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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

s/ J. Cordell Maddox Jr., Circuit Court Judge
Case No: 2021-CP-37-00560

Appellate Case No.: 2021-001552

DOROTHY PIERCE, Appellant,

V.

JARED ADAM PIERCE, Respondent.

APPELLANT’S REPLY TO RESPONDENT’S MOTION TO DISMISS APPELLANT’S

APPEAL

Pursuant to S.C. App. Ct. R. 240(f), Appellant hereby files this Reply to Respondent’s Motion to Dismiss Appellant’s Appeal. In support of the Reply, the Appellant states as follows:

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FACTUAL BACKGROUND

This case concerns the validity of a will made by the deceased, Doyle Elton Pierce.

Accordingly, on August 18, 2021, a judgment in favor of the Respondent entitled“ORDER ON MOTION TO DETERMINE VALIDITY OF WILL" was signed by the probate Court Judge Kenneth E. Johns Jr. in this case. The Appellant subsequently filed a Motion for a New Trial on August 23, 2021. Thereafter, Appellant filed an Amended Motion for a NewTrial in lieu of the already filed Motion for New Trial.

On or about October 1, 2021, the Court conducted a hearing for Appellant’s Motion for New Trial. Consequently, the Court denied the said Motion. It is worth noting that the Judge was so unfair that he did not even respond to any of Appellant’s emails asking for a legal explanation to his denial of Appellant’s Motion. Besides, the said Judge signed an Order, which the Respondent

drafted without Appellant’s knowledge/ consent.

On or about August 23rd, 2021, Appellant filed a Notice of the Intention to Appeal the said Order, and the Appeal Brief thereof, to Oconee County Court of Common Pleas.

On or about November 3rd, 2021, the court conducted a hearing for the appellant’s appeal, and the appeal was denied on December 29th, 2021. It should be noted that the Judge did not even give the appellant an opportunity to present her case properly. He strictly asked the Appellant to briefly tell the court why she thought removing her as a personal representative as of the judgment of August 18th was unjust while ignoring all the legal errors of the law in the judgment included in the appeal brief.

On or about December 30th, 2021, the appellant filed a notice of intention to appeal with this honorable court against the decision of the Circuit Court.

Consequently, on or about January 13th, 2022, The Respondent responded to the said Appellant’s Notice of Appeal, by filing a Motion to Dismiss the said Appeal.

Appellant hereby files this Reply to Respondent’s Motion to Dismiss

STANDARD OF REVIEW

“An appellate court's determination of the standard of review for matters originating in the probate court is controlled by whether the cause of action is at law or in equity.” *Holcombe–Burdette v. Bank of Am.*, 371 S.C. 648, 654, 640 S.E.2d 480, 483 (Ct.App.2006). To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below. If the crucial character of the petitioner's cause of action is grounded on equitable

rights and equitable relief is sought, the case is regarded as equitable, and the appellate court has jurisdiction to make findings in accordance with its view of the preponderance of the evidence. *Eagles v. South Carolina National Bank*, 301 S.C. at 408, 392 S.E.2d at 191. On the other hand, if the essential nature of the cause of action is legal, the action to be taken by the court is controlled by its determination of whether or not there is any evidence to support the factual findings of the court below. *Id.*

ARGUMENTS

I. The Appellant States Valid Claim(s) For Relief

"In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief." *See Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). ("In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court."). A circuit court must deny a motion to dismiss under Rule 12(b)(6) "if facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case." *Flateau v. Harrelson*, 355 S.C. 197, 203, 584 S.E.2d 413, 415 (Ct. App. 2003).

Appellant avers that she presented a valid claim for relief. The Appellant avers that all the grounds in the Appeal are pleaded sufficiently to raise genuine claims for relief. Besides, the grounds in the Appeal are all based on factual evidence. In that regard, the Appellant avers that the Respondent's Motion is dismissed.

II. The Respondent's Motion is Frivolous

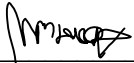
The law is against the filing of frivolous or bad faith Motions. *See* SC Code § 15-36-10 (2019). In that regard, an attorney may be sanctioned for filing a frivolous pleading, motion, or document if "a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party." *See* SC Code § 15-36-10(A)(4)(a)(iii); *See also Rutland v. Holler, Dennis, Corbett, Ormond Garner (Law Firm)*, 371 S.C. 91, 637 S.E.2d 316 (Ct.App. 2006). Further, a party and attorney may also be sanctioned for filing a pleading, motion, or other paper in bad faith whether or not there is reasonable ground to support it. *See Ex parte Gregory*, 378 S.C. at 437, 663 S.E.2d at 50.

The Appellant avers that the Respondent filed the Motion to Dismiss in a bid to harass and threaten the Appellant. The respondent has made it very difficult for the appellant to get justice due to his connections in the Oconee court system. Notably, the Appeal raises genuine grounds for relief against the Order of the Probate Court. In that regard, the Respondent's Motion should be dismissed.

CONCLUSION

Based upon the foregoing arguments, and each of them, it is clear that Justice will not be properly served unless the Respondent's Motion to Dismiss is denied. Accordingly, the Appellant prays that the Court dismisses the Respondent's Motion to Dismiss. In the interest of justice, sanction the Respondent and Respondent's Attorney(s) for filing frivolous and malicious Motions.

Respectfully Submitted, this January 25, 2022

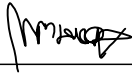


Dorothy Pierce, Appellant, pro se.

CERTIFICATE OF SERVICE

I hereby certify that, on the 25th Day of January 2022, a copy of the foregoing Reply to Respondent's Motion to Dismiss was filed in this court. I further certify that on the said date, a copy of the said document was mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following: **Richard H. McDuff, Esq. Merrell, Jahn & McDuff, P.A. 119-B Professional Park Drive, Seneca, South Carolina 29678.**

Respectfully Submitted,



Dorothy Pierce, Appellant, pro se.

APPEAL BRIEF IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

APPEAL FROM OCONEE COUNTY

The Probate Court

Kenneth E. Johns Jr.-Probate Court Judge (*Suspended*)

CASE NO.:2021CP3700560

DOROTHY PIERCE

*Surviving Spouse & Personal Representative
to Doyle Elton Pierce Estate.
(Appellant)*

VS.

JARED ADAM PIERCE

(Respondent)

APPEAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1. DID THE JUDGE FAIL TO CORRECTLY APPLY THE DAUBERT STANDARD FOR EXPERT TESTIMONY?
2. DID THE JUDGE'S CONDUCT AMOUNT TO JUDICIAL MISCONDUCT?
3. DID THE JUDGE'S CONDUCT VIOLATE APPELLANT'S DUE PROCESS RIGHTS?
4. DID THE JUDGE ERR IN FINDING APPELLANT LIABLE FOR FRAUD UPON THE COURT AND UNFAIRLY REMOVED THE APPELLANT AS PERSONAL REPRESENTATIVE?

STATEMENT OF THE CASE

This case concerns the validity of a will made by the Deceased, Doyle Elton Pierce. Accordingly, on August 18, 2021, a judgment in favor of the Respondent entitled "ORDER ON MOTION TO DETERMINE VALIDITY OF WILL" was signed by this Court in this case. The Appellant subsequently filed a Motion for a New Trial on August 23, 2021. Thereafter, Appellant filed an Amended Motion for a New Trial in lieu of the already filed Motion for New Trial.

On or about October 1, 2021, the Court conducted a hearing for Appellant's Motion for New Trial. Consequently, the Court denied the said Motion. It is worth noting that the Judge was so unfair that he did not even respond to any of Appellant's emails asking for a legal explanation to his denial of Appellant's Motion. Besides, the said Judge signed an Order, which the Respondent drafted without Appellant's knowledge. Appellant hereby appeals the said Order.

STANDARD OF REVIEW

The standard of review applicable to cases originating in the probate court is controlled by whether the underlying cause of action is at law or in equity. *Howard v. Mutz*, 315 S.C. 356, 361-62, 434 S.E.2d 254, 257-58 (1993). Appellant states that this is an action at law. *NationsBank of S.C. v. Greenwood*, 321 S.C. 386, 392, 468 S.E.2d 658, 662 (Ct. App. 1996) (holding an action to construe a

will is an action at law). If a proceeding in the probate court is in the nature of an action at law, review by this court extends merely to the correction of legal errors. *Townes Assocs. Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976), abrogated on other grounds by, *In re Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018).

Further, the circuit court must hear and determine an appeal from the Probate Court “according to the rules of law.” S.C.Code Ann. § 62-1-308(d) (1987). This phrase means according to the rules governing appeals. *Howard*, 315 S.C. at 360, 434 S.E.2d at 257. On appeal from the final order of the probate court, the circuit court should apply the same standard of review that this court would apply on appeal. *Id.*

FACTS

In November 2017, the Appellant was looking for a house to rent within Upstate South Carolina. Since the Appellant had a small manufacturing business, she had a second requirement: a house with a spare storage space for her manufacturing business. Craigslist was the only reliable platform to find houses for rent within the upstate community. She therefore searched several listings and the Deceased, Doyle Elton Pierce, had listed for rent, a room in his 3-bedroom brick house in a small city of Seneca, Oconee County, SC. After chatting with the Deceased, he had both a room for rent and approximately 5,000 SF warehouse that the Appellant could lease for her business after cleaning it up.

The Appellant met the Deceased in Greenville, SC. and they drove to Seneca to see the house. Upon arriving at the Deceased’s home, the Appellant discovered that the Deceased was a hoarder, his house looked like it had never been cleaned or organized in a decade. The Deceased told Appellant that if she wanted to leave, he would understand. On the contrary, Appellant told him that she would still rent the room if the Deceased allowed her to clean up his entire house. He was excited. It took Appellant more than fifteen days to clean the house. During the clean-up, the Deceased helped the

Appellant whenever he could. There were so many items to move to the dumpster. Sometimes the Deceased was running the skid steer while the Appellant loaded the trash on foot. Two weeks later, the Deceased told the Appellant that he would have looked a thousand years and never found a woman like her. He asked Appellant to marry him, but he had not even asked her out on a date yet. Appellant told him to start from the beginning by asking her out on a date. The two joked and laughed about it. Subsequently, they went on series of “cleaning dates” and fell head over heels for each other. A few weeks later, Appellant also discovered that the Deceased had also earlier posted another ad on craigslist looking for a young woman to bear him children. He was abandoned by his own children and family, he said. The two got married on February 14, 2018.

The Appellant wondered why the Deceased wanted children at the age of 71, but the answer came in handy a few weeks later when the couple decided to visit the Deceased’s eldest son, Jared Adam Pierce, the respondent. It was about 2:45pm in the afternoon when the Deceased knocked at his son’s door. The Respondent opened the door slightly and immediately asked his father “What? What do you want? The Deceased turned red and mumbled, “...I came to visit you, are you not going to let me in? “Hell no, go the F..k away.” Replied the Respondent. The Deceased left in shame. For a long time, the Deceased never said much about the incident and never wanted to hear about the Respondent. It took several months before he would want to talk to his son again. Accordingly, when the Deceased forgave his son, the Respondent asked his father for a piece of land so he and his now separated wife could buy a trailer and move in since they still rented their house after losing their previous home to the Respondent’s gambling habits and liabilities. The Deceased, the Respondent, Respondent’s wife Sandy Phillips Pierce and Appellant went down to Cedar hill farm, where the Respondent picked the most expensive and best river front plot of land. He asked Deceased to cut the land and make the deed in his name, but the Deceased refused fearing that the Respondent would sell the land again once the deed was in his name. The Respondent could not build a house on his father’s land without a deed in

his name since her never trusted his father enough. Doyle Elton Pierce willed the land and a trailer to Respondent on his last will and testament dated, July 7th, 2020.

The Deceased's second "son", Greg Alan Pierce never talked to his "father" for over 10 years. The Deceased on the other hand, never wanted anything to do with his "son". To Doyle Elton Pierce, his "son", Greg Alan Pierce was Dead. Greg Pierce showed up in April 2020 when the Easter storm hit Seneca and destroyed almost everything the Deceased had worked for his entire life, three months before the Deceased passed away. Within two weeks of helping with cleanup after the storm, Greg Pierce asked the Deceased for land and a favor to pay for a new trailer since he did not have any credit to buy one or a home. His credit was so bad that he could not get any mortgage or loan. He offered to pay the Deceased cash as his "father" paid the mortgage company. The Deceased and Greg Pierce rode on a 4-Wheeler to Cedar hill farm where Greg picked a river front plot of land adjacent to his brother Jared Adam Pierce. Greg, however, also wanted his "father" to deed him the title to the land, but Doyle Elton Pierce refused arguing that Greg Pierce only showed up when he needed something and vanished when he got it or didn't get his way. Though the Deceased refused to deed his second "son" the land, he allowed him to build or use it. He however, refused to secure a mortgage on his "son's" behalf but gave him an old trailer on 745 Mourning Dove Lane, where Greg's daughter Samantha Leigh still lives in up to the time of this filing. The Deceased willed the land and the Trailer to Greg Alan Pierce on his last will and testament dated July 7, 2020.

For the last three years of the Deceased's life, the Appellant was both light and hope to him. When everyone abandoned him, the Appellant accepted, respected, and loved him unconditionally irrespective of the fact that Appellant's made more money than her husband. The Appellant was the only one available when the Deceased needed someone. When he was sick, Appellant was always by his side. When he needed to go to the hospital for his appointments, it was Appellant who accompanied him. When his blood sugar dropped in the middle of the night, Appellant was the one that got up and

made him something sweet to drink. When his sons humiliated him, it was Appellant who comforted him. When he was lonely, it was Appellant who gave him company. When he was happy, it was Appellant that he shared his joy with. When the Appellant got pregnant with the Deceased miracle child and had a miscarriage, the Deceased was there for her.

On or about July 7th, 2020, the Deceased executed the last will and testament in compliance with SC Code § 62-2-502 (2017). Notably, the will was in writing and was signed by at least two disinterested individuals, each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will. Three months later, the decedent died at Prisma hospital, Oconee County on September 14th, 2020, at the age of 74 years, 3 month, & 29 days.

On or about September 23rd, 2020, the Appellant was legally appointment Personal Representative of the Estate of Doyle Elton Pierce.

The Respondent contested the will and testament of the Deceased dated July 7, 2020, with the Probate Court. He relied on expert testimony that is time barred and failed the Daubert test.

On or about November 05th, 2020, the Respondent's Attorney Rick McDuff reported an incident case to Oconee County Sheriff Department on the account of counterfeiting/forgery. The sheriff department investigated the Appellant thoroughly and closed the investigation, after finding NO WRONGDOING on the part of the Appellant.

On or about August 2, 2021, the Probate Court ruled to set aside the will.

ARGUMENTS

I. THE JUDGE FAILED TO CORRECTLY APPLY THE DAUBERT STANDARD FOR EXPERT TESTIMONY.

Under The Daubert Standard for Admissibility of Scientific Evidence. The first decision judges must determine, as gatekeepers of the law, is whether a witness is sufficiently qualified by "knowledge, skill, experience, training, or education" to give expert testimony. Once a judge has decided a witness is qualified to serve as an expert, Daubert requires the judge to make an independent assessment to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable.

The U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals Inc.*, 509 U.S. 579 (1993) set out the Daubert standard to assess whether an expert witness's scientific testimony is based on scientifically valid reasoning that can properly be applied to the facts at issue. Under the Daubert standard, the factors that may be considered in determining whether the methodology is valid are: (1) whether the theory or technique in question can be verified, refuted, and tested, (2) whether the evidence is valid and reliable, (3) whether it has been subjected to peer review and publication; (4) whether the existence and maintenance of standards controlling its operation are held to standards within the field ; and, (5) whether it has attracted widespread acceptance within a relevant scientific community.

The Federal Rules of Evidence 702 is the crux of Article VII, as it guides the court's analysis in determining admissibility of expert testimony. Rule 702 of the Federal Rules of Evidence makes no distinction between "scientific knowledge" and "technical knowledge" or "other specialized knowledge." Under Federal Rule 702, persons that are qualified as experts based on knowledge, skill, experience, training, or education are permitted to offer expert opinion testimony if the following conditions have been met:

1. The expert's scientific, technical, or other specialized knowledge will help the trier of

- fact to understand the evidence or to determine a fact in issue;
2. The testimony is based on sufficient facts or data;
 3. The testimony is the product of reliable principles and methods; and
 4. The expert has reliably applied the principles and methods to the facts of the case

It follows; the federal courts are all governed by the Daubert standard. Besides, the proponent of an expert bears the burden of demonstrating that the expert's testimony would satisfy the Daubert standard. *Lewis v CITGO Petroleum Corp.*, 561 F3d 698 (7th Cir 2009), citing *Bourjally v US*, 483 US 171, 175-76 (1987).

In this instant case, on whether the theory or technique in question can be verified, refuted, and tested. The Answer is NO. The expert evidence is not reliable, verifiable, refutable, or testable. According to the vague report of the Respondent's handwriting expert, both the report and the evidence do not show the type of document purportedly signed by the Deceased, does not show the contents of the document, the actual date it was purportedly signed or the purpose of the documents in question. The purported signature standards cannot be verified or authenticated to have been signed by Doyle Elton Pierce. To be specific, 14 purported signatures copied and pasted on one single piece of paper with an impossible way of tracing or authenticating the documents from which the purported signatures were extracted. It should be noted that 4 of the 14 signatures appear to have been extracted from documents typed by the same person according to Doyle E. Pierce naming and font size.

On whether the evidence is valid and reliable. The answer in NO. Chiefly, the Respondent's handwriting expert used signature exhibits as old as 1971-2008 with one purported signature for 2016, which are all against the basic rules and guidelines of modern document examination that require that the signature samples execution be within the proximity of the execution of questioned document. The expert evidence is not relevant, valid, or reliable. The expert presented the probate court with evidence and testimonies based irrelevant and insignificant signatures samples with notes of dates too old to be

used to compare a person's signature 49 years after. To put this into perspective, the signatures used from as 1971, 1972 1974 ,1975,1979 1991,1992,1994,2004,2008 ,2016, an act considered, foolish, forbidden, and fraudulent in the handwriting examination forensics.

On whether the method corresponds to published peer review, held to standards within the field, or generally accepted in the scientific community. The answer is NO. The evidence relied upon by the Respondent would not gain general acceptance in the relevant scientific community because it was time barred. All published document examiners recommend that the best standards are those that most closely emulate the timeframe, circumstances, materials, and content of the questioned document. Therefore, the collected standards should be executed close in time to the questioned document. This is especially critical in cases involving illness, death, accident, mental imbalance, substance abuse, or anything likely to cause a dramatic change in the subject's handwriting. Investigators MUST Find out everything possible about the circumstances under which the questioned document was allegedly prepared. Was the subject lying sick in bed, standing at a counter, holding a clipboard in his or her lap? Try to obtain standards written under similar conditions. In this instant case, the decedent was 74 years old who signed the last will and testament on the Trunk of the car.

Furthermore, it was the courts responsibility to independently consider all the facts presented by the expert, the court ignored important facts as per the testimony of the expert witness, Mr. John Jamieson that could not make any conclusions as to whether the initials on pages one through nine of the last will and testament of the Decedent, dated July 7th, 2020, was that of the Deceased or not.

In the instant action, the Trial Judge erroneously admitted, and relied on fraudulent, irrelevant, insignificant, unreliable, untestable, and unverifiable expert evidence, which failed the Daubert test.

II. THE JUDGE'S CONDUCT AMOUNTED TO JUDICIAL MISCONDUCT

Under S.C. App. Ct. R. 7, a Judge is said to have committed misconduct and is therefore subject to discipline if the Judge: failed to uphold the integrity of the judiciary; fails to participate in establishing, maintaining, and enforcing high standards of conduct, and personally observing those standards; fails to avoid impropriety and the appearance of impropriety; fails to act at all times in a manner that promotes public confidence in the judiciary; allows his relationships with others to influence the judge's judicial conduct or judgment; fails to perform the duties of the judicial office impartially; fails to be dignified and courteous to those with whom the judge deals in an official capacity and requiring similar conduct of persons subject to the judge's discretion and control; and fails to perform his judicial duties without bias or prejudice and by failing to cooperate with other judges and court officials in the administration of court business.

South Carolina case law requires "[a] factual finding of judicial misconduct [to] be supported by clear and convincing evidence." *In re Gravely*, ___ S.C. ___, 467 S.E.2d 924 (1996).

Appellant contends that the Judge's actions as alleged in the "Statement of the Case" section of this Brief, constituted the practice of law, a violation of Code of Judicial Conduct Canon 5 F. The practice of law is not limited to "the conduct of cases in courts" but includes "all action taken for them in matters connected with the law." *In re Duncan*, 83 S.C. 186, 65 S.E. 210 (1909). It is the character of the services rendered, not where they are rendered, which determines whether the acts constitute the practice of law. *State ex rel. Daniel v. Wells*, 191 S.C. 468, 5 S.E. (2d) 181 (1939).

The trial Judge constantly engaged in improper ex parte communication with the Respondent. During the probate hearing on August 2nd, 2021, while on recess, the Judge, the Respondent, and the Respondent's counsel had an ex parte communication before deciding to bring the Respondent as a witness after the appellant's witnesses made an irrefutable testimony validating

the Will. The Respondent even called the Judge by his first name (Kenneth) while both exited the court room, proof that the judge has personal connection to the Respondent.

Furthermore, several minutes before the Motion for a new trial hearing on October 1st, 2021, The Respondent's attorney, Richard McDuff, the Respondent, Jared Adam Pierce and another lady in their company spent considerable amount of time with the probate Judge in the judge's office before the three exited the office from the back door. The Appellant was not informed of the subject matter of the meeting nor invited to attend the meeting.

The trial Judge Intentionally discriminated against the Appellant based on race, color and national origin. When the Appellant filed a motion for a new trial, neither the judge nor his clerks wanted to set up any date for the hearing of the motion for a new trial. The appellant politely asked the probate court on more than 3 different occasions to set a date, but the judge deliberately refused to set up a date claiming that the probate court did not have jurisdiction to hear the motion, NOT until Judge Sprouse, the presiding judge on the Appellant's appeal hearing advised that the pending motion in the probate court be ruled upon before Court could hear the appeal. Upon such determination, the Respondent informed the probate judge about Judge Sprouse's position, and the probate judge responded in less than two hours with possible dates for the motion hearing.

Additionally, Weeks before the hearing of the appellant's motion for new trial, the appellant asked probate court about PowerPoint presentation system if court had any to aid her presentation during the motion hearing but the judge and his clerks denied they had a PowerPoint presentation system, only to discover at the time of the hearing that the probate court actually had a boardroom with all PowerPoint system in place but they did not think the appellant was white enough to use the court's PowerPoint system. Surprisingly, the judge asked the appellant if she wanted to use PowerPoint at the time of the hearing of the appellant's motion to save face. The appellant had

already printed her presentation on paper and did not prepare a PowerPoint presentation.

The appellant presented 10 grounds in her motion for a new trial but on his ruling, the probate judge ruled on one and completely ignored the other 9 arguments. In his Ruling the judge wrote”;

*“After reviewing Rule 59, the case file and the arguments presented, I find the following: Both sides had ample time for discovery, to prepare their arguments, secure witnesses and expert testimony prior to the August 2, 2021 Hearing. A continuance prior to the August 2, 2021 Hearing could have been requested and granted for additional time to prepare.
The Motion for a New Trial/Hearing is denied.
Mr. McDuff, please draft an Order for Ms. Pierce’s review, and then my signature.
Thank you,
Kenneth E. Johns, Jr.”*

When the appellant reminded the judge that Rule 59 provides grounds for granting a new trial based on significant error of the law and that Legal error and abuse of discretion were the basis of the appellant’s new trial motion. The appellant, therefore, asked the Judge to provide legal grounds for each of the arguments to preserve the record. The Judge was so unfair that he did not even respond to any of Appellant’s emails asking for a legal explanation to his denial of Appellant’s Motion. Besides, the said Judge signed an Order, which the Respondent drafted without Appellant’s knowledge. Although it is not express sole object of this Appeal to have the Judge disciplined, Appellant avers that the Judge’s misconduct affected the validity of the Order issued by the Judge, which Order was issued without considering Appellant’s case, and without giving any reason of the denial to Appellant.

The Judge had Personal knowledge of the facts of the case and yet failed to recuse himself from the case. According to American Bar Association Rule 2.11: Disqualification. A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances: The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

The law considers the partiality of a Judge in a case as a very sensitive matter. It follows; for example, a judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to, instances where he has a personal bias or prejudice against a party. *Murphy v. Murphy*, ___ S.C. ___, 461 S.E.2d 39 (1995).

In the instant case, Defendant has several Email evidence detailing that the plaintiff's attorney persistently emailed the judge about the forgery case he reported to Oconee Sheriff Department tainting the Defendant's reputation on false allegations and speculations. Even after the Sheriff Department closed the investigations, exonerating the Defendant on several false charges, the Plaintiff did not inform the judge that the cases were closed. It is also worth noting that in the Emails, the Petitioner/Counsel was tainting Defendant's name by informing the Judge how bad Defendant is. For example, the Petitioner **falsely** stated thus:

"She is having the utilities disconnected ... for nonpayment, and is in default under the payment terms of the lease on that property... We have employee witnesses to testify that she has not paid them wages and are pursuing action with the Department of Labor." In another communication the petitioner wrote *"Judge John's, Sheriff Crenshaw has confirmed through the Department of Homeland Security that the PR, Dorothy Pierce, **has fled** the country and is in Uganda - not in Florida as she apparently told her attorney.* In a similar Communication the petitioner wrote: *Judge Johns: At the request of Sheriff Crenshaw, SLED performed an examination of Mr. Pierce's Last Will and Testament dated July 7, 2020. Upon examination, the SLED Questioned Documents Examiner, Jack Jamieson, determined that signature on the Will is not that of the Decedent. The SLED File Number is L21-897. Sheriff Crenshaw can be contacted to confirm, and Mr. Jamieson's direct phone number is.*

It is apparent that such communication sought to influence the Judge's decision to rule in favor of the Petitioner, in violation of the Defendant's due process rights. For that reason, the Defendant contends that the contents in the email communications by the petitioner's attorney to the Judge corrupted the Judge's view of the case.

III. THE JUDGE'S CONDUCT VIOLATED APPELLANT'S DUE PROCESS RIGHT

“Procedural due process requires (1) adequate notice; (2) adequate opportunity to be heard; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d. 743 (2008) (Emphasis added). See also *Clear Channel* .

“Procedural due process requires (1) adequate notice; (2) adequate opportunity to be heard; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses.” *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d. 743 (2008) (Emphasis added). See also *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). The right to a notice and reasons for the decision is also protected under due process.

"In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest footed in state law." *Sloan v. S.C. Bd. of Physical Therapy Examr'.*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006); see *Mathews v. Eldridge*, 424 U.S. 319, 332, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) (recognizing that before due process guarantees are implicated, there must be a deprivation by the government of constitutionally protected interest).

In the instant action, the Judge failed to give reasons for the denial of Appellant's Motion. Appellant is entitled, under the due process rights, to notice and reasons for the decision of the Court. Besides, the Appellant's due process rights guaranteed Appellant's right to a fair and/or impartial hearing; and to have an opportunity to be heard. Therefore, Appellant contends that the Judge ought to have provided Appellant sufficient notice and/or reasons of the Court's decision. Instead, the Judge failed to respond to Appellant's request(s) to provide the said decisions.

The Judge abused his discretion when he impeached Appellant’s witnesses by association without any factual grounds. An abuse of discretion is to be found because the conclusions reached by the court were without reasonable factual support.” *runyon v. wright*, 322 s.c. 15, 19, 471 s.e.2d 160, 162 (1996). The court’s action violated Appellant’s due process rights, which guarantee an adequate opportunity to be heard; the right to introduce evidence; and the right to confront and cross-examine witnesses. *See Moore*, 376. S.C. 467, 657 S.E.2d. 743 (2008).

Witness impeachment is guided by federal general rules 601, 607,608, 609 and 613. Rule 601. Competency to Testify in General. Every person is competent to be a witness unless these rules provide otherwise. But in a civil case, state law governs the witness’s competency regarding a claim or defense for which state law supplies the rule of decision. Rule 608. Permits impeachment based on A Witness’s Character for Truthfulness or Untruthfulness. Rule 609. Impeachment by Evidence of a Criminal Conviction, Rule 613. Permits impeachment of a witness based on Prior inconsistent Statement. In this instant case, the witnesses where not impeached on the stand but on the judgment order. The Respondent did not raise any evidence or issues to impeach the witnesses during the hearing, neither did he suggest the witnesses be impeached for any reasons. The trial Judge however, at his discretion decided to impeach the witnesses on the judgment.

The Court unfairly impeached the appellant’s witnesses on the account that, they could not remember the exact name of the Church where the will was signed. Notably, SC Code § 62-2-502 does not limit the witnesses to specific location of the signing ceremony, neither does it provide guidance on the same. The witnesses were using GPS to reach the Decedent’s house and they are not natives of the local area of Six Miles, SC. hence it’s only natural that they would not remember the exact name of the location. *Commonwealth v. Brusgulis* , 398 Mass. 325, 329 (1986). Neither the inability of a witness to remember specific details of events nor inconsistencies in the testimony render the witness incompetent to testify, so long as the witness demonstrates “the general ability to observe, remember and recount.

The Court also unfairly impeached a witness to the last will and testament of Doyle Elton Pierce dated, July 7th, 2020, Tammy Youngblood, on the account of prior brain surgery or bad nerve. According to a report presented to Court by Tammy Youngblood's Neurologist, Dr. Stephen Gardner, the witness is in sound mind and does not have any mental incompetence.

Further, In the absence of a body language expert, the Court unfairly impeached the Appellant's witnesses based on body language. The Appellant finds significant inconsistencies and lack of credibility in Court's narration on the events that transpired during the Court hearing on August 2nd, 2021.

IV. THE JUDGE ERRED IN FINDING APPELLANT LIABLE FOR FRAUD UPON THE COURT AND UNFAIRLY REMOVED THE APPELLANT AS PERSONAL REPRESENTATIVE.

Fraud on the court" . . . requires a showing that one has acted with an intent to deceive or defraud the court." *Chewning v. Ford Motor Co.*, 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003) (quoting *United States v. Buck*, 281 F.3d 1336, 1342 (10th Cir. 2002)); *id.* at 78-79, 579 S.E.2d at 608-09.

Appellant contends that the Court erred in its conclusion that the appellant intentionally misrepresented material facts in the proceedings and had knowledge that the last will and testament was forged, leading to her appointment as personal representative. The Respondent did not present any evidence that showed that the Appellant had intent to deceive or defraud. Besides, the Appellant could possibly have no motive to defraud the Respondent. Notably, the will gave Appellant the residue of the Estate while the Respondent has eight acres of river front land, which is the most expensive part of the Decedent's real estate.

The Decedent's last will and testament was duly signed and witnessed by two disinterested witnesses, Tammy Youngblood of Greenville SC. and Deana Walker, both of whom testified under

oath before the probate court to the validity of the last will on August 2nd, 2021. Their testimonies were consistent with prior testimonies in their sworn affidavits dated, September 08th 2020, filed with the Probate Court on December 7th, 2020, and sworn voluntary statement to the deputy sheriff of Oconee County SC. dated February 8th, 2021. Again, On August 2nd, 2021, both witnesses testified under oath to the validity of the last will and testament of the decedent without any contradiction of their previous sworn statement.

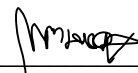
Furthermore, the appellant presented court with text messages corroborating testimonies of the witnesses before the signing event dating between July 6th2020 to July 7th 2020.

Considering all the above factors and evidence, it's absolutely cruel for the probate Court to taint the reputation of the appellant for having knowledge the will was forged and yet the Will is Valid and Authentic.

CONCLUSION

Based upon the foregoing arguments, and each of them, it is clear that Justice will not be properly served unless the appeal is granted. Accordingly, the Appellant prays that the Court reverses the judgment of the Probate Court; and in the interest of justice, remand the case with further instructions.

Respectfully Submitted,



Dorothy Pierce, Appellant, Pro se

THE STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS

APPEAL FROM OCONEE COUNTY

The Probate Court

Kenneth E. Johns Jr.-Probate Court Judge

CASE NO.:2021CP3700560

DOROTHY PIERCE

*Surviving Spouse & Personal Representative
to Doyle Elton Pierce Estate.
(Appellant)*

VS.

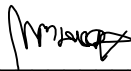
JARED ADAM PIERCE

(Respondent)

CERTIFICATE OF SERVICE

I hereby certify that, on 11/01/2021, a copy of the foregoing Appeal Brief was filed in this court. I further certify that on the said date, a copy of foregoing Appeal Brief were mailed by first-class U.S. Mail, postage prepaid, and properly addressed to the following: **Richard H. McDuff, Esq. Merrell, Jahn & McDuff, P.A.119-B Professional Park Drive, Seneca, South Carolina 29678.**

Respectfully Submitted,



Dorothy Pierce, Appellant, pro se.

Travis King
Expert Document Examiner

P.O. Box 1008
Phoenix, OR 97535
Office: 541.890.4322

Email: travis@handwritingexpertking.com
www.HandwritingExpertKing.com

Questioned Document Examination
Letter of Opinion

Date: July 29, 2021
Matter: Doyle E. Pierce

REQUESTED ASSIGNMENT

Examine a copy of Last Will and Testament, Page 10 of 11, Dated 07/07/2020 to determine if the Doyle E. Pierce signature is authentic.

DESCRIPTION OF THE QUESTIONED DOCUMENT(S)

Q1 Copy of Last Will and Testament, Page 10 of 11, Dated 07/07/2020

DESCRIPTION OF THE PURPORTED KNOWN DOCUMENTS OF DOYLE E. PIERCE

- K1 Copy of Signature Page of Commercial Lease Agreement, Page 10, Dated 07/15/20
- K2 Copy of Medical Power of Attorney, Page 6 of 9, Witnessed 07/07/2020
- K3 Copy of Signature Page, Seneca, SC, Page 10 of 11, Dated 07/05/2020
- K4 Copy of Affidavit, Form I-864, Page 8 of 10, Dated 07/05/2020
- K5 Copy of Petitioner's Statement, Form I-129F, Page 10 of 13, Dated 06/20/2020
- K6 Copy of Petitioner's Statement, Form I-130, Page 9 of 12, Dated 06/20/2020
- K7 Copy of Bill of Sale, Dated 08/28/2019
- K8 Copy of The Sullivans Note 5050, Dated 12/13/2018
- K9 Copy of Marriage License, Dated 01/05/2018
- K10 Copy of Signature Page of Lease Agreement, Dated 09/24/2017
- K11 Copy of Check 1735 to Affordable Dentures, Dated 04/07/2015

OBSERVATIONS

Similarities to Known Signatures:

- Spacing
- Letter combinations
- Connecting strokes
- Pressure patterns and ink pooling

CONCLUSION

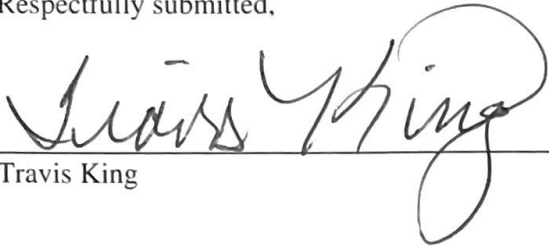
In order to establish that a questioned signature was written by a particular person, an examination with known genuine signatures must show substantial agreement in sufficient handwriting characteristics to identify the maker and eliminate the possibility of any other writer.

The handwriting characteristics that are evaluated include line quality, pressure patterns, rhythm, slant, size and proportions, utilization of space, initial and terminal strokes, writing speed, legibility, skill level, letter forms, types of connectors, method of construction, and pattern formations.

After a thorough analysis of these items, from an application of accepted forensic document examination tools, principles and techniques, and based on the documents examined, my professional expert opinion is there are "indications to suggest" Doyle E. Pierce authored the signature on the Questioned document, Q1

I am willing to testify as to my findings in a Court of Law.

Respectfully submitted,



Travis King

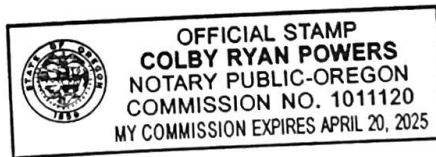
ATTACHMENTS

- Copy of Last Will and Testament, Page 10 of 11, Dated 07/07/2020, Labeled Q1
- Eleven (11) documents with the purported known signatures of Doyle E. Pierce , Labeled K1-K11
- CV of Travis King
- The relevant Scientific Working Group for Forensic Document Examination (SWGDOC) standards and guidelines for the field of forensic document examination. See www.swgdoc.org

State of Oregon
County of Jackson

Subscribed and sworn to before me, this 29, day of July 2021.


NOTARY PUBLIC – State of Oregon



STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE MATTER OF:
DOYLE ELTON PIERCE,
Decedent.

}
}
}
}
}
}

IN PROBATE COURT

Affidavit of Interested Party

CASE #: 2020ES3700532

OCONEE PROBATE
DEC 7 PM 3:00

PERSONALLY APPEARED BEFORE ME, the under-signed Notary, TAMMY YOUNGBLOOD, who being duly sworn deposes and says:

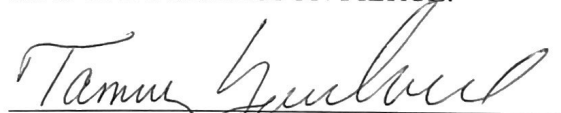
I am Tammy Youngblood, a resident of Greenville, South Carolina, and friend of Decedent, DOYLE ELTON PIERCE, and his spouse, DOROTHY PIERCE.

My Address and phone: 3 Dinwiddle Drive, Greenville, SC 29617 (864) 908-7632 _____

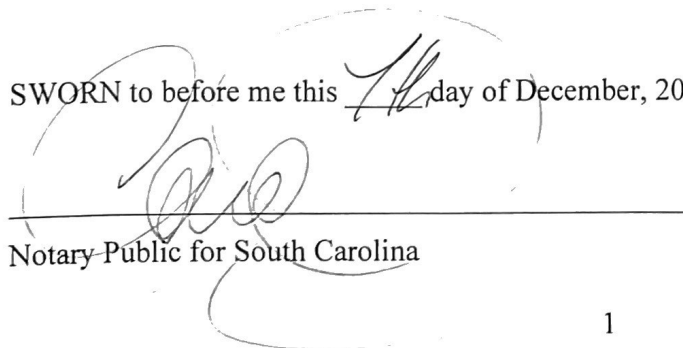
I hereby state under penalty of perjury, that the following events that occurred were personally witnessed by me:

- 1) I have known the Decedent for approximately two years.
- 2) On or about July 7, 2020, Decedent phoned me to ask if I would be a witness to his Last Will and Testament. I agreed to do so.
- 3) On or about 5pm on July 7, 2020, Decedent and his wife, DOROTHY PIERCE, met me and my daughter, DEANA WALKER, in a church parking lot in Six Mile, South Carolina.
- 4) I was personally present on July 7, 2020, to witness the signing of Decedent's Last Will and Testament.
- 5) I personally witnessed Decedent sign his Last Will and Testament.
- 6) I signed the document as a witness to Decedent's signing of the document.
- 7) The person signing the document was known to me to be DOYLE ELTON PIERCE.

FURTHER AFFIANT SAYETH NAUGHT.


 TAMMY YOUNGBLOOD, Affiant
 3 Dinwiddle Drive, Greenville, SC 29617

SWORN to before me this 14 day of December, 2020



 Notary Public for South Carolina



PRISMA HEALTH

Tammy G Youngblood
3 Dinwiddle Dr
Greenville SC 29617-1012

Date of Birth: **7/9/1963**
Today's Date: **9/28/2021**

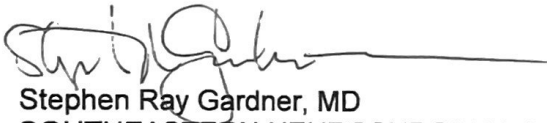
To Whom it May Concern:

Tammy G Youngblood was seen in my clinic on 9/15/2021. The above named patient has been under my care for the last 16 years. Despite a history of prior brain surgery, she has maintained her cognitive ability. She is able to manage her life and finances. I understand that she has been perceived to have memory deficits. However, over my entire care of her I have noted her memory to be intact and adequate to maintain a normal life.

In my professional opinion, she shows no significant deficits of memory, cognitive ability, or judgement that would prevent her from serving as a witness for legal proceedings.

If you have any questions or concerns, please don't hesitate to call.

Sincerely,



Stephen Ray Gardner, MD
SOUTHEASTERN NEUROSURGICAL AND SPINE INSTITUTE
109 DOCTORS DRIVE
GREENVILLE SC 29605-5608
864-797-7150

CC: No Recipients

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE MATTER OF:
DOYLE ELTON PIERCE,
Decedent.

}
}
}
}
}
}

IN PROBATE COURT

Affidavit of Interested Party

CASE #: 2020ES3700532

OCONEE PROBATE
DEC 7 PM 3:00

PERSONALLY APPEARED BEFORE ME, the undersigned Notary, DEANA WALKER, who being duly sworn deposes and says:

I am Deana Walker, a resident of Greenville, South Carolina, and know both Decedent, DOYLE ELTON PIERCE, and his spouse, DOROTHY PIERCE, through my mother.

My Address: 87B Montague Road, Greenville, SC 29617

I hereby state under penalty of perjury, that the following events that occurred were personally witnessed by me:

- 1) On or about July 7, 2020, Tammy Youngblood, my mother, phoned me to ask if I would be a second witness to Decedent's signing of his Last Will and Testament. I agreed to do so.
- 2) On or about 5pm on July 7, 2020, Decedent and his wife, DOROTHY PIERCE, met my mother, TAMMY YOUNGBLOOD, and me in a church parking lot in Six Mile, South Carolina.
- 3) Decedent briefly explained what was in the document he was signing.
- 4) I was personally present on July 7, 2020, to witness Decedent, DOYLE ELTON PIERCE, sign his Last Will and Testament.
- 5) I personally witnessed Decedent sign his Last Will and Testament.
- 6) I signed the document as a witness to Decedent's signing of the document.
- 7) The person signing the document was known to me to be DOYLE ELTON PIERCE.

FURTHER AFFIANT SAYETH NAUGHT.

Deana Walker

DEANA WALKER, Affiant
87B Montague Rd, Greenville, SC 29617

SWORN to before me this 7th day of December, 2020

[Signature]
Notary Public for South Carolina



Monday, Jul 6, 2020



Tammy

I called to tell you she said we can come today after she gets off work. Is that o.k. Love you

10:38 AM

Dorothy Pierce

That will be okay

10:38 AM



Dorothy Pierce

What time does she get off work?

10:38 AM



Tammy

I'll call you, she gets off work at three.

10:40 AM

Dorothy Pierce

Okay

10:40 AM



Dorothy Pierce

Call me

10:40 AM



Dorothy Pierce

Tammy

12:42 PM



Dorothy Pierce

Power is off at our house, Doyle just called his doctor and they made an appointment at 3:20pm. I needed to print one last paperwork he asked me to print so you can sign together but power is gone

12:43 PM



Tammy

Do you won't us to come it will be about five

12:50 PM



Tammy

Just let me know if your power come back on I'll call Deana and see what day she can come. Love y'all, I hope Doyle good visit.

1:46 PM

Dorothy Pierce

It hasn't come back

1:47 PM



Dorothy Pierce

They arw fixing it i guess

1:48 PM



Tammy

Ok,

1:48 PM

Tuesday, Jul 7, 2020



Tammy

Where are we meeting at today ?

2:11 PM

Dorothy Pierce

708 Mourning Dove Lane
Seneca SC, 29678

2:30 PM



Dorothy Pierce

5:30 is best.

3:26 PM



Tammy

It probably be 6 are a little bit after.

3:29 PM



Tammy

She gets off at five

3:30 PM

Dorothy Pierce

Oh that's even better

3:30 PM



Dorothy Pierce

Doyle got out of the house to meet you somewhere in the middle. I can't stop him

6:12 PM



Tammy

We are on 273

6:13 PM



Tammy

We are now on 183

6:14 PM

Dorothy Pierce

Got it headed there now

6:19 PM

