricted from making any attempts to contact the residence without further Order of the Court.

IT IS ORDERED that Bobby Knight shall not be present during any visitation or drop off of Mr. Knight.

IT IS ORDERED that the failure by any party to adhere to this Order shall be considered Contempt of Court and appropriate sanctions shall be rendered.

ACC
for
8/18/05

AND IT IS SO ORDERED.


Tamara C. Curry
Associate Probate Judge for
Charleston County

Charleston, South Carolina
August 11, 2005

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 2004-GC-10-0099

NORMAN ROBERT "BOBBY" KNIGHT, III,)
Petitioner,)

ORDER

versus)

NORMAN ROBERT KNIGHT, JR., an)
incapacitated person, and Mildred Knight,)
Linda K. Jones and Chloe K. Tonney, his next)
of kin,)

Respondents.)

Date of Hearing: July 20, 2005
Presiding Judge: The Honorable Tamara C. Curry
Petitioner: Norman Robert Knight, III
Guardian: Mildred Knight
Charles Molony Condon, Esquire
Temporary Conservator: Family Services, Inc.
Guardian *ad Litem*: Glenn P. Churchill, Esquire

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This matter came before the Court on the Petition for Removal of Allan Bolden as Co-Conservator for Norman Robert Knight, Jr., submitted by Norman Robert "Bobby" Knight, III; Motion for Attorney's Fees filed by Jack Sinclair, III, Esquire; Appointment of permanent Conservator, and investigation of expenditures by the previous Co-Conservators.

Present at the hearing were Glenn P. Churchill, Esquire in his capacity as Guardian *ad Litem*; Mildred Knight, wife of Norman Robert Knight, Jr., represented by Charles Molony Condon, Esquire; Norman Robert "Bobby" Knight, III, son of Norman Robert Knight, Jr., who represented himself *pro se*; Chloe Knight Tonney, daughter of Norman Robert Knight, Jr., represented by Thad. H. Vincent, Esquire; Linda K. Jones, daughter of Norman Robert Knight,

Jr.; previous Co-Conservator, Allan Bolen, represented by Wendi Freeman, Esquire and Iris Albright and Jean Kennedy, representatives of the Temporary Conservator, Family Services, Inc.

This Court finds that venue is proper, that the required notices have been given or waived; that the protected person, Norman Robert Knight, Jr., is a resident of the County of Charleston, and that Norman Robert Knight, Jr. has assets requiring protective proceedings.

Prior to beginning the hearing, the Petitioner, Norman Robert "Bobby" Knight, III, advised the Court that he was withdrawing his petition for removal of Allan Bolden as Co-Conservator and would not be seeking any further legal action against the former Co-Conservator while serving in that capacity. Mr. Bolden also informed the Court that he no longer desired to serve as Co-Conservator and requested that the Court permanently remove him as Co-Conservator.

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This Court has been advised that there was a misprint in the previous Order of this Court dated May 19, 2005, wherein Norman Robert Knight, III was referred to as "Bobby Knight, Jr." or "Norman Robert Knight, Jr." This Court stipulates that Norman Robert Knight, Jr., the protected person in these proceedings, shall hereinafter be referred to as Norman Robert Knight, Jr. and further stipulates that Norman Robert "Bobby" Knight, III shall hereinafter be referred to as Bobby Knight, III.

PROCEDURAL HISTORY

Norman Robert Knight, Jr. was declared incapacitated by this Court per Orders dated November 9, 2004, appointing his wife Mildred Knight as his Guardian and Mildred Knight and Allan Bolden as his Co-Conservators.

By Order of this Court dated January 28, 2005, the children and grandchildren of Norman Robert Knight, Jr. were granted visitation. The visiting parties were required to give the Guardian, Mildred Knight two (2) hours notice of the visit, and Bobby Knight, III, was not to remain in the area of the visit or was required to remain upstairs. The Order also required the Guardian, Mildred Knight, to retain the services of an elder care professional and submit a plan for the care of Norman Robert Knight, Jr. The assessment was completed and a report was submitted by Maureen Maguire, a licensed geriatric nurse with Seniors Choice.

Subsequently, this Court issued an Order for a Rule to Show Cause on February 17, 2005, ordering all parties to abide by the Court Orders. A further Rule to Show Cause Order was issued on May 19, 2005, wherein a specific visitation schedule and procedures were given for the children of Norman Robert Knight, Jr. At this hearing, it was agreed by all parties that the family members would allow the Court to set the visitation schedule with the assistance of Norman Robert Knight, Jr.'s private physician, F. Carl Derrick III, M.D. The Order further required Maureen Maguire, of Seniors Choice to make bi-weekly visits to the home of Norman Robert Knight, Jr. and to assess his in-home care and report her findings to the Court.

A status conference was held with the Co-Conservators on May 19, 2005. The Court determined that credit cards had been used in violation of this Court's Orders, that the Co-Conservators were not cooperating with each other and checks had been written to various parties without each Conservator's knowledge. Based on this information, the Court immediately removed Mildred Knight and Allan Bolden temporarily as Co-Conservators and appointed Family Services, Inc. as Temporary Conservator for Norman Robert Knight, Jr. The Order required the latter named parties to immediately turn over any and all checkbooks, money market accounts, credit cards, ATM cards, and any and all records of accounts and assets

belonging to or in the name of Norman Robert Knight, Jr. to Family Services, Inc. This Order also froze and restricted all credit cards usage in the name of Norman Robert Knight, Jr.

An Amended Order followed the May 19th Orders correcting the date at which Mildred and Norman Robert Knight, Jr. inhabited their home and the name of their grandson John Paul Jones, Jr.

FINDINGS OF FACT

At the hearing held July 20, 2005, Glenn Churchill, Esquire, reported that he had been denied access to Norman Robert Knight, Jr. in his capacity as Guardian *ad Litem*; therefore he could not submit a current Visitor's report.

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Iris Albright and Jean Kennedy of Family Services, Inc. testified as to their representation while acting as Temporary Conservator for Norman Robert Knight, Jr. Ms. Albright testified that her investigation had been difficult to complete, because of lack of cooperation and lack of access to records in the name of Norman Robert Knight, Jr. Ms. Albright testified that several appointments had been cancelled by Mildred Knight; and that Mrs. Knight refused to turn over all of Norman Robert Knight, Jr.'s past and present bills or to establish a budget.

Ms. Albright testified that she established a household budget of \$200.00 based on the limited information she had secured. She had advised Mrs. Knight to contact her should additional funds be needed or required. Weekly checks in the amount of \$200 have been mailed to Mildred Knight to pay for food and other necessities; however they have not been cashed. Ms. Albright also testified that she had made arrangements to pay all other routine monthly bills that she had access to.

Ms. Albright further testified regarding a UBS account that had been held in the names of Norman Robert Knight Jr. and Mildred Knight. Ms. Albright gave account information for Norman Robert Knight, Jr. and stated that his UBS account had been all but closed, and a check had been disbursed from the account totaling the \$42,957.99. She was unable at that time to testify as to who had made the withdrawal, but had requested a copy of the withdrawal form from UBS. This withdrawal came after all assets had been ordered to be turned over to Family Services, Inc., as the Temporary Conservator.

Daughter Chloe Knight Tonney testified that she last visited her father, Norman Robert Knight, Jr., on June 5, 2005, but has since been unable to reach her father or mother, Mildred Knight, by telephone. Ms. Tonney testified that her phone calls have not been answered during the scheduled visitation times.

Daughter Linda Jones testified that she last visited her father, Norman Robert Knight, Jr., on June 5, 2005, but has since been denied access to him. Ms. Jones testified that she has gone by the home during scheduled visitation times and no one has answered the door or telephone calls made during the scheduled visitation times.

Mildred Knight, wife of Norman Robert Knight, Jr., testified that she has violated previous Court Orders, and admitted to being somewhat uncooperative with the Co-Conservator Allan Bolden, because he had written some checks without her permission. Mrs. Knight also testified that she withdrew/spent funds from the banking accounts and credit cards after the Court Orders directed her not to for household expenditures.

Mrs. Knight testified that she was holding onto the weekly checks mailed to her by Family Services, Inc., and had no plans to cash them until she needed them. Mrs. Knight further testified that she hired an additional accountant to handle household finances without the Court's

knowledge. She testified that Bobby Knight, III pays expenses on both her behalf and Norman Robert Knight Jr.'s behalf, but has not submitted verification of such payments.

Mrs. Knight further testified that she along with Norman Robert Knight, Jr. or Bobby III, withdrew the funds from the UBS investment/savings account, and the funds are currently held in a sole account in the name of Bobby Knight, III. She further testified that she knowingly withdrew the funds without Court approval.

When queried as to why she denied Mr. Churchill access to Norman Robert Knight, Jr., Mrs. Knight stated that he upset her when he stated that he needed to see Mr. Norman Knight, Jr. in his home; she stated "that it is our home". Mrs. Knight was also unwilling to allow Mr. Churchill, as Guardian *ad Litem*, any unscheduled visitation.

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Mrs. Knight stated that she does not want her daughters Chloe Knight Tonney and Linda Jones in the house because they have caused problems and cost her money by bringing this action. Mrs. Knight stated that she did not believe her daughters should be allowed visitation and that she had removed Norman Knight Jr. from the home on the dates & times for scheduled visitation with the daughters. When queried as to her relationship with her daughters, Mrs. Knight stated there was no chance of reconciliation.

Lastly, Mrs. Knight further admitted that she has failed to turn over all requested records to the Temporary Conservator, Family Services, Inc. Mrs. Knight has refused to obtain homeowners insurance on the properties owned by Norman Robert Knight, Jr. because they have not done so in the past.

The Court also heard testimony regarding Bobby Knight, III request for approval for attorney fees that he has incurred as a result of this action.

CONCLUSIONS OF LAW

Based on the testimony and evidence presented, this Court has determined it would be in the best interest of Norman Robert Knight, Jr., that Walter Kaufmann, Esquire be appointed as Guardian for Norman Robert Knight Jr. This Court does not take lightly the institution of marriage. However considering Norman Robert Knight Jr.'s substantial health care needs, the continuous problems with visitation, the previous violations of this Courts Orders and the refusal of the parties involved to cooperate, that an independent person should be appointed Guardian.

This Court has further determined that it would be in the best interest of Norman Robert Knight, Jr. that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator for Norman Robert Knight, Jr.; it is therefore

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ORDERED that Mildred Knight be removed as Guardian for Norman Robert Knight, Jr., and Walter Kaufmann, Esquire be appointed as Guardian; and it is further

ORDERED that Mildred Knight and Allan Bolden be permanently removed as Co-Conservators; and it is further

ORDERED that the Temporary Conservator, Family Services, Inc. be appointed as permanent Conservator of the estate of Norman Robert Knight, Jr.; and it is further

ORDERED that Walter Kaufmann be present as long as needed for scheduled visitation times per the Courts previous orders to ensure that visitation is properly carried out. Mr. Kaufmann shall utilize all measures to ensure that the Court's visitation schedule is followed; it is further

ORDERED that Chloe Knight Tonney and Linda Jones are allowed visitation every other Sunday afternoon for three hours. The visitation shall take place the first and third Sunday

of each month between the hours of 1pm to 4pm; or any other times agreed upon with the Guardian; it is further

ORDERED that the visitations may take place outside of Mr. Knight's residence, however, either party must make any necessary provision to accommodate any additional medical assistance that Mr. Knight may require, and they shall be responsible for the cost of the assistance; and it is further

ORDERED if the visitation schedule is violated by either Mildred Knight or Bobby Knight III, that the Guardian, Walter Kaufmann, with the assistance of Family Services, Inc., shall locate a residential care facility or nursing home to house and care for Norman Robert Knight, Jr., and this shall be done immediately or as soon as a facility can be located; and it is further

ORDERED if Norman Robert Knight, Jr. is ultimately removed from the home, and placed in a nursing home or residential care facility, the visitation schedule with his daughters Chloe Knight Tonney and Linda Jones shall be held every Sunday between 11am and 3pm and every Tuesday and Thursday evening between 4pm and bedtime. Both Chloe Knight Tonney and Linda Jones are permitted nightly telephone conversations with Norman Robert Knight, Jr.; and it is further

ORDERED if Norman Robert Knight, Jr. is removed from the home, that both Mildred Knight and Bobby Knight, III shall be permitted to visit Norman Robert Knight, Jr. every day except during the hours of visitation reserved for daughters, Chloe Knight Tonney and Linda Jones; and it is further **ORDERED** that the Guardian, Walter Kaufmann is permitted to visit Norman Robert Knight, Jr. whenever necessary to fulfill his duties, but must call one (1) hour in advance; and it is further

ORDERED that the Guardian, Walter Kaufmann, shall keep all family members informed as to Norman Robert Knight, Jr.'s care and that Mildred Knight must be consulted regarding major medical care decisions, however the final decision is that of Walter Kaufmann; and it is further

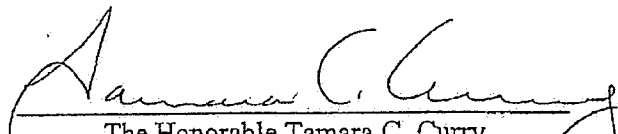
ORDERED that the Conservator shall consult Mildred Knight regarding major financial decisions; and it is further

ORDERED that Mildred Knight shall turn over any and all financial records to Family Services within five (5) days of the execution of this Order or she shall be found in Contempt of Court and subject to a fine of \$100 per day. If Mildred Knight fails to comply within 15 days of this Order, a hearing will be set to determine further sanctions; and it is further

ORDERED that Mildred Knight and Bobby Knight, III, shall turn over the proceeds of the UBS Account liquidated May, 2005, in the amount of \$42,957.99, to the Conservator Family Services, Inc., within five (5) days of the execution of this Order or they shall be found in Contempt of Court and subject to a fine of \$100 per day per person. If Mildred Knight and Norman Robert "Bobby" Knight, III, fail to comply within 15 days of this Order as directed, a hearing will be held to determine further sanctions; and it is further

ORDERED that the Petitioner's request for attorney fees is denied.

AND IT IS SO ORDERED.


The Honorable Tamara C. Curry
Associate Judge of Probate

This 25 day of August 2005.
Charleston, South Carolina


ATTEST: A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
COMMITMENT DIVISION
CASE NO.: 2004-GC-0099

NORMAN ROBERT "BOBBY" KNIGHT, III,
Petitioner,

Versus

ORDER APPOINTING
TEMPORARY GUARDIAN
AND CONSERVATOR

NORMAN ROBERT KNIGHT, JR., an
Incapacitated person, and Mildred Knight,
Linda K. Jones and Chloe K. Tonney, his
next of kin,

Respondents.

On July 20, 2005, the Honorable Tamara C. Curry, Associate Probate Judge for Charleston County, did appoint Walter Kaufmann, Esquire as Guardian and Family Services, Inc., as Permanent Conservator for Norman Robert Knight, Jr., an incapacitated person.

Comes now Petitioner, Norman Robert "Bobby" Knight, III, Pro se and Mildred Knight by and through her attorney Charlie Condon, Esquire who have appealed the findings of the Charleston County Probate Court, dated August 18, 2005 and August 25, 2005 to the Court of Common Pleas in the Ninth Judicial Circuit.

Norman Robert Knight, Jr. was adjudicated an incapacitated person in need of both a Guardian and Conservator on November 9, 2004. Mr. Knight's physical conditions, inability to care for himself or his finances leaves him vulnerable. Since appointing Walter Kaufmann as Guardian and Family Services, Inc. as Permanent Conservator, it has come to the attention of this Court that several pressing matters concerning Mr. Knight's care, visitation and finances require continued administering during the pendency of the appellant process. The Guardian Walter

Kaufmann has not been allowed to visit with Norman Robert Knight, Jr. The funds which were previously wrongfully withdrawn from Norman Robert Knight, Jr.'s UBS account have not been returned to the Conservator. The funds are currently in an account in the name of Norman Robert "Bobby" Knight, III. This Court is concerned that the funds will be wasted or dissipated if not returned during the appeals process. Mildred Knight is still in possession of credit cards in the name of Norman Robert Knight, Jr. and she has refused to turn these items over to the Conservator. The funds have continued to be used without Court approval, and have not been turned over to the Conservator.

Based on these facts and the continued refusal of both Mildred Knight and Norman Robert "Bobby" Knight, III to comply with this Court's previous orders, and in order to protect the health, welfare and safety of Norman Robert Knight, Jr. throughout the appellate process in the Ninth Judicial Circuit, this Court orders that a Temporary Guardian and Temporary Conservator be appointed during the pendency of the appellate process.

Now, therefore, on the Court's own motion, it is

ORDERED that Walter Kaufmann, Esquire be appointed as Temporary Guardian for Norman Robert Knight, Jr.; and it is further

ORDERED that Family Services, Inc. be appointed as Temporary Conservator for Norman Robert Knight, Jr.; and it is further

ORDERED that Mildred Knight turn over any and all financial records to Family Services, Inc. within five (5) days of the execution of this Order or she shall be found in Contempt of Court; and it is further

ORDERED that Mildred Knight and Norman Robert "Bobby" Knight, III shall turn over the proceeds of the UBS Account liquidated May, 2005 in the amount of \$42,579.99 to the

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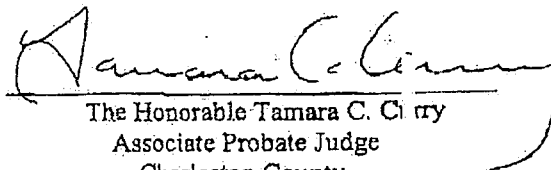
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Temporary Conservator, Family Services, Inc., within five (5) days of the execution of this Order
or they shall be found in Contempt of Court.

AND IT IS SO ORDERED!


The Honorable Tamara C. Cherry
Associate Probate Judge
Charleston County

Charleston, South Carolina
This 20th day of September, 2005.


ATTEST: A TRUE COPY
DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY SOUTH CAROLINA

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ELECTRONICALLY FILED - 2020 Sep 04 11:36 AM - CHARLESTON - COMMON PLEAS - CASE#2019CP1003042

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	OF CHARLESTON COUNTY
COUNTY OF CHARLESTON	)	Case No: 2004-GC-10-0099
CHLOE KNIGHT TONNEY	)	
Petitioner,	)	
	)	EMERGENCY
-vs-	)	ORDER
	)	(On Petition of Guardian)
NORMAN ROBERT KNIGHT, JR.	)	
an alleged incapacitated person	)	
MILDRED KNIGHT and	)	
NORMAN ROBERT KNIGHT III	)	
	)	
<u>Respondents.</u>	)	

This matter came before the Court on the Petition for Emergency Order submitted by Walter R. Kaufmann, Esquire, the Guardian in this matter.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Based on the Petition of the Guardian, and the accompanying affidavits of the Guardian *ad Litem* in this matter, Glenn P. Churchill, Esquire, and of Ellsabeth Spencer, and based on the Court's own extensive knowledge of the procedural history of this case, the Court finds that the granting of Guardian's petition is appropriate. The Court finds that, because of the continuing contempt of orders of this Court, and of the Circuit Court, by Mr. Norman Robert "Bobby" Knight III and Mrs. Mildred Knight, exigent and emergency circumstances make this action appropriate. The Court finds that, based on the belief and petition of the Guardian, that it is the best interest of the ward that the ward be in the custody of the Guardian. The Court has directed the Guardian to take custody of the ward, Mr. Knight. The Court finds that it is necessary for law enforcement personnel to be involved in this matter in order to best ensure the safety of all involved, and to accomplish the transfer of custody from the Respondents to the Guardian. The Court

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finds that the actions of the Respondents make it necessary for the Court to authorize the potential use of forcible entry, if the same be necessary, to the ward's own home in order to determine whether the ward is there or elsewhere.

It is therefore

ORDERED that the physical and legal custody of the person of Mr. Norman Robert Knight, Jr., is granted to his Guardian, Walter R. Kaufmann, and it is further

ORDERED that the Charleston County Sheriff's Office (or any other law enforcement agency or agencies, as may be appropriate) provide all means available and necessary to assist the Guardian in both in ascertaining the whereabouts and in gaining custody of the ward, Mr. Norman Robert Knight, Jr., and it is further

ORDERED that entry may be gained, by the use of force if necessary, to the ward's own home at 3940 Hottinger Avenue, N. Charleston, Charleston County, to ascertain whether or not the ward is on the premises, and it is further

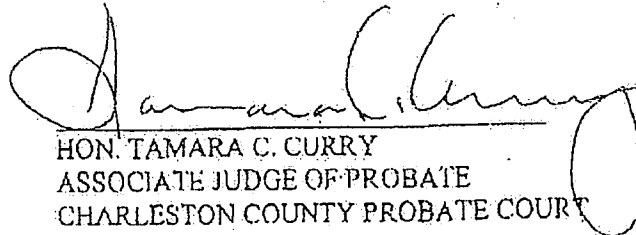
ORDERED That any law enforcement agency may take custody of the ward, Norman Robert Knight, Jr., subject to the further directions and instructions of the Guardian, and it is further

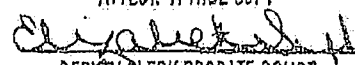
ORDERED that the Guardian has the sole authority as to who, if anyone, including any of the parties (with the exception of the Guardian *ad Litem* as provided below) is permitted to have visitation with the ward, and that such visitation is subject to any restrictions (including supervision of the visitation) imposed by the Guardian, including the denial of visitation to anyone, pending further order of this Court. The costs of any such restriction (e.g. supervision) shall be borne by the parties upon whom the Guardian places any such restriction, and it is further

ORDERED that the Guardian *ad Litem* shall have free access to visit the ward at any time upon reasonable notice to the Guardian.

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SO ORDERED this the 31st day of January, 2006, at Charleston, South
Carolina.


HON. TAMARA C. CURRY
ASSOCIATE JUDGE OF PROBATE
CHARLESTON COUNTY PROBATE COURT

ATTEST: A TRUE COPY

DEPUTY CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

IN RE THE ESTATE OF:
NORMAN ROBERT KNIGHT, JR.
An Incapacitated Person

FAMILY SERVICES, INC., AS
CONSERVATOR,

Petitioner,

vs.

NORMAN ROBERT KNIGHT, III, and
MILDRED KNIGHT,

Respondents.

IN THE PROBATE COURT

CASE NO.: 2004-GC-10-099

ORDER

WHEREAS, this matter came before me today on a Petition for Rule to Show Cause why the Respondents Norman R. Knight, III (also known as Bobby Knight) and Mildred Knight have failed to comply with an Order of this Court, dated August 25, 2005. Present before me today were Thad H. Vincent, Esquire, attorney for Chloe Knight Tonney and Linda Knight Jones, daughters of the incapacitated person; Glen P. Churchill, Esquire, Guardian Ad Litem for the incapacitated person; Walter R. Kaufmann, Esquire, Guardian for the incapacitated person; Iris Albright, Director of the Conservatorship division of Family Services, Inc., the Conservator for the incapacitated person; J. Seth Whipper, attorney for Norman Robert Knight, III; and Mildred Knight, the wife of the incapacitated person, who appeared *pro se*. After hearing testimony from the parties, arguments from counsel, and reviewing the file in this matter, I make the following Findings of Fact and Conclusions of Law.

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FINDINGS OF FACT and CONCLUSIONS OF LAW

1. I find that on August 25, 2005, I issued an Order that Norman R. Knight, III and Mildred Knight must turn over the proceeds of the UBS Account liquidated May, 2005, in the amount of \$42,957.99, to the Conservator, Family Services, Inc., within five (5) days of the execution of that Order or they would be found in Contempt of Court and subject to a fine of \$100 per day;

2. I further find that on August 25, 2005, I ordered that Respondents turn over any and all financial records to Family Services within five (5) days of the execution of that Order or they would be found in Contempt of Court and subject to a fine of \$100 per day;

3. I further find that on August 25, 2005, I ordered that if Respondents failed to comply within 15 days of the August 25, 2005 Order, as directed, a hearing would be held to determine further sanctions;

4. I further find that Respondents testimony today directly contradicted testimony given to this Court on July 20, 2005 related to the whereabouts of these funds;

5. I further find that Respondents, Norman R. Knight, III, and Mildred Knight have willfully failed to comply with my Order and have therefore given me no other choice than to place them in Contempt of Court and to Order that they be placed into the custody of the Charleston County Sheriff's Department;

6. I further find that Respondents are to be incarcerated in the Charleston County deteniton facilities until such time as they have complied with the Order of August 25, 2005 and have paid over \$42,957.99 to Family Services, Inc. The Court

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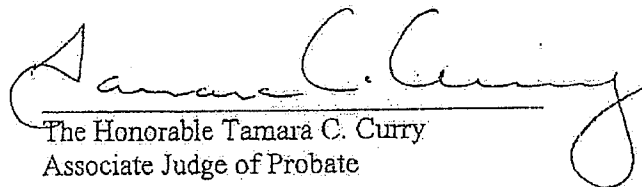
Ordered fines in the amount of \$100 per day, per person, having accrued since September 1, 2005, shall be paid within 60 days of their release;

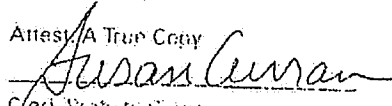
7. I further find that Respondents can be released from their incarceration upon complying with the directives of paragraph six (6) of this Order.

NOW, THEREFORE, IT IS ORDERED THAT Norman Robert Knight, III, and Mildred Knight are held in Contempt of Court and shall be held in a Charleston County detention facility until such time as they shall comply with the directives of this Order.

IT IS SO ORDERED!

This 2nd day of June, 2006
Charleston, South Carolina.


The Honorable Tamara C. Curry
Associate Judge of Probate

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2019-CP-10-3042
Judith A. Brown, as Personal	)	
Representative for the Estate of	)	
Mildred C. Knight, and Norman R.)	)	
"Bobby" Knight, III,	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Chloe Knight Tonney,	)	
Defendant.	)	

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO
ALTER OR AMEND ORDER**

This matter is before the Court on the Motion of Plaintiffs to Alter or Amend the Order denying Plaintiffs' Motion to Amend the Complaint entered on October 16, 2020 ("Plaintiffs' Motion"). In addition to relying on the Memoranda previously submitted in this action, the Defendant, Chloe Knight Tonney ("Tonney") also opposes Plaintiffs' Motion on the following grounds and contends that the Order was correct and no reconsideration is necessary.

Plaintiffs base their Motion on *Thomas v. Grayson*, 318 S.C. 82 (1995), but their reliance is misguided. *Thomas*, rather, stands for Tonney's position that there is no relation between the proposed amendments and the original pleadings. *Thomas v. Grayson*, 318 S.C. 82, 88 (1995). In Plaintiffs' Motion, they recognize that the proposed claims for loss of consortium and conspiracy are barred by the statute of limitations, and use *Thomas* in their attempt to salvage these stale claims. *Id.* ("The purpose of Rule 15(c) is to salvage causes of action otherwise barred by the statute of limitations"). Plaintiffs, however, ignore the requirement of a relationship between the proposed amendments and the original pleadings. *Id.* *Thomas* states that amendment is only appropriate

“whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings.” *Id.* This relationship goes beyond merely the parties being the same, the proposed claim must arise out of the same conduct asserted in the original pleadings. *Id.* This must be a logical relationship: as recognized in the Order, “[t]he new claim must be ‘logically related’ to the *matters original pleaded* so that the Defendant is not prejudiced by the new claim asserted after the statute of limitations has expired.” *Whitfield Construction Co. v. Bank of Tokyo Trust Co.*, 338 S.C. 207 (Ct. App. 1999).

In the instant case, the proposed claims do not relate back to the original pleadings, as they arise out of completely different conduct. As stated in the Order, “[s]imply put, the proposed amended complaint seeks to state a new cause of action.” Tonney agrees with the Order, which further states,

...the amended complaint alleges tortious wrongdoing by the Defendant by her alleged complicity in the 2004 DSS proceeding relating to her father, the late Norman Knight, Jr. that caused the loss of consortium between her parents. The only wrongful conduct of Defendant alleged in the original complaint is that she demolished the house on the property. There is no nexus whatsoever between the original complaint’s allegations of adverse possession and the Defendant’s demolition of the house, on the one hand, and the allegations of the proposed amended complaint that the Defendant tortiously caused a DSS intervention with her father, on the other. I must conclude there is no “logical relation” between the matters sought to be pled in the amended pleading, and those originally pled.

These claims do not logically, or in any way, arise out of the same conduct, transaction, or occurrence and therefore, no requisite relation back exists. *Thomas*, 318 S.C. 88. Therefore, the Special Referee was correct in his conclusion that “because the amended complaint does not “relate back” to the original filing,” the proposed claims would be barred by the statute of limitations.”

Plaintiffs also argue that Tonney "offered nothing to demonstrate any prejudice that [she] would encounter because of the amendment." This statement ignores both Tonney's arguments and the Order itself. Tonney agrees with the Order, which recognizes that "the proposed amended complaint would also be barred by the doctrine of futility." Because the proposed claims lack any factual basis and fail to relate back, they are clearly futile and therefore prejudicial. Additionally, as Tonney has previously argued, Plaintiffs' undue delay is significantly prejudicial. Tonney further agrees with the Order on this point:

The investigation, discovery and presentation in evidence of events transpiring sixteen years before the filing of an action may well be an almost impossible task. But even if it could be accomplished, it would present significant challenges and difficulties to all parties, and would thereby be prejudicial; and not only to the Defendant but also to the Plaintiffs as well . . . Because of [the undue delay], the Defendants, and also the Plaintiffs for that matter, would be challenged to investigate, discover and present evidence, not relating to adverse possession, or constructive trust, or demolition of a house, but rather relating to DSS proceedings sixteen years ago. The time and expense involved in that process is likely to be considerable.

Forcing Tonney to defend against the proposed claims, which are wholly unrelated and extremely stale, would be prejudicial to not only to Tonney, but also the Plaintiffs.

For the reasons stated above, the Motion to Alter or Amend Order should be denied.

Law Offices of Charles S. Altman, LLC.

/s/ Charles S. Altman
Charles S. Altman (SC Bar No. 351)
575 King Street, Suite A
Charleston, South Carolina 29403
Tel.: 843-853-9907
Fax: 843-572-7702

November 19, 2020

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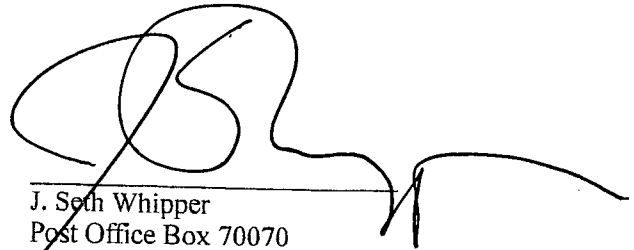
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Certificate of Counsel

SC Court of Appeals

The undersigned hereby certifies that the Record on Appeal contains all material in accordance with Rule 210 et seq., SCACR proposed to be included by any of the parties and not any other material.

October 13, 2021



J. Seth Whipper
Post Office Box 70070
North Charleston, SC 29415
(843) 740-7777
Attorney for Appellants