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Feb 22 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Orangeburg County
Judge James B. Jackson, Jr., Master in Equity

Appellate Case No. 2021-000787

Lyle Wilson Fairey, Jr.,

Appellant.

v.

Joy A. Gillespie, as Personal Representative of the
Estate of Martha Ann Fairey Gillespie,

Respondent,

RECORD ON APPEAL

Russell A. Blanchard IV, SC Bar No. 76369
Williams & Williams
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Orangeburg, SC 29116
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Attorneys for Appellant

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Attorneys for Respondent

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The undersigned hereby certifies the Record on Appeal contains all materials proposed to be included by any of the parties and no other material.

February 17, 2022

Orangeburg, SC

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Feb 22 2022
SC Court of Appeals

s/Russell A. Blanchard IV

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Attorneys for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE PROBATE COURT
Case Number: 2015ES3800105

IN THE MATTER OF:

The Estate of Martha Ann Fairey Gillespie,
Decedent,

L. Wilson Fairey,

Petitioner,

vs.

ORDER

Joy A. Gillespie,

Respondent.

The above referenced matter came before me on February 4, 2016 for a hearing on the Petitioner's Petition for Removal of Personal Representative and Petition for Successor Personal Representative. Present at the hearing were: Petitioner, L. Wilson Fairey, and his attorney, Martin R. Banks, Esquire; the Respondent, Joy A. Gillespie, and her attorney, Robert F. McCurry, Jr., Esquire; and Linda Chavis, mother of the Respondent. After oral arguments and the testimony presented, the Court finds and concludes as follows:

1. That the property referenced in Schedule A of the Inventory and Appraisement number 1, TMS No.: 0214-00-04-002.000 being a home and improvements located at 116 Rickenbaker Road, should be deleted from the Inventory and Appraisement, and an Amended Inventory and Appraisement should be filed deleting same inasmuch as the decedent, Martha Ann Fairey Gillespie, owned only a life estate interest in said property. It is not an estate asset.
2. That the Third Item of the Last Will and Testament of Catherine Inabinet Fairey indicates that the property referenced as Number 2 under Schedule A of the Inventory and Appraisement of the Estate of Martha Ann Fairey Gillespie was owned in fee simple by Martha Ann Fairey Gillespie

ATTEST: TRUE COPY
Winnifred B. Claiborne
CLERK OF COURT
ORANGEBURG COUNTY

at the time of her death. Therefore, TMS No.: 0214-00-04-001.000 being a home and acreage located at 1014 Till Road is an estate asset and shall remain on the Inventory and Appraisement.

3. That there was no intentional malfeasance or misrepresentation or wrongdoing on the part of Joy A. Gillespie, Personal Representative of the Estate of Martha Ann Fairey Gillespie, and that she shall remain in her position as Personal Representative.

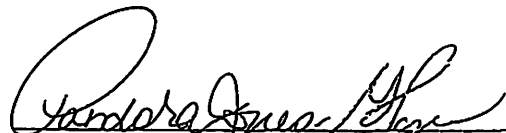
4. That the Petition of the Petitioner, L. Wilson Fairey, is denied.

5. That the Temporary Order of Restraint against Joy A. Gillespie, Personal Representative, filed August 14, 2015 is cancelled, lifted and terminated.

AND IT IS SO ORDERED.

Dated: February 26, 2016

Orangeburg, South Carolina


Pandora Jones-Glover, Probate Judge
Orangeburg County

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE MATTER OF:

MARTHA A. F. GILLESPIE

CASE NO: 2015ES3800105

IN THE PROBATE COURT

ORDER DENYING
MOTION TO RECONSIDER

2016 APR 22 PM 3:37

On March 7, 2016 a Motion to Reconsider was filed in the above matter by L. Wilson Fairey. He requests that the Court reconsider its decision in an order dated February 26, 2016 that the property of the decedent located at 1014 Till Rd. is an asset of the estate and should be included in the Inventory/ Appraisalment.

Upon review of the pertinent documentation in this matter, the Court believes that the language of the will is clear in indicating the disposition of the property in question, that there is no new relevant information to consider, and that the order issued by this Court on February 26, 2016 is correct.

IT IS THEREFORE ORDERED that the Motion to Reconsider filed by L. Wilson Fairey in this matter is HEREBY DENIED.

April
Date: ~~March~~ 11, 2016

Pandora Jones Glover

Pandora Jones-Glover,
Probate Judge for Orangeburg County

ATTEST: TRUE COPY
Winnifred B. ...
CLERK OF COURT
ORANGEBURG COUNTY, SC

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT

Judge Pandora Jones-Glover, Orangeburg County

Case No. 2016-CP-38-00460
Probate Court No. 2015-ES-38-00105

Lyle Wilson Fairey, Jr.

Appellant,

v.

Joy A. Gillespie, as Personal Representative
of the Estate of Martha Ann Fairey Gillespie,

Respondent.

DENIED

Russell A. Blanchard, IV, of Williams & Williams
of Orangeburg, South Carolina, for Appellant.

Robert F. McCurry, Jr., of Horger, Barnwell & Reid, LLP
of Orangeburg, South Carolina, for Respondent.

This is an appeal from the decision of the Probate Judge of Orangeburg County dated February 26, 2016. The Appellant filed a Motion to Reconsider which was also heard by the Probate Judge of Orangeburg County and denied on April 11, 2016. This Appeal followed. It was heard by me on July 31, 2019.

At issue is the ownership of a 9.7 acre tract of land on Till Road in Orangeburg County. The Appellant claims it is his, while the Respondent claims it was owned by Martha Ann Fairey Gillespie, decedent, at the time of her death. I agree that the property was owned in fee simple by Martha Ann Fairey Gillespie at the time of her death and became part of her estate. The appeal of Appellant is denied.

FACTS OF THE CASE

Catharine Inabinet Fairey died testate on July 21, 2003 and her estate was probated in the Orangeburg County Probate Court in File No. 2003-ES-38-00416. At the time she created her Will, she owned four tracts of land which had been surveyed and platted. Two tracts were devised in fee simple to her son, the Appellant, and two tracts were to be devised to her daughter, Martha Ann Fairey Gillespie, with certain conditions. One of those two tracts was later conveyed to Martha during the life of Catharine and the 9.7 acre tract remained in Catharine's name until her death.

Item Third of the Last Will and Testament of Catharine Inabinet Fairey is that item that speaks to the 9.7 acre tract, and it states as follows:

THIRD: I give and devise unto my daughter, Martha Ann Fairey Gillespie, subject to the following conditions, for and during the term of her natural life and after her death to my grandson, Mark Allen Gillespie, if he shall survive her, the real estate described below. If my said daughter shall die and at the time of her death be married to Henry L. Gillespie and not survived by Mark Allen Gillespie, I give and devise said real estate unto my son, Lyle Wilson Fairey, Jr. If during my daughter's lifetime she shall become the widow of Henry L. Gillespie, then I direct that this gift of real estate to my said daughter shall be in fee simple. ...

Upon the death of Martha Ann Fairey Gillespie, probated in File No. 2015-ES-38-00105, Appellant claimed ownership of the subject tract.

ANALYSIS

This Third Item of Catharine's Last Will and Testament has several conditions, only one of which is applicable in this case. The first condition in the first sentence indicates that if Martha's son Mark survives Martha, then Mark is the remainderman. This condition did not occur because Mark predeceased Martha.

The next condition is in the second sentence. It states that at the time of Martha's death, if she is married to Henry and is not survived by Mark, then the remainder interest goes to Appellant. This condition also did not occur because Henry Gillespie, Martha's husband, died prior to Martha. This condition also fails.

The third condition in the third sentence does apply and controls this case. It states that if during Martha's lifetime she becomes the widow of Henry L. Gillespie, then the real estate devise to Martha becomes fee simple. Because Henry died during Martha's life, she became his widow, this condition did occur and it is determinative – the 9.7 acre tract of the real estate from Catharine became owned by Martha in fee simple.

Appellant argues that, based upon language in deed of distribution from Catharine's estate, the Appellant should have become the remainderman upon the death of Martha. In the instant case, the language in the deed of distribution is clearly different from the language in the Last Will and Testament of Catharine Inabinet Fairey, and some language from the Will is missing. Therefore, because title to real estate is devised pursuant to the language in the Will, there can be no reliance upon the language in a deed of distribution unless its language mirrors that of the language in the Will. Clearly here, the Deed of Distribution is deficient and improper, and does not control the title to the real estate. Title is controlled by the language in the Will.

Appellant also argues that Martha, upon the death of her husband Henry, had some duty to file documentation to confirm that her devise became fee simple. Martha however, had no duty to perform any act to further establish the title granted to her in the Last Will and Testament.

It is also noteworthy that the subject Deed of Distribution of the estate of Catharine was prepared under the direction of the Appellant, who was the Personal Representative of Catharine's estate. Any errors made in the Deed of Distribution while under the direction of the Appellant cannot inure to the benefit of the Appellant, and he is estopped from any claim that he should benefit from said errors.

CONCLUSION

For the foregoing reasons, I hold that the Order of the Probate Court, both initially and in the Probate Court's denial of Appellant's Motion for Reconsideration was proper. Accordingly, the appeal of the Appellant is DENIED.

AND IT IS SO ORDERED.

James B. Jackson, Jr.
Special Circuit Court Judge
of the First Judicial Circuit



Orangeburg Common Pleas

Case Caption: Lyle Wilson Fairey Jr VS Martha A. F Gillespie

Case Number: 2016CP3800460

Type: Order/Other

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2020-02-19 13:57:34 page 4 of 4

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP3800460

Lyle Wilson Fairey, Jr
PLAINTIFF(S)

Martha A. F Gillespie
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

The Court has considered the matters raised in the Motion to Reconsider filed on March 02, 2020 ; however, the Court has determined that all these matters were properly resolved in the previous Order issued in this case on February 19, 2020. Therefore, the Motion to Reconsider is denied.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 06/28/2021 .

Joy A Gillespie
Lyle Wilson Fairey, Jr for Lyle Wilson Fairey, Jr
Lyle Wilson Fairey, Jr for Lyle Wilson Fairey, Jr

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Orangeburg Common Pleas

Case Caption: Lyle Wilson Fairey Jr VS Martha A. F Gillespie

Case Number: 2016CP3800460

Type: Order/Electronic Form 4

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2021-06-28 14:37:56 page 3 of 3

STATE OF SOUTH CAROLINA

IN PROBATE COURT

COUNTY OF Orangeburg

IN THE MATTER OF:

Martha Ann Fairley Gillespie

(Decedent)

CASE NUMBER: 2015ES3800/05

*** Amended ***

*COMPLETE THIS SECTION ONLY IF FILING PETITION FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT

* _____
Petitioner(s)
vs.
* _____
Respondent(s)

APPLICATION FOR INFORMAL

(check any that apply)

☒ PROBATE OF WILL

☐ APPOINTMENT

*PETITION FOR FORMAL

☐ TESTACY

☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to SC Rules of Civil Procedure.

*NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00. A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

If not a formal filing, please indicate N/A. N/A

Name: Joy A. Gillespie

Address: 125 Ridgehill Dr., Lexington, SC 29073

Phone Number: 803-391-6802

2. Decedent Information:

Full Legal Name
(including all known names):

Martha Ann Fairley Gillespie

Date of Birth:

April 25, 1951

Date of Death:

January 13, 2015

Age at date of death:

63

3. Venue for this proceeding is proper in this County because:

☒ Decedent was domiciled in this County at date of death:

Address: 116 Ridenbaker Rd; County: Orangeburg; State: South Carolina.

☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death:

Address: _____; County: _____; State: South Carolina

☐ Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address of the Decedent prior to entering the facility: _____

***Amended ***

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
H.L. Gillespie	1942	Deceased	husband
Mark A. Gillespie	1975	Deceased	Son

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Preston M. Gillespie	2006	125 Ridgehill Drive Lexington, SC 29073	grandson

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☐ YES ☒ NO If no, please explain on page 3.

5. Did Decedent have any change of marital status or the birth or adoption of any children after execution of this Will, if one exists, or has any child of the Decedent been born since his/her death, or is any birth of a child of the Decedent anticipated? (This includes illegitimate children.)

☒ NO ☐ YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the Decedent a patient in a non-private State of South Carolina mental health facility during his/her lifetime?

☒ NO ☐ YES If yes, please explain, on page 3.

7. Has a Guardian or Conservator ever been appointed by the Court for this person?

☒ NO ☐ YES If yes, please explain on page 3.

8. Has a Personal Representative of the Decedent been appointed prior to this date by a Court in this State or elsewhere?

☐ NO ☒ YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any Demands for Notice (FORM 111ES) of any probate or appointment proceeding concerning the Decedent that may have been filed in this state or elsewhere?

☒ NO ☐ YES If yes, please state details, including names and addresses on page 3

10. Have more than ten (10) years passed since the Decedent's death?

☒ NO ☐ YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The Decedent died with probate personal property having an approximate value of \$ 90,000 and/or probate real estate having an approximate value of \$ 60,000. (Note: A complete inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

12. After the exercise of reasonable diligence, are you aware of any unrevoked Will and/or Codicil(s), other than the one(s) attached hereto, relating to property in this State?

☒ NO ☐ YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the Decedent's Will:

- ☐ The original is attached.
☒ The original is in the Court's possession.
☐ An exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (authenticated) copy of a Will not probated in another jurisdiction is attached.
☐ The Will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached.

2. The execution date of the Will was: October 24, 2003
Codicil(s): _____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

☒ NO ☐ YES If yes, please explain on page 3.

COMPLETE EXPLANATION(S) FOR QUESTIONS IN SECTIONS I and II HERE.
(If more space is required, use additional sheets.)

- Personal Representative appointment of Jay A. Gillespie by Orangeburg County Probate Court February 19, 2015.
- H.L. Gillespie + Mark A. Gillespie predeceased Martha Ann Gillespie, July 12, 2012 + December 20, 2014, respectively.

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

Joy A. Gillespie
125 Ridgeway Drive, Lexington, SC 29013

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) is:

- ☐ named as Primary Personal Representative in Will
☐ named as Alternate Personal Representative in Will
☐ nominee of above Primary Personal Representative in Will
☐ nominee of above Alternate Personal Representative in Will
☐ surviving spouse of Decedent who is devisee of Decedent or nominee of said spouse
☐ other devisee of Decedent (describe): _____ or nominee of said devisee
☐ surviving spouse of Decedent or nominee of said spouse
☐ other heir of Decedent (describe): _____
☐ creditor (forty-five (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
☒ other (describe): Mother & Guardian of minor surviving heir

3. List below the names of any other persons, if any, having an equal or higher priority of appointment than the proposed Personal Representative:

Joy A. Gillespie

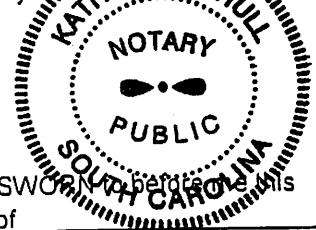
IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 23rd day
of March, 2015

Katherine L. Hull
Notary Public for South Carolina
My Commission Expires 7/27/20



SWORN to before me this _____ day
of _____, 20____

Notary Public for South Carolina
My Commission Expires: _____

Signature of
Applicant/Petitioner: Joy A. Gillespie
Print Full Name: Joy A. Gillespie
Address: 125 Ridgeway Dr.
Lexington, SC 29013
Telephone (work): 803-777-5999

(Home): _____
(Cell): 803-391-6862
Email: joyg@sc.edu

Relationship to Decedent/Estate: Mother of only minor surviving heir

Signature of Co-
Applicant/Co-Petitioner: _____
Print Full Name: _____
Address: _____

Telephone (work): _____
(Home): _____
(Cell): _____
Email: _____

Relationship to Decedent/Estate: _____

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: Joy A. Gillespie
Print Full Name: Joy A. Gillespie
Address: 125 Kedgehill Dr.
Lexington, SC 29073
Telephone (Work): 853 - 777 - 5999
(Home): _____
(Cell): 853 - 391 - 6882
Email: joyg@sc.edu

Signature: _____
Print Full Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____
Telephone: _____
Email: _____

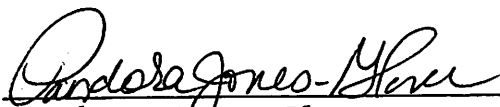
FOR PROBATE USE ONLY BEYOND THIS POINT.

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a Will executed October 24, 2003

be informally ☒ GRANTED ☐ DENIED.

Executed this 13th day of Apr, 2015.


Pandora Jones-Glover

, Probate Court Judge

☐ For formal probate of Will, see separate order executed _____.

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

- | | |
|---|---------------------------------------|
| ☐ Fiduciary Bond in the amount of \$ _____ | <u>Notice to Creditors</u> |
| ☐ Bond waived by Will or Personal Representative nominated by Will | ☐ Required |
| ☐ Bond waived by Will or Personal Representative nominated by Will | ☐ Not Required |
| ☐ Bond not required as Personal Representative is sole heir or sole devisee | |
| ☐ Bond not required as Personal Representative is state agency, bank, or trust company | |
| ☐ Bond waivers filed | |
| ☐ See order dated _____ | |
| ☐ Other: _____ | |

Executed this _____ day of _____, 2015.

Pandora Jones-Glover

, Probate Court Judge

☐ For formal appointment of Personal Representative, see separate order executed _____.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF: ORANGEBURG

INVENTORY AND APPRAISEMENT: PROBATE PROPERTY

ORIGINAL

X SUPPLEMENTARY, AMENDED OR CORRECTED #1

(must restate the unchanged information from the original inventory)

IN THE MATTER OF:

ESTATE OF MARTHA ANN GILLESPIE

CASE NUMBER: 2015ES3800105

(Decedent)

File the original Inventory and Appraisal with the Probate Court within ninety (90) days following the fiduciary appointment. A copy shall be sent to each interested person who has demanded it. A Proof of Delivery must be filed with the Court. The gross fair market value of all probate assets, regardless of location (whether in this state or elsewhere), should be listed as of the date of death. Continue on additional sheets if necessary. A Supplementary, Amended, or Corrected Inventory should be utilized for correcting, adjusting or adding to an original inventory, and *must restate the unchanged information from the original inventory*. A qualified and disinterested appraiser may be employed to ascertain the value of any asset. If an appraiser is employed, his/her name and address must be indicated with the item or items he/she appraised.

RECAPITULATION

Schedule A - Real Estate.....	\$ 110,000.00
Schedule B - Stocks and Bonds	\$ -0-
Schedule C - Notes Due Decedent and Cash.....	\$ 94,753.00
Schedule D - Insurance on Decedent's Life - Payable to the Estate.....	\$ 33,101.00
Schedule E - Jointly Owned Property	NA
Schedule F - Other Miscellaneous Assets.....	\$ 47,800.00
Schedule G - Transfers During Decedent's Life Payable to the Estate	\$ -0-
Schedule H - Powers of Appointment Payable to the Estate	\$ -0-
Schedule I - Annuities and Retirement Accounts Payable to the Estate	\$ 3,600.00
TOTAL GROSS VALUE OF PROBATE ESTATE	\$ 289,254.00

The undersigned, being sworn, states: That the following schedules contain a complete and accurate inventory and appraisal of all probate real and personal property of this estate so far as the undersigned is informed; that he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 4 day of February 2016

Notary Public for South Carolina
My Commission Expires: 3-13-2025

Personal Representative

Signature: *Joy A. Gillespie*

Print Name: Joy A. Gillespie

Address: 125 Ridgehill Drive

Lexington, SC 29073

Telephone (Work):

(Home):

(Cell): 803-391-6802

(Email):

Co-Personal Representative

Signature

Name:

Address:

Telephone (Work):

(Home):

(Cell):

(Email):

Attorney: Robert F. McCurry, Jr.

Address: P O Drawer 329

Orangeburg, SC 29116

Telephone: 803-531-3000

Email:

(If none, so state)

A. REAL ESTATE in Decedent's name as owner or tenants in common (not as joint with right of survivorship). Describe each property by listing its full address, tax map number, deed book and page and description consistently (house, lot, buildings, acreage). Also list oil / mineral rights and time shares, if it is real property. If the property is encumbered, list the full fair market value of the property here and the encumbrance on Encumbrance section below	% Owned by Decedent	Fair Market Value of Decedent's Interest
1. 116 Rickenbaker Rd.; TMS #0214-00-04-002.000; 5.93 acre tract (mobile home site)	100%	30,000.00
2. 1014 Till Rd.; TMS #0214-00-04-001.000; House and 9.73 acres	100%	80,000.00
B. STOCKS, BONDS in Decedent's name alone or tenants in common (not as joint with right of survivorship). List each type of security and number of shares.		
1. NONE		-0-
2.		
3.		
C. CASH, BANK ACCOUNTS, NOTES RECEIVABLES in Decedent's name alone or as tenants in common. List each separate account type and institution and the last two digits of each account. List all bank accounts owned by Decedent alone or as tenants in common (checking, savings, CDs, money market, brokerage, employment bonus, cash award, final paycheck etc.), cash on hand, notes payable to Decedent, and survival action proceeds.		
1. CD - BB&T - 51	100%	51.00
2. Checking - BB&T - 28	100%	11,792.00
3. Checking - BB&T - 01	100%	2,160.00
4. Savings - BB&T - 43	100%	80,750.00
D. LIFE INSURANCE payable to the Decedent's estate.		
1. Lincoln Heritage		8,059.00
2. Lincoln National		25,042.00
E. JOINTLY OWNED PROPERTY - REPORTING IS NOT REQUIRED		N/A
F. ALL OTHER MISCELLANEOUS PERSONAL PROPERTY in Decedent's name alone or as tenants in common. List below any tangible personal property, including household goods & furnishings, vehicles, boats/motors/trailers, mobile homes that are not de-titled, airplanes, equipment, interest in a partnership or unincorporated business, articles or collections having either artistic or intrinsic value, including coins, guns, artwork, jewelry, etc., and any other miscellaneous probate items not listed elsewhere, including any digital assets		
1. 2004 Buick	100%	2,800.00
2. 2005 Chevrolet Truck	100%	14,000.00
3. 1979 Chevrolet	100%	1,000.00
4. 2004 Kubota Tractor	100%	10,000.00
5. 1988 Fleetwood Double Wide Mobile Home	100%	20,000.00
G. TRANSFERS DURING DECEDENT'S LIFE PAYABLE TO ESTATE ONLY Any transfers intended to take effect at death if payable to the Estate shall be reported. A trust created by Decedent in which income for life was retained by the Decedent, power to revoke or other incidents of ownership retained by the Decedent, lifetime transfers of real property in which Decedent retained life estate, etc.		
1. NONE		-0-
H. POWERS OF APPOINTMENT PAYABLE TO THE ESTATE ONLY List property, both real and personal, over which Decedent possessed a Power of Appointment whether testamentary or otherwise, if such property is payable to the Estate.		
1. NONE		-0-
I. ANNUITIES AND IRA, ETC. PAYABLE TO THE ESTATE ONLY List any annuities or retirement accounts owned by the Decedent and payable to the Estate.		
1. SC Retirement System		3,600.00
2.		
TOTAL PROBATE ESTATE VALUE		\$ 289,254.00
ENCUMBRANCES (e.g., mortgages, liens, judgments, etc., but not general debts of the estate). List debts of the Decedent secured by assets on the above schedule and describe the debt and the specific asset encumbered.		
1. 2005 Chevrolet - Auto Loan		10,757.46
2. 2011 Kawasaki - Recreational Loan		1,169.52
TOTAL ENCUMBRANCES		\$ 11,926.98

STATE OF SOUTH CAROLINA,)

COUNTY OF ORANGEBURG)

2015 AUG 13

2:23

IN THE PROBATE COURT

LYLE WILSON FAIREY)

Petitioner,)

SUMMONS

vs.)

CASE NO.

JOY A. GILLESPIE)

Respondent(s).)

2015 ES 3800 105

TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

ORANGEBURG,
, South Carolina

L Wilson Fairey
Petitioner/Attorney for Petitioner

Dated:

7-31-2015

Address:

1211 PENINSULA DR
PROSPERITY, SC 29127

STATE OF SOUTH CAROLINA)
COUNTY OF: ORANGEBURG)
IN THE MATTER OF:)
MARTHA ANN FAIREY GILLESPIE)
(Decedent))
LYLE WILSON FAIREY JR.)
Petitioner(s)

IN THE PROBATE COURT

CASE NUMBER: 2015 ES 3800

2015/08/13 PM 2:23

vs.
JOY A GILLESPIE
Respondent(s)

*PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE

I request an Order for the removal of JOY A. GILLESPIE, Personal
Representative in the estate, because (check all that apply):

☐ The Personal Representative intentionally misrepresented material facts on the Application or Petition leading to
his/her appointment. Additional Information:

☐ The Personal Representative disregarded a Court order. Additional information: _____

☐ The Personal Representative has become incapable of carrying out his/her assigned duties. Additional information:

☒ The Personal Representative has mismanaged the estate. Additional information: OVERVALUED ESTATE
ON INVENTORY FORM.

☒ The Personal Representative failed to perform a required duty. Additional information: FAILED TO CONFORM TO
LRP WHEN COMPLETING
ESTATE DOCUMENTS.

☒ Removal is in the best interests of the estate because: ERRORS NEEDED TO BE CORRECTED
AND PREVENTED.

(Attach additional sheets if necessary.)

Executed this 13th day of August, 2015

Signature: L Wilson Faires Jr

Print Name: L WILSON FAIREY JR

Address: 1211 PENINSULA DR

PROSPERITY, SC 29127

Telephone (Work): _____

(Home): _____

(Cell): 803-463-5061

Email: _____

Relationship to Decedent/Estate: BROTHER

Attorney: _____

Address: _____

Telephone: _____

Email: _____

*NOTE: THIS IS A FORMAL PROCEEDING. IN ADDITION TO A PETITION, YOU MUST ALSO FILE
A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.

This concerns the open estate of my sister, Martha Ann Gillespie. She died Jan 13, 2015. Her son Mark Allen, died unexpectedly Dec 20, 2014. Mark's estate is not open.

I have copies of both deeds to real estate listed in her inventory form #350ES SF, para A. She had life estates in these parcels. She lost ownership to the remainders when she died.

The PR did not conform to the law, UPC 62-2-805, etc. when completing her inventory form. The form states above para A that property owned by the decedent with right of survivorship shall not be listed in Para A.

Incorrectly listing these parcels, 1014 Till Rd-book1078 page315 and 116 Rickenbaker Rd-book412 page35, overvalues the estate by 90,000, which could divert a handling fee of 5% from the heir.

The PR has said they can sell properties out of the estate to me or others. Martha's estate cannot sell real estate it doesn't own. This is a misrepresentation of the estate.

116 Rickenbaker Rd went to Mark on Martha's death. His estate should have been opened by now to dispose that property to his heir.

1014 Till Rd went to me on Martha's death because Mark was gone. I filed the death certificates on May 15. The PR of Martha's estate is attempting possession by insisting on the keys. The PR also intends to remove furniture from the front bedroom. 1014 Till Rd is not in the estate so this is improper.

Martha's will directs that her debts be paid as soon as possible. The funeral service has not been paid yet but there are ample funds to pay. Late fees of \$500 have been added to the funeral bill. With this the PR is not following the will or preserving the estate.

I respectfully ask the court to appoint me PR of Mark's estate.

I respectfully also ask the court to remove the PR from Martha's estate and appoint me so I can correct the errors in the inventory and correctly dispose of the assets.

Martha had 23 days to appoint another PR after Mark's death. She was trying hard to survive and didn't get it done. She was hospitalized when he died and was hospitalized again when she died of heart failure.

I am qualified because I settled Mother's estate and signed the contract for Martha's funeral. Also the PR in the will is not alive.

2015 MAR 13 PM 2:33

Martha's will was old. It left all to husband Henry, who died in Jul 2012 or son Mark. Also Martha had been ill for years. She retired from nursing about 25 years ago. Her stomach was removed by a series of surgeries over 20 years.

She tube fed thru an incision in her abdomen over 5 to 10 years and when the incision became infected she intravenously fed for years up to her death. That required a lot of extra care and cleaning. She could drink some but eat little. She had a battery powered nutrient pump she carried. She also developed COPD. She had many stays in the Medical University and Orangeburg Hospitals.

She was determined to keep going and her son Mark moved in with her. She also asked a close friend Betty Ulmer to stay with her during the day. She had been in the hospital for a week when Mark died on Dec 20. She also fought a yeast infection in her eyes.

The point of all this is that she assumed Mark would outlive her and was trying so hard to just survive she couldn't plan for anything else. Between Dec 20 and Jan 13 she didn't choose a PR because she was trying to adjust and survive. She came to her son's funeral in a wheel chair with oxygen.

The court appointed PR is Martha's ex daughter in law, guardian of Mark's 10 year old son, Preston. There were only a couple of meetings between Preston and Martha in the 7 years since the divorce. The PR introduced Preston to Martha at Mark's funeral. He did not know Martha but they only live 30 minutes away.

Betty said Martha talked with her about her affairs and wishes after Mark died and that Martha called her attorney but they never met to change the will. Please call Betty Ulmer at 536-1962 if you need more information about Martha's wishes or condition.

Respectfully, Lyle Wilson Fairey Jr

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

IN THE PROBATE COURT

2015 OCT -2 PM 1:07

Case Number: 2015ES3800105

IN THE MATTER OF:

The Estate of Martha Ann Fairey Gillespie,
Decedent

L. Wilson Fairey,

Petitioner,

vs.

Joy A. Gillespie,

Respondent.

RESPONSE TO PETITIONER'S
PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE
AND PETITION FOR SUCCESSOR
PERSONAL REPRESENTATIVE

The Respondent herein, reserving her rights under any motions filed or to be filed, answering the Petition for Removal of Personal Representative and Petition for Successor Personal Representative of the Petitioner, would respectfully allege unto this Honorable Court as follows:

RESPONSE TO PETITION FOR REMOVAL OF
PERSONAL REPRESENTATIVE

1. The Respondent denies all allegations not herein specifically admitted, controverted, modified or denied.
2. Answering the first item checked, the Respondent denies that items are overvalued on the Inventory and Appraisement form.
3. Answering the second item checked, the Respondent denies that she failed to conform to the law when completing the estate documents.
4. Answering the third item checked, the Respondent denies that errors need to be corrected and prevented.
5. Further, answering the Petition, the Respondent would allege that the initial Inventory and Appraisement filed May 15, 2015 was filed in order to comply with timing requirements and the Petitioner was aware that an appraisal was to be performed. An appraisal of the subject property has been completed by a certified South Carolina General Real Estate Appraiser, which will reflect an increase in the value of the real property assets. Because of the filing of the Temporary Injunction, the Inventory and Appraisement has not been amended to date.

6. An additional sheet was added to the Petition for Removal of Personal Representative with various statements of the Petitioner, opinions of the Petitioner, and Petitioner's interpretation of South Carolina law. In an attempt to answer said allegations, the Respondent would allege that the Decedent's son, Mark Allen Gillespie, died December 20, 2014. Mark Allen Gillespie had various problems of which the Petitioner is well aware and Mark Allen Gillespie died with no assets and he had no estate to Probate. The Decedent, Martha Ann Gillespie, died on or about January 13, 2015. The minor, Preston M. Gillespie, is the only grandchild and sole heir of Decedent, and the Respondent, Joy A. Gillespie, is his mother. All allegations contained therein to the contrary are specifically denied and strict proof is demanded thereof.

RESPONSE TO PETITION FOR SUCCESSOR
PERSONAL REPRESENTATIVE

7. Said document provides the name of the Personal Representative and the Petitioner's status as brother seeking to be appointed as successor Personal Representative and does not allege any facts or complaint and this Respondent is not required to answer same.

WHEREFORE, the Respondent having fully answered the Petitions of the Petitioner, moves to dismiss the Petition for Removal of the Personal Representative and Petition for Successor Personal Representative, with costs to the Petitioner.

HORGER, BARNWELL & REID, LLP

Dated: October 2, 2015

By: _____

Robert F. McCurry, Jr.

Attorneys for the Respondent,

Joy A. Gillespie

P.O. Drawer 329

Orangeburg, SC 29116

(803) 531-3000

CERTIFICATE OF SERVICE BY MAILING
Case Number: 2015ES3800105

I, Sonia L. Hunt, an employee of the firm of Horger, Barnwell & Reid, LLP attorneys for the Respondent, do hereby certify that, on October 2, 2015, I served a copy of the Respondent's Response to Petitioner's Petition for Removal of Personal Representative and Petition for Successor Personal Representative in connection with the above entitled action on the following, by mailing a copy thereof, postage prepaid and properly addressed to as follows:

Mr. L. Wilson Fairey, Jr.
1211 Peninsula Drive
Prosperity, SC 29217

Dated at Orangeburg, South Carolina, this the 2nd day of October, 2015.

HORGER, BARNWELL & REID, L.L.P.

BY: Sonia L. Hunt

Sonia L. Hunt, Paralegal

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT

Judge Pandora Jones-Glover, Orangeburg County

Case No: 2016-CP-38-00460
Probate Case No. 2015-ES-38-00105

Lyle Wilson Fairey, Jr.,

Appellant.

v.

Joy A. Gillespie, as Personal Representative of the
Estate of Martha Ann Fairey Gillespie,

Respondents,

INITIAL BRIEF OF APPELLANT

Russell A. Blanchard IV, SC Bar No. 76369
Williams & Williams
P.O. Box 1084
Orangeburg, SC 29116
803.534.5218
blanchardra@williamsattys.com

Attorney for Appellant

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STATEMENT OF ISSUES ON APPEAL

1. DID THE PROBATE COURT INCORRECTLY RELY ON THE LANGUAGE IN THE WILL INSTEAD OF THE LANGUAGE IN THE DEED OF DISTRIBUTION WHEN DETERMINING WHAT INTEREST MARTHA A. F. GILLESPIE HAD IN THE 9.7 ACRES?
2. DID THE PROBATE COURT HAVE SUBJECT MATTER JURISDICTION TO MODIFY THE DEED OF DISTRIBUTION FILED ON FEBRUARY 4, 2005?
3. DID THE PROBATE COURT ERR IN DETERMINING THAT MARTHA GILLESPIE OWNED A FEE SIMPLE INTEREST IN THE 9.7 ACRES AT ISSUE IN THIS MATTER AT HER DEATH?

STATEMENT OF THE CASE

Catharine Inabinet Fairey died testate on July 31, 2003, and her Estate was filed in the Orangeburg County Probate Court in Case No. 2003-ES-38-00416. At her death, Catharine I. Fairey held fee simple title to a 9.7 acre tract of land in Orangeburg County. A Deed of Distribution was signed on January 21, 2005, and filed on February 4, 2005, in the Orangeburg County office of the Register of Deeds in Deed Book 1078 at page 315. This Deed of Distribution transferred title to the 9.7 acre tract of land to “Martha Ann Fairey Gillespie, for her lifetime; remainder unto Mark Allen Gillespie, if he survives; contingent remainder unto L. Wilson Fairey, Jr.”

Martha Ann Fairey Gillespie, hereinafter Martha, died on January 13, 2015, and her Estate was filed in the Orangeburg County Probate Court in Case No. 2015-ES-38-00105. Her son, Mark Gillespie, died on December 20, 2014. The Inventory and Appraisement for the Estate of Martha was filed on May 18, 2015, and listed the 9.7 acres as an asset of Martha’s Estate. This property is listed as Item 2 in Schedule A and titled “1014 Till Rd; TMS#0214-00-04-001.000; House/Acreage.” Appellant filed a Petition for Removal of Personal Representative in Martha’s Estate on August 13, 2015. A hearing on that Petition was held on February 4, 2016, and the Probate Court issued its decision by Order dated February 26, 2016. Appellant filed a Motion to Reconsider on March 7, 2016, and the Probate Court denied this Motion by Order dated April 11, 2016. Appellant subsequently filed his Notice of Appeal on April 21, 2016.

FACTS

Catharine Inabinet Fairey died testate on July 31, 2003, and at her death she held fee simple title to the real property described as follows:

All that certain piece, parcel, or tract of land, with any improvements thereon, containing 9.73 Acres, situate, lying, and being in Orange Township, Orangeburg County, South Carolina, being more specifically shown and delineated as Tract B on a Plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the Office of the Clerk of Court for Orangeburg County in Plat Book 52, at page 124.

Catharine I. Fairey's Estate was probated in the Orangeburg county Probate Court in Case No. 2003-ES-38-00416. A Last Will and Testament dated March 31, 1992, was admitted to Probate, and Appellant Lyle Wilson Fairey, Jr., was appointed as the Personal Representative pursuant to the Will. In her Last Will and Testament dated March 31, 1992, Catharine I. Fairey devises her interest in the 9.7 acre tract in Item Three as follows:

I give and devise unto my daughter, Martha Ann Fairey Gillespie, subject to the following conditions, for and during the term of her natural life and after her death to my grandson, Mark Allen Gillespie, if he shall survive her, the real estate described below. If my said daughter shall die and at the time of her death be married to Henry L. Gillespie and not survived by Mark Allen Gillespie, I give and devise said real estate unto my son, Lyle Wilson Fairey, Jr. If during my daughter's lifetime she shall become the widow of Henry L. Gillespie, then I direct that this gift of real estate to my said daughter shall be in fee simple.

The Last Will and Testament then goes on to grant Appellant a First right of Refusal and specifically describe the 9.73 acres at issue along with a 42.7 acre tract of land. The 42.7 acre tract was transferred by Catharine prior to her death. A Deed of Distribution was filed on February 4, 2005, conveying Catharine I Fairey's interest in the 9.7 acres to "Martha Ann Fairey

Gillespie, for her lifetime; remainder unto Mark Allen Gillespie, if he survives; contingent remainder unto L. Wilson Fairey, Jr.” The Deed of Distribution was filed with the Orangeburg County Register of Deeds in Deed Book 1078 at page 315. The Deed was prepared by the Dooley Law Firm.

Martha took possession of the property as the life tenant, and maintained possession until her death on January 13, 2015. Martha was predeceased by her husband Henry in 2012, and her son Mark in 2014. No action was taken by Martha during her lifetime to modify the Deed of Distribution.

On February 19, 2015, Joy A. Gillespie was appointed as the Personal Representative of the Estate of Martha A. F. Gillespie. The Inventory and Appraisement filed by the Personal Representative shows the 9.7 Acre tract of land as an asset of the Estate of Martha and shows that Martha had a 100% ownership interest in the real property. At the time the Inventory and Appraisement was prepared and filed, Respondent was not represented by an attorney. Appellant filed his Petition for Removal of Personal Representative in part to challenge the inclusion of the 9.7 acre tract in the Estate of Martha. When Appellant filed the Petition for Removal, he was unrepresented, but he subsequently retained Martin R. Banks to represent him.

The Appellant and Respondent appeared with their attorneys for a hearing on February 4, 2016, at the Orangeburg County Probate Court. At the hearing, both attorneys made arguments regarding the status of Martha A. F. Gillespie’s ownership of the 9.7 acres of land at her death. After hearing the parties’ agreements and reviewing the language in the Last Will and Testament, the Probate Court determined that the 9.7 acre tract of land “was owned in fee simple by Martha Ann Fairey Gillespie at the time of her death” and therefore was an asset to be included in her Estate.

Appellant filed a Motion to Reconsider on March 7, 2016. The Probate Court denied the relief requested in the Motion without a hearing as stated in the Order Denying Motion to Reconsider dated April 11, 2016. In this Order, the Court indicates that it relied on the language of the Will in making its decision regarding the ownership of the 9.7 acre tract of land.

This appeal followed.

ARGUMENT

Standard of Review

On appeal from a final order of the Probate Court, the Circuit Court must apply the same standard of review that an appellate court would apply on appeal. *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). “The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity.” *In re Estate of Hyman*. 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). “If the proceeding in the probate court is in the nature of an action at law, the circuit court ... may not disturb the probate [court]’s findings of fact unless a review of the record discloses there is no evidence to support them.” *In re Estate of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999). “In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial [court].” *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997). If probate proceedings are equitable in nature, then the circuit court on appeal may make factual findings according to its own view of the preponderance of the evidence. *Howard*, 315 S.C. at 361-62, 434 S.E.2d 254, 257-58.

I. THE PROBATE COURT INCORRECTLY RELIED ON THE LANGUAGE IN THE WILL INSTEAD OF THE LANGUAGE IN THE DEED OF DISTRIBUTION WHEN DETERMINING WHAT INTEREST MARTHA A. F. GILLESPIE HAD IN THE 9.7 ACRES.

In reaching its decision on the ownership of the 9.7 acres at issue in this matter, the Probate Court incorrectly looked to the language of the Last Will and Testament of Catharine instead of focusing solely on the language contained in the Deed of Distribution. Because the Deed of Distribution was filed and the Estate of Catharine was closed, the Deed of Distribution operates as proof of ownership to “the distributee, and his purchasers or encumbrancers.” S.C. Code Ann. §62-3-907; see also §62-3-908. There is no requirement that a future purchaser for

value review the decedent's Last Will and Testament to verify that the language in the Deed of Distribution complies with the Last Will and Testament.

The language in the granting clause and habendum clause of the Deed of Distribution is clear and unambiguous, and a court interpreting the deed would be restricted to the language contained solely in the deed itself. "When a deed is unambiguous, any attempt to determine the grantor's intent . . . must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper." *Bluestein v. Town of Sullivan's Island*, 424 S.C. 362, 371, 818 S.E.2d 239, 243 (Ct. App. 2018). "The language in a deed is ambiguous if it is reasonably susceptible to more than one interpretation." *Id.* at 370. The language in the granting clause and habendum clause clearly grant a life estate to Martha with remainder to Mark, if he survives, and contingent remainder to Wilson. There is nothing ambiguous in the deed. Additionally, "in ascertaining [the grantor's] intention, the deed must be construed as a whole and affect given to every part thereof, is such can be done consistently with law." *Id.* at 371.

"The determination of whether language in a deed is ambiguous is a question of law." *Id.* at 370. In this case there is no evidence in the deed itself to support a finding by the Probate Court that the deed is ambiguous. The Probate Court therefore committed an error of law when it used the language in the Last Will and Testament of Catharine to modify the Deed of Distribution.

II. THE PROBATE COURT DID NOT HAVE SUBJECT MATTER JURISDICTION TO MODIFY THE DEED OF DISTRIBUTION FILED ON FEBRUARY 4, 2005.

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" *Gantt v. Selph, et al.* 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018). The issue of subject matter jurisdiction can be raised for the first time on appeal. *Id.* at 338. Additionally, the existence of subject matter jurisdiction is a question of

law, and an appellate court can decide questions of law without giving deference to the trial court. *Id.* In this case, the issue of subject matter jurisdiction was not raised or ruled on by the Probate Court.

The Probate Court is not a constitutional court and only has jurisdiction as defined by the legislature. *Judy v. Judy*, 393 SC. 160, 169, 712 S.E.2d 408, 412 (2011). The subject matter jurisdiction of the Probate Court is set out in §62-1-302. Subsection (a)(1) allows the Probate Court to determine whether a particular piece of property is or is not part of a decedent's Estate. To make that determination, the Probate Court in this case would read the granting clause and habendum clause from the Deed of Distribution filed in the Estate of Catharine Inabinet Fairey which both provide that the property goes to Martha for life with the remainder to Mark Allen Gillespie if he survives and the contingent remainder to L. Wilson Fairey, Jr. Under a clear reading of this language, if Mark Allen Gillespie is alive when Martha dies, he takes title to the property, but if Mark predeceases Martha, L. Wilson Fairey, Jr., gets the remainder interest. There is no ambiguity in this language. The only fact needed for the Probate Court to make its determination is whether Mark survived Martha.

Instead of interpreting the language in the Deed of Distribution, the Probate Court took the additional step of modifying the language to reach the conclusion in the Order of February 26, 2016. The power to modify a deed is not granted to the Probate Court by S.C. Code §62-1-302. Additionally, the Estate of Catharine was closed on March 3, 2016, and has not been reopened.

Because the Probate Court lacked subject matter jurisdiction to modify the Deed of Distribution filed at Deed Book 1078 at page 315 with the Orangeburg County Register of Deeds, this Court should issue an Order reversing the decision of the Probate Court.

III. THE PROBATE COURT ERRED IN DETERMINING THAT MARTHA GILLESPIE OWNED A FEE SIMPLE INTEREST IN THE 9.7 ACRES AT ISSUE IN THIS MATTER AT HER DEATH.

“The interpretation of a deed is an equitable matter.” *Bluestien* at page 370. On appeal, the Circuit Court may therefore make factual findings according to its own view of the preponderance of the evidence. *Howard*, 315 S.C. at 361-62, 434 S.E.2d 254, 257-58. Here the preponderance of the evidence supports a finding that Martha owned merely a life estate in the 9.7 acres with the remainder to Wilson.

As previously argued, the language in the Deed of Distribution is clear and unambiguous, so the Court should make no further inquiry to determine what ownership interest Martha had in the 9.7 acres. However, even if the Court looks to extrinsic evidence to determine the grantor’s intent, the conclusion reached should be the same. The language in Catharine’s Last Will and Testament shows Catharine’s intention is that Martha could be given the property in fee simple in Martha’s lifetime if she became a widow. Martha held a life estate subject to a condition subsequent. The legal right created was a right of entry which accompanied a condition subsequent. Normally conditions subsequent are used to defeat estates, so they are strictly construed against the grantor. *McManaway v. Clapp*, 150S.C. 249, 148 S.E. 18, 19 (1929). Conditions subsequent do not enforce themselves automatically but require action to be taken by the party benefiting from the condition, if they so choose. In this case, the condition subsequent provided for a right of entry that would allow Martha during her life time to end her life estate and take a fee simple interest if she became a widow. At the time of Catharine’s death, Martha’s husband was still alive. When the Deed of Distribution was drafted and filed in 2005, Martha’s husband was still alive. Martha’s husband died in 2012, but she took no action to alter or amend the Deed of Distribution.

Martha had the right during her lifetime take action to obtain a fee simple interest in the 9.7 acres, but she did not exercise that right.

CONCLUSION

For the foregoing reasons, this Court should reverse the ruling of the Probate Court and determine that the Probate Court lacked subject matter jurisdiction to modify the Deed of Distribution in this matter.

December 29, 2018

Respectfully Submitted,

s/Russell A. Blanchard IV
Russell A. Blanchard IV, SC Bar No. 76369
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, S. C. 29116-1084
(803) 534-5218
(803) 928-5191 (fax)
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT

Judge Pandora Jones-Glover, Orangeburg County

Case No: 2016-CP-38-00460
Probate Case No. 2015-ES-38-00105

Lyle Wilson Fairey, Jr.,

Appellant.

v.

Joy A. Gillespie, as Personal Representative of the
Estate of Martha Ann Fairey Gillespie,

Respondents,

MOTION TO RECONSIDER

**TO: RESPONDENT, JOY A. GILLESPIE, AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF MARTHA ANN FAIREY GILLESPIE AND HER ATTORNEYS:**

Appellant, by and through the undersigned attorneys, gives notice of his intent to move at such time and place as the Court may direct, and does now move to have the following issues reconsidered and to have the Order in this Matter altered or amended. This motion is made pursuant to SCRCP 59.

After hearing the appeal from the Orangeburg County Probate Court, the Court signed and filed its Order on February 20, 2020, and Appellant received notice of the filing of the Order on the same day. Appellant timely filed his Motion to Reconsider. In its February 20, 2020, Order, this Court denied Appellant's appeal and upheld the rulings of the Orangeburg County Probate Court. However, in denying the appeal, the Court failed to consider certain facts in its

analysis.

When Mrs. Catharine Fairey (Decedent) died, her Estate was handled by the same attorney, Mr. Hipp, who prepared previous deeds for Decedent while she was alive. The conveyances made in the previous deeds are substantially similar to the conveyance that Decedent provided for in her Last Will and Testament. Mr. Hipp knew Decedent's wishes and decided to make the Deed of Distribution at issue in this case similar to the previous deeds he had prepared for her. One of the conveyances made during life was identical to a devise made in Mrs. Fairey's Last Will and Testament.

When the provision of Decedent's Last Will and Testament that is at issue in this case is properly interpreted, the Court would reach a different conclusion than that which has been previously reached. The devise can be simplified as follows: I give and devise to Martha Gillespie, subject to certain conditions, for life and to Mark after her death if he survives her. The intent of the devise was to convey a life estate which could be converted into a fee simple interest if certain conditions were met. The devise created a remainder interest which had to be held by someone, but the only person who could hold the remainder interest under the Last Will and Testament without defeating Decedent's intention is Appellant. Both Martha and Appellant were devised the rest, residue, and remainder of Decedent's Estate, but devising the remainder interest to Martha would defeat the clear intention of Decedent in her Last Will and Testament. If Martha held a life estate and remainder interest in the real property, the two would merge contrary to Decedent's intent. Additionally, the life estate held by Martha only ended if and when certain conditions were met. Because these conditions are conditions subsequent, they create a right of entry and require Martha to take action to end her life estate. No such action was taken by Martha, nor has any action been taken by anyone on Martha's behalf.

Upon considering the above grounds, this Court should find in favor of Appellant and overturn the rulings made by the Probate Court.

On the above grounds and on such other grounds as may be presented to the Court, Appellant requests that the Court reconsider the above issues and alter or amend the final Order as allowed under SCRCP 59.

Based on SCRCP 59(f), this motion stays the time within which appeal can be filed in this matter.

March 2, 2020
Orangeburg, SC

s/Russell A. Blanchard, IV
Russell A. Blanchard IV, SC Bar No. 76369
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THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT

Judge Pandora Jones-Glover, Orangeburg County

Case No. 2016-CP-38-00460
Probate Court No. 2015-ES-38-00105

Lyle Wilson Fairey, Jr.

Appellant,

v.

Joy A. Gillespie, as Personal Representative
of the Estate of Martha Ann Fairey Gillespie,

Respondent.

**MEMORANDUM IN SUPPORT OF
DENIAL OF MOTION TO RECONSIDER**

Russell A. Blanchard, IV, of Williams & Williams
of Orangeburg, South Carolina, for Appellant.

Robert F. McCurry, Jr., of Horger, Barnwell & Reid, LLP
of Orangeburg, South Carolina, for Respondent.

To: Appellant, Lyle Wilson Fairey, Jr., and his attorneys.

Appellant moves for the Court to Reconsider its Order of February 19, 2020 which upheld the Order of the Probate Judge for Orangeburg County which found that the 9.7 acre parcel at issue in this action was owned by Martha Ann Fairey Gillespie, in fee simple absolute, at the time of her death. Inasmuch as the Probate Court's decision and the upholding of same by the Master-in-Equity is correct, we feel that the Motion for Reconsideration should be denied.

The Master-in-Equity correctly stated in its Order that the language of the Last Will and Testament of Catherine Inabinet Fairey (Testator) controls the outcome of the present case. However, Appellant nonetheless makes reference to deeds of Testator which were executed by Testator subsequent to the execution of her Last Will and Testament. Three deeds were

executed, two of which granted property to appellant and one granted property to Martha – but these post-will deeds have no bearing on the language in Testator’s Last Will and Testament.

As was referenced in the hearings before the Master, it was known by the family that Testator had no fondness for Martha’s husband Henry, also known as Buddy. Buddy was some years older than Martha when they met and married, and Buddy had children from a previous relationship. Testator clearly wanted to make sure that her home could not fall into the hands of Buddy upon testator’s death.

Therefore, Testator’s Last Will and Testament was crafted in such a way to insure her wishes regarding her home tract. Testator’s Will gave Martha a life estate which could ripen into fee simple ownership if Martha became the widow of Henry. Therefore, Buddy could never obtain ownership of Testator’s home tract. This is exactly what happened in this case. Buddy predeceased Martha, and Martha outlived her son, Preston. As stated in the Will, “if during my daughter’s [Martha] lifetime she shall become the widow of Henry L. Gillespie, then I direct that this gift of real estate to my said daughter shall be in fee simple.” This results in Martha owning the subject parcel in fee simple. There was and is no requirement that Martha do anything or that Martha take any action during her lifetime or upon the death of her husband, Buddy, in order for the wishes expressed in Testator’s Last Will and Testament to occur.

It may be noteworthy that Testator’s attorney for the execution of her Will was Charlton B. Horger of Orangeburg County Bar. Subsequent to the execution of her Will, Testator was taken by the Appellant to Appellant’s attorney in Columbia, Mr. Hipp. Mr. Hipp prepared the three deeds referenced above for some of Testator’s parcels, which parcels did not include Testator’s home tract. Upon Testator’s death, Mr. Hipp prepared the deed of distribution for the subject home tract, but the language from the will was not properly quoted. Because this deed of distribution did not mirror the Last Will and Testament of Martha, the Deed of Distribution is patently erroneous.

Thereafter, Martha became the fee simple owner of the subject tract. Upon Martha’s death, Martha’s Will controls, and the subject property was devised to her grandson, Preston Mark Gillespie.

For the foregoing reasons and for those earlier discussed in the prior hearings, the Motion for Reconsideration of the decision of the Master-in-Equity upholding the Order of the Probate Court should be denied.

Orangeburg, SC
May 27, 2020.

HORGER, BARNWELL & REID, L.L.P.

s/Robert F. McCurry, Jr.

Robert F. McCurry, Jr.

SC Bar # 003762

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APPEARANCES

Honorable Pandora Jones-Glover
Orangeburg County Probate Judge
190 Gibson Street
Orangeburg, South Carolina

Martin R. Banks, Esquire
716 N. F.R. Huff Drive
St. Matthews, South Carolina
Attorney for Wilson Fairey

Robert F. McCurry, Jr., Esquire
Horger Barnwell & Reid, LLP
Post Office Drawer 329
Orangeburg, South Carolina
Attorney for Joy A. Gillespie,
Personal Representative of the
Estate of Martha A. F. Gillespie

Also Present:

Mr. Wilson Fairey
Ms. Linda Chavis

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1 **THE COURT:** You may be seated. All right. Okay.
2 We're now on the record in the Estate of Martha
3 A.F. Gillespie. This is Estate Number
4 2015ES3800105 and this matter is before the
5 Court on a Petition for Removal of Personal
6 Representative and appointment for a successor.
7 If you would, please introduce yourselves and
8 your client, please.

9 **MR. BANKS:** Thank you, Your Honor, I'm Martin Banks
10 for the -- for the Petitioner here and this is
11 Wilson Fairey, who is --

12 **THE COURT:** Okay.

13 **MR. BANKS:** -- actually, by way of introduction, he
14 would be the son -- I'm sorry, the brother of
15 the decedent in this case.

16 **THE COURT:** Mark's brother.

17 **MR. BANKS:** Ma'am?

18 **THE COURT:** Mark's brother?

19 **MR. FAIREY:** Yes.

20 **THE COURT:** Or Ms. Martha's brother?

21 **MR. BANKS:** Martha's brother.

22 **MR. FAIREY:** I'm Martha's brother.

23 **THE COURT:** Okay. All right.

24 **MR. McCURRY:** May it please the Court. Your Honor,
25 I'm Bob McCurry of the law firm of Horger,



1 Barnwell & Reid, and I represent in this action
2 Joy A. Gillespie, who is the mother of the ten
3 year-old Preston, being -- who is the grandson
4 of the decedent, and in the courtroom with her
5 is her mother, Linda.

6 **THE COURT:** Linda's last name is?

7 **MS. _____:** Chavis.

8 **MR. McCURRY:** Chavis.

9 **THE COURT:** Chavis, all right. All right, Mr.
10 Banks.

11 **MR. BANKS:** Thank you, Your Honor. Your Honor, this
12 is I guess our motion or our petition, so I'll
13 start by saying this, my client would rather be
14 anywhere but here today and doing this right
15 now. In fact, if he'd known it would come to
16 this, he would have petitioned to be the PR in
17 the first place for this Estate. Not
18 anticipating any difficulties, any problems or
19 anything, he just let things go as they were.
20 And, for the most part, I think the PR has
21 probably done a decent job. We haven't gone
22 behind everything she's done, but what happened
23 about a year ago is when she filed the
24 Inventory and Appraisement, and I'll just give
25 you -- I've already passed a copy to her



1 attorney. The Inventory and Appraisement, and
2 I'm going to hand her that, too --

3 **THE COURT:** Thank you.

4 **MR. BANKS:** -- they listed two pieces of property --
5 I'm sorry, she listed two pieces of property on
6 the Inventory and Appraisement that aren't
7 property of the Estate.

8 **THE COURT:** Okay.

9 **MR. BANKS:** One is clearly -- went straight through
10 as a life tenancy to Mark and it -- and then it
11 didn't come into the estate of Martha at all.

12 **THE COURT:** Okay.

13 **MR. BANKS:** And then the other is the piece of
14 property that I've handed you a deed of
15 distribution from Martha's mother's estate,
16 Katherine.

17 **THE COURT:** Uh-huh (affirmative response).

18 **MR. BANKS:** That's Martha's mother. Martha -- when
19 Katherine died in her will she left -- it was
20 a little convoluted, but that's the deed of
21 distribution that came out of Martha's mother's
22 estate.

23 **THE COURT:** Uh-huh (affirmative response).

24 **MR. BANKS:** It clearly lists my client as the
25 ultimate recipient of the residuary and that



1 estate was probated by my client several years
2 back and it had an attorney, Mr. Hipp, who does
3 nothing -- almost nothing but estate stuff.
4 Mr. Hipp was the attorney of record in that
5 case and he looked at the will and determined
6 that that's the way the deed of distribution
7 should go and property -- which is the other
8 property now listed in the Inventory and
9 Appraisement, which shouldn't be because it
10 should have come through that deed which, of
11 course, this was an estate that you
12 administered -- I mean, that you were the judge
13 upon.

14 **THE COURT:** And so we can pull this estate just to
15 pull the will.

16 **MR. McCURRY:** Your Honor, may -- if I may, and I
17 hate to interrupt his opening argument
18 somewhat, but there's very clearly a dispute
19 about this -- this information. It is not
20 clear-cut. The last will and testament I think
21 is the final word. The last will and testament
22 of Katherine Fairey I think should be the final
23 word on the title. The deed of distribution
24 that was prepared by whomever, Mr. Hipp or
25 whomever, does not quote exactly the language



1 of the last will and testament. I would go so
2 far as to say that without question, that deed
3 of distribution is -- is erroneous. The last
4 will and testament, again, is a controlling
5 document, not a deed of distribution, which we
6 all know doesn't convey title. It just simply
7 indicates to the public that the title is being
8 administered by the Estate. So that is an
9 issue, if you will, so I would again have to --
10 have to disagree and want to make sure that
11 you're aware of that. Thank you.

12 **MR. BANKS:** And, Your Honor --

13 **THE COURT:** So we can just pull Katherine Fairey's
14 estate and just take a look at the last will
15 and testament. We'll get that done.

16 **MR. BANKS:** Okay. Is it still recording?

17 **THE COURT:** It is. We're still on the record.

18 **MR. BANKS:** Your Honor, and we can go in -- and I'm
19 happy to go into all that, but the bottom line
20 is there's two pieces of property, real estate,
21 in the Inventory and Appraisement --

22 **THE COURT:** Uh-huh (affirmative response).

23 **MR. BANKS:** -- and I think inherently listed. The
24 second one that we are going to probably end up
25 focusing on -- because the first one I think is



1 an easy determination. The second one that
2 we're going to focus on again is property that
3 was devised to my client through the mother of
4 Martha, who is the estate for today. It's
5 clearly if it's left in tact here, it would
6 jeopardize my client's title and we'd rather
7 not do that. And I'll go as far as to say
8 this, it gets very convoluted because it's
9 about a contingent remainder determinable
10 interest and I've -- Mr. Hipp has done the
11 research when he did the deed; I've done the
12 research and it boils down to this, Mrs. -- the
13 -- Katherine, who is the mother of this
14 decedent, when she died, she left a will that
15 had about three contingencies in her devise for
16 this piece of property.

17 **THE COURT:** Okay.

18 **MR. BANKS:** And the first -- and I'll try to quote
19 it best I can. The first says "I give and
20 devise," and, of course the devise is for real
21 estate, we all know that, "to my daughter,"
22 which is the decedent in this case --

23 **THE COURT:** Uh-huh (affirmative response).

24 **MR. BANKS:** -- "subject to the following
25 conditions." And this is where it ends up in



1 my client's hands. "First, for life," so she
2 gets it for life. "Then to Mark," who is the
3 ex-husband of the PR here.

4 **THE COURT:** Uh-huh (affirmative response).

5 **MR. BANKS:** "And Martha's son for life; then to Mark,
6 if he survives her."

7 **THE COURT:** Okay.

8 **MR. BANKS:** Well, he did not.

9 **THE COURT:** Uh-huh (affirmative response).

10 **MR. BANKS:** And I don't think anybody disputes that.
11 He did not survive her. So the remainder did
12 not go to Mark. So she's still holding the
13 life interest, okay. If he dies -- if she dies
14 married to Henry, that's her husband, and
15 believe me, I wish we weren't here --

16 **THE COURT:** Okay.

17 **MR. BANKS:** -- doing this either, but --

18 **THE COURT:** Okay.

19 **MR. BANKS:** -- if the decedent in this case --

20 **THE COURT:** Okay.

21 **MR. BANKS:** -- dies married to her husband, Henry --

22 **MR. McCURRY:** Your Honor, I got a copy of the deed.
23 It might be good for you to look at the will.

24 **THE COURT:** Okay.

25 **MR. McCURRY:** This is the paragraph third to the



1 bottom.

2 **MR. BANKS:** It starts near the very bottom and it
3 goes onto the next page.

4 **THE COURT:** Tell Jeremy to come on back.

5 **MR. _____:** Yes, ma'am.

6 **MR. BANKS:** Do you want me to let you catch up?

7 **THE COURT:** Sure. What it is is our 2003's, I know
8 that they're going to be on microfiche, so --

9 **MR. BANKS:** Hard to get documents, yes.

10 **THE COURT:** So he's probably doing that. But so I
11 appreciate it, so.

12 **MR. BANKS:** Sure.

13 **THE COURT:** Okay. I know it's going to take a
14 minute. We'll pull it afterwards.

15 **MR. _____:** It's on microfilm.

16 **THE COURT:** I know. Okay. All right.

17 **MR. BANKS:** All right. And again, I'll just start
18 from the top and you find it -- I think it's
19 paragraph three.

20 **THE COURT:** Okay.

21 **MR. BANKS:** Are you there?

22 **THE COURT:** I am. Third paragraph.

23 **MR. BANKS:** I give and devise clearly devising it to
24 the daughter Martha Gillespie subject to the
25 following conditions, one, for life; then to



1 Mark if he survives her. Well, he didn't, so
2 let's just skip that. And if he -- if he -- if
3 she dies married to Henry, which is her
4 husband, and not survived by Mark, then to
5 Wilson. And if during her life, she -- and
6 this comes after, okay, it's devised to Wilson
7 at that point. And I'm very specific about the
8 usage of the language devise. Then it says if
9 during her life, she becomes a widow of Henry,
10 then I direct, not devise, I direct -- so she's
11 got to be directing somebody.

12 **THE COURT:** Uh-huh (affirmative response).

13 **MR. BANKS:** It's not a legal devise, it's a
14 direction to a person. If during her life she
15 becomes a widow of Henry, then I direct that
16 the gift of real estate be in fee. All right.
17 This is where the focus and the whole thing
18 comes. If she -- if she had used the word
19 devise there, I would have no problems. We
20 wouldn't be here today, except for the other
21 piece of property. If she used the word devise
22 there. She's directed something that didn't
23 happen until probably seven years after the
24 Estate closed. The Estate was closed seven
25 years after this direction is made.



1 **MR. FAIREY:** No, no, no, she became a widow.

2 **MR. BANKS:** I'm sorry; she became a widow. Yeah,
3 you're right. She became a widow about seven
4 years after this direction was made. So the
5 Estate was closed and at that gift of real
6 estate to be in fee, it gave her what we call
7 a contingency where she could exercise her
8 right to -- to gain that fee and she never did
9 that. So the fee now has to reside somewhere
10 because it never went anywhere. It goes
11 through the residuary clause in there -- in
12 that will that you -- and when it goes to the
13 residuary clause, it is share and share alike
14 between her and my client, Wilson, which is per
15 capita, not per stirpes, which means my client
16 receives the entire fee to the 9.73 acres.
17 That's about as plainly as I can put it and
18 there's a whole lot more research that goes
19 into something like that, but that's as plainly
20 as I can put it, Your Honor. And I -- and I --
21 hold on one second. I do want to say this.
22 When I went back to the beginning where I said
23 my client is actually the brother of the
24 decedent in this case, the PR, and if he had
25 known this would have happened, he would have



1 priority to be the PR at that point. The PR is
2 the ex-wife of her son and I believe my client
3 would have definitely had priority over her if
4 -- if -- and if he could have seen the future,
5 he'd be the PR right now and we wouldn't be
6 sitting here. One moment, Your Honor. Yeah,
7 and I want to point out that since there was no
8 estate, that direction, the direct -- I direct
9 that, there was no PR to direct and so it would
10 be a direction to Martha and Martha never went
11 that direction. She never -- she never chose
12 to exercise her right to her contingency, so he
13 was -- this fee was never taken.

14 **THE COURT:** All right. Mr. McCurry?

15 **MR. McCURRY:** Well, Your Honor, certainly, I
16 disagree with that interpretation. The -- the
17 fact that the Estate is closed, the fact that
18 this deed of distribution was filed really
19 doesn't have anything to do with the title to
20 the property. I think it goes back to this
21 will in question. And this is a --
22 (inaudible), whatever, situation with the
23 language here. But I think what you have, the
24 only -- the only -- the only listed situation
25 that fits in this case is the item that says if



1 during my daughter's lifetime, she shall become
2 the widow of Henry Gillespie, then I direct
3 that this gift of real estate to my daughter be
4 in fee simple. The use of the word direct, we
5 don't have magic words any more. The life
6 estate was earlier -- over on the first page it
7 says I give and devise to my daughter. And
8 very importantly it says -- it didn't say I
9 devise and give -- devise my daughter for and
10 during, I highlighted on my copy it says
11 subject to the following conditions. That's --
12 that's critical. It says subject to the
13 following conditions. The only condition that
14 fits is the one that says if during my
15 daughter's lifetime she becomes a widow. Mr.
16 Henry Gillespie died in 2012, prior to Martha.
17 Mark died in 2014, December of 2014. Mark is
18 the only child of Martha and would have been
19 the sole heir if he had survived. Mark had
20 divorced Joy, we can get into that, the reasons
21 therefor, and Mark's only child is Preston, the
22 ten year-old, the only -- who is the sole heir
23 of Martha.

24 **THE COURT:** Uh-huh (affirmative response).

25 **MR. McCURRY:** And so Ms. Gillespie came to the court



1 classes that y'all offer and did what she was
2 supposed to do and she -- we take the position
3 that certainly the inclusion of this property
4 in the Estate is correct because it says if she
5 -- if Martha's a widow of Henry, then the gift
6 to Martha is in fee simple.

7 **THE COURT:** Uh-huh (affirmative response).

8 **MR. McCURRY:** If it's -- if it's in fee simple, then
9 upon her death, her will controls and it goes
10 down to Preston, the son of her predeceased
11 son, Mark.

12 **THE COURT:** Okay.

13 **MR. McCURRY:** So that's the position we take,
14 certainly, with regard to that.

15 **MR. BANKS:** Your Honor, he did slightly misstate
16 this -- the fee simple aspect of that. It
17 directs and -- you devise real estate and you
18 bequeath property and you direct people.

19 **THE COURT:** Uh-huh (affirmative response).

20 **MR. BANKS:** You direct people. And this is a
21 direction to a person, not to some legal
22 theory. It's a direction to a person and that
23 person couldn't be the PR any more. It had to
24 be to Martha and she chose not to do it. And
25 I could put my client up right now and tell you



1 why she didn't because, you know, her intent --
2 the intent of the decedent is all powerful here
3 and we know why she didn't do it because she
4 had medical bills and didn't want to take that
5 and then end up handing it to the government.

6 **MR. McCURRY:** We have -- we have a difference in
7 opinion. The direction was not to a person.
8 The direction is -- it could be a scrivener's
9 error; it could just be saying -- well, these
10 conditions, this is the only condition that
11 works and -- and this -- this gift is now a fee
12 simple. It converts from a life estate to a
13 fee simple absolute, so.

14 **THE COURT:** Okay. So, Mr. Banks --

15 **MR. BANKS:** Yes, Your Honor.

16 **THE COURT:** -- your client took issue with -- has
17 taken issue with several things that the PR has
18 done.

19 **MR. BANKS:** Yes, ma'am.

20 **THE COURT:** Anything else?

21 **MR. BANKS:** The -- and I think he actually sent a
22 letter that details some other things and then
23 we talked about the intent and the situation.
24 She -- this decedent died like 20 something
25 days after Mark, the son that would have -- it



1 would have fixed all this if Mark would have
2 lived, but he didn't.

3 **THE COURT:** Okay.

4 **MR. BANKS:** She died only 20 something days after
5 that and she was in the hospital. She was
6 feeding tubes and all that. I mean, she was in
7 no condition to make any changes to anything or
8 do anything regarding this property or deeds or
9 anything else. These are the two main issues
10 that -- that greatly affect him and his family
11 and that would be the two that we would focus
12 on here for --

13 **THE COURT:** So the 1014 Till Road?

14 **MR. BANKS:** Yes, that's the one I think we were just
15 talking about and the other is -- the other
16 piece of real estate is --

17 **MR. FAIREY:** Rickenbaker.

18 **MR. BANKS:** Yeah, Rickenbaker Road.

19 **THE COURT:** Okay.

20 **MR. BANKS:** And that one I think is pretty clear.
21 In fact, I don't know if you had a chance to
22 look at it because I know you just saw my
23 thing, but I think that was pretty clear.
24 That's a life estate that basically skipped
25 Martha all together.



1 **THE COURT:** So this deed that you have -- you've
2 presented is for 1014 Till Road.

3 **MR. BANKS:** Yes, that's the one that we most -- that
4 most affects my client. My client's -- I
5 believe in the process, he's filed an estate
6 for Mark --

7 **THE COURT:** Okay.

8 **MR. BANKS:** -- the son of this decedent.

9 **THE COURT:** Uh-huh (affirmative response).

10 **MR. BANKS:** He's filed an estate for Mark and he
11 plans on listing -- Rickenbaker Road in that
12 estate because that's the -- that's the proper
13 way to dispose of that property is through
14 Mark's estate. Mark had a fee in that.

15 **THE COURT:** So his position with respect to
16 Rickenbaker Road is simply that it shouldn't be
17 listed under Martha's assets; it should be
18 listed under Mark's.

19 **MR. BANKS:** That's -- that's -- that is absolutely
20 right.

21 **THE COURT:** Okay. And so will it then --

22 **MR. BANKS:** Until it shouldn't be anybody's at all -
23 -

24 **THE COURT:** Okay. So just remove.

25 **MR. BANKS:** -- but his.



1 **THE COURT:** He just wants -- he's just requesting
2 that she amend the inventory and delete that?

3 **MR. BANKS:** Yeah, and we'll drop our petition to
4 replace her with my client if those two
5 properties come off. And if they still feel
6 like they have a -- a right to that, a fee
7 simple right to Till, I mean, we'll probably
8 end up in another courtroom one day over that
9 if -- if they want to have time to look at it.

10 **THE COURT:** Okay. So what's your position with
11 respect to 116 Rickenbaker, Mr. McCurry?
12 Should -- are you willing to amend?

13 **MR. McCURRY:** 116 Rickenbaker Road, I believe that
14 is the -- that is her house tract. That's
15 correct.

16 **THE COURT:** Do we have a deed we can --

17 **MR. McCURRY:** Yeah --

18 **THE COURT:** I think we can check that out fairly
19 quickly.

20 **MR. McCURRY:** I do not.

21 **THE COURT:** Okay.

22 **MR. _____:** That's where she lived.

23 **MR. McCURRY:** Yeah.

24 **MR. BANKS:** Yeah, it's where she lived.

25 **THE COURT:** So did that home belong to Martha or



1 Mark?

2 **MR. McCURRY:** She had a life estate in it.

3 **MR. BANKS:** That's page one of what we believe is
4 the right one for that.

5 **MR. McCURRY:** Your Honor, I apologize. I had
6 forgotten until he showed it to me, this
7 property indicates that the property is
8 conveyed to Martha Ann Gillespie.

9 **THE COURT:** Uh-huh (affirmative response).

10 **MR. McCURRY:** The decedent. For life -- for her
11 life and upon her death to Mark, his heirs and
12 assigns forever. At the time of Martha's
13 death, Mark had already predeceased.

14 **THE COURT:** Uh-huh (affirmative response).

15 **MR. McCURRY:** And this property is vested in Preston
16 again. The ten year-old.

17 **MR. BANKS:** We don't disagree with that, but it's
18 not Martha's. It's Mark's to go down to
19 Preston.

20 **MR. McCURRY:** Well, let me say this, Your Honor,
21 this property -- this property -- when I read
22 this deed, and I have not read that deed
23 because, Your Honor, if you may have seen the
24 filing that was made by Mr. Fairey prior to him
25 retaining an attorney, it says all kind of



1 things and I couldn't hardly follow it. I have
2 not looked at this deed in recent memory, but
3 this -- this property would not truly be in
4 Mark's estate either because Mark predeceased.
5 Mark couldn't take at the death of Martha.
6 Mark had already passed away a month before.
7 So, therefore, this property, if you will, is
8 truly in the name of Preston.

9 **THE COURT:** All right. Let's do this. If you'll
10 just hand it up, we'll make a copy and get it
11 back to you, okay.

12 **MR. _____:** Yeah.

13 **THE COURT:** All right. So we'll take a look at 116
14 Rickenbaker. Now, there were some other
15 concerns addressed in your petition, Mr.
16 Fairey. Funeral expenses, is that something
17 you're still concerned about?

18 **MR. FAIREY:** What's that?

19 **MR. BANKS:** The funeral expenses.

20 **MR. FAIREY:** Yeah.

21 **THE COURT:** You were complaining that the funeral
22 expenses have yet to be paid?

23 **MR. FAIREY:** No, that's -- no, I filed a claim for
24 them. I'm not complaining about that.

25 **THE COURT:** No longer.



1 **MR. BANKS:** I think his point there, Your Honor, was
2 that he -- he actually paid the funeral
3 expenses. He was that involved with this
4 estate --

5 **THE COURT:** Uh-huh (affirmative response).

6 **MR. BANKS:** -- but he didn't foresee any problems,
7 so he allowed, you know, the PRship to go to
8 someone else.

9 **THE COURT:** Okay.

10 **MR. BANKS:** But, I mean, he's not some interloper
11 coming in. He actually is very involved and
12 very interested --

13 **THE COURT:** Certainly.

14 **MR. BANKS:** -- and -- but that -- that --

15 **THE COURT:** It's his sister.

16 **MR. BANKS:** -- was the point he was trying to make
17 that he's --

18 **THE COURT:** Well, do you want --

19 **MR. BANKS:** -- he should be the PR.

20 **THE COURT:** Do you want to address it today?

21 **MR. FAIREY:** I didn't -- I didn't tell Mr. Banks
22 this, but I didn't pay the funeral expenses and
23 they had not been paid when I filed that. I do
24 not know if they have been paid now or not. I
25 think there's a claim against the estate for



1 the funeral expenses, but I don't doubt that
2 they'll be paid.

3 **THE COURT:** Okay.

4 **MR. FAIREY:** I mean, that's not it. They just
5 hadn't been paid at the time.

6 **THE COURT:** Okay. I just want to make certain that
7 we address all of your concerns.

8 **MR. McCURRY:** Judge, if you will, and I --

9 **THE COURT:** Uh-huh (affirmative response).

10 **MR. McCURRY:** -- I appreciate Mr. Fairey saying he
11 thinks it'll be paid. Mrs. -- her -- her --
12 her ex-husband, Mark --

13 **THE COURT:** Uh-huh (affirmative response).

14 **MR. McCURRY:** -- died of habitual -- impairment,
15 Oxycodone and cocaine. He was a big -- he had
16 spent a lot of his mother's, Martha's, money
17 going to rehab. They didn't have -- Mark and
18 Joy no longer had much of a relationship at
19 all, if you will. It started when they were --
20 right along the time Preston was born is when
21 it started. They got divorced. Mark caused
22 her all kind of grief. She's had to file
23 bankruptcy. He owed nearly \$100,000 in debt by
24 the time -- upon his death. So at the death of
25 Martha, Mr. Wilson Fairey, as I understand it,



1 dealt with the funeral bills, if you -- dealt
2 with the funeral home. Joy and Preston did
3 show up at the funeral and they did show up for
4 Mark's funeral. But the relationship was
5 strained, as you can imagine, given that
6 history. So what happened, she -- she was
7 appointed and she -- gosh, I'm telling you
8 things, but she came to the classes, never saw
9 a funeral bill, still hasn't seen a funeral
10 bill, this document -- when the initial
11 documents were filed by Mr. Fairey, still no
12 funeral bill, but she's -- that moratorium was
13 placed on her -- on her ability to do anything.
14 We need to file an amended Inventory and
15 Appraisement, but we've been prevented from
16 doing so. So, yes, the funeral bill has
17 obviously got to be paid and that's a priority
18 item. There's a marker that needs to be paid.
19 When that happens, there's no doubt about that.
20 But she -- she -- she never dealt with the
21 funeral home; never got a bill; never got a
22 call; never saw it, so please understand that
23 Joy -- Joy's intelligent and wants to do the
24 right thing, wants to protect her son's
25 interests. This is all she's ever going to get



1 from that side of the family, and so she wants
2 to do the right thing and so she certainly
3 needs -- knows that she's paying that bill.
4 So, I hope that helps a little bit.

5 **THE COURT:** So do I understand you, Mr. Fairey, to
6 say that you're not -- you're not seeking to
7 have her removed at this point?

8 **MR. FAIREY:** Well, no, I can't say that. I think --

9 **THE COURT:** If you get the two properties.

10 **MR. BANKS:** Yeah, if those come off, we --

11 **THE COURT:** Okay. Okay.

12 **MR. BANKS:** -- we're perfectly fine not -- not
13 pursuing him replacing her or his designee
14 replacing her.

15 **MR. FAIREY:** Yeah.

16 **THE COURT:** Okay. So you don't -- do you want to
17 address the request for removal?

18 **MR. BANKS:** Yeah, if those two items don't come off,
19 I certainly need to continue --

20 **THE COURT:** Okay.

21 **MR. BANKS:** -- and address that.

22 **THE COURT:** All right. And your position with
23 respect to that, Mr. McCurry, would be --

24 **MR. McCURRY:** Well, certainly, Your Honor, with
25 regard to the deed that you just had a copy



1 made or having a copy made, that -- that
2 property appears to be vested in Preston as a
3 result of Martha's death. So at the time --
4 again, I wasn't involved when the submission
5 was filed, but when Joy filed it, she thought
6 that that was property of the estate. So
7 certainly, we'll take that off. There's no
8 question about that. The other property,
9 however, I just don't think that's been
10 resolved. I think there's a clear legal
11 dispute over the interpretation of that
12 paragraph in the will. Certainly, but from all
13 other respects, we feel like my client is
14 capable and able to serve as personal
15 representative of the Estate for the very
16 assets that are going to her natural child and
17 the only sole heir of Martha. So we want to
18 continue to serve as personal representative.
19 And, of course, the personal representative
20 serves as trustee of the estate, too, and so
21 certainly my client wants to be involved in
22 those funds, those assets as trustee. So we
23 certainly want to continue to serve as personal
24 representative.

25 **THE COURT:** Okay. So with respect to the removal,



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1 there's no allegations of breach or
2 malfeasance, it's just -- it could just be an
3 error because we have two learned attorneys
4 that can't agree on how the property should be
5 handled. So you're not alleging that she's
6 doing anything improper --

7 **MR. BANKS:** Your Honor, I haven't --

8 **THE COURT:** -- that would require removal?

9 **MR. BANKS:** I don't know if I can call Till Road an
10 error when you've got a deed of distribution in
11 the chain of title that shows clearly that it
12 went to my client.

13 **THE COURT:** Uh-huh (affirmative response).

14 **MR. BANKS:** And -- and I don't want to go into too
15 much detail about this, but I will say that --
16 and it was in his letter to you and to the
17 Court, there has been some issues because of
18 the son and it's mainly on Mark's head that he
19 brought most of the problems into this family
20 and the extended family. And because of that,
21 Martha, the decedent in this case, really never
22 got to know her grandson and I think that the
23 bad blood probably goes both ways. I'm not
24 blaming anyone except Mark and because of that,
25 we fear that there may -- it may -- adding this



1 property may be more malfeasance than
2 misfeasance, if you understand what I mean.
3 And just in the climate of that family thing
4 and we didn't anticipate, it was something that
5 came completely out of the blue, so yeah, long
6 story short, we can't rule that out, that there
7 was no malfeasance there.

8 **THE COURT:** Okay. Can't rule it out.

9 **MR. McCURRY:** Your Honor, my -- my client's not an
10 attorney. When she filed this, I think clearly
11 that a person could read this and say this
12 property goes to -- went to Martha and,
13 therefore, goes to my -- my son. So the
14 malfeasance, my goodness, I -- the only object
15 of my client's affection is Preston. Her son.
16 There's no way in the world that there's any
17 malfeasance on her part in administering the
18 estate of Preston's grandmother, who is the
19 only person that had any assets. Mark had
20 nothing but debt. He had, you know, the
21 \$80,000-something, \$90,000 something in debt
22 he had, he had no truck, it was in his mother's
23 name; he had no life insurance; he had nothing.
24 And so all she's after is making sure Preston
25 gets what's entitled to her. If it's



1 determined at some point in time that that
2 property is not -- was not Martha's and,
3 therefore, not Preston's, of course, you know,
4 we might -- we might want to make sure of that
5 decision but she -- you know, she's not trying
6 to reach anything that's not her's or overreach
7 or any malfeasance in her actions, I just -- I
8 just think we're kind of -- it's much ado about
9 things that shouldn't be -- we shouldn't be
10 concerned about. Her -- her -- her -- the
11 object of her affection is Preston. She's
12 going to do the right thing. We can live with
13 whatever decision is finally made, but
14 malfeasance, I don't think so.

15 **THE COURT:** Okay. Anything else from anyone?

16 **MR. FAIREY:** You were talking about the funeral
17 expenses, the markers. I don't think -- I
18 still have a claim to be resolved there. It's
19 still going to be addressed, isn't it?

20 **THE COURT:** Yes, sir.

21 **MR. BANKS:** Not today.

22 **THE COURT:** It will be.

23 **MR. FAIREY:** Not today, okay.

24 **THE COURT:** It will be. And so -- what I -- I know
25 that my -- I recognize that my ruling is



1 important to both of you, so what I'd like to
2 do is just take some time to review the last
3 will and testament from Ms. Katherine Fairey
4 and the deeds of distributions that have been
5 filed and I'll get your copies back to you.
6 But what I want to do is again take some time
7 to review the documents and I'm going to reach
8 out to your attorneys no later than Tuesday of
9 next week, okay. So you're going to hear from
10 them by Tuesday of next week. And I don't have
11 the date before me, but just give me a couple
12 of days to review the documents, okay. Good
13 luck to you all. Is there anything else?

14 **MR. BANKS:** No, Your Honor.

15 **THE COURT:** All right.

16 **MR. BANKS:** Thank you.

17 **MR. McCURRY:** Thank you.

18 **(There being nothing further, the hearing was**
19 **concluded.)**



IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM ORANGEBURG COUNTY PROBATE COURT
Judge Pandora Jones-Glover, Orangeburg County

Case No.: 2016-CP-38-00460
Probate Case No.: 2015-ES-38-00105

Lyle Wilson Fairey, Jr.,

Appellant,

v.

Joy A. Gillespie, as Personal Representative
of the Estate of Martha Ann Fairey Gillespie,

Respondent.

TRANSCRIPT ON APPEAL

Date: July 31, 2019

Time: 10:16 a.m.

Location: Orangeburg County Courthouse, 151 Docket Street,
Third Floor, Room 305, Orangeburg, South Carolina

Reported by:

Gretchen H. Wise
WISE COURT REPORTING, LLC
102 Sandy Run Court
Gaston, South Carolina 29053
Phone: (803) 290-1988/Email: wisecourtreporting@gmail.com

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APPEARANCES

Presiding as Special Circuit Judge
for Orangeburg County:

The Honorable James B. Jackson, Jr.
Orangeburg County Courthouse
151 Docket Street
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Also present:

Linda Chavis
Joy Lester
Lyle Wilson Fairey, Jr.

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P R O C E E D I N G S

(Exhibits 1 through 13, having been submitted by Appellant, and Exhibits 14 through 18, having been submitted by Respondent, were marked and entered into evidence by agreement of the parties and the Court prior to the commencement of the proceeding.)

THE COURT: Madam Court Reporter, we're now on the record in the matter of Lyle Wilson Fairey, Jr., as Appellant, versus Joy A. Gillespie, as Personal Representative of the Estate of Martha Ann Fairey Gillespie, Respondent. The Circuit Court number is 2016-CP-38-460. This is an appeal from Probate Court. The probate number is 2015-ES-38-105. The Appellant is present represented by attorney Russ Blanchard, and the Respondents are present represented by attorney Bob McCurry.

And this is Mr. Fairey with you, Mr. Blanchard?

MR. BLANCHARD: Yes, Your Honor.

THE COURT: So Lyle Wilson Fairey, Jr., is present.

And, Mr. McCurry, who's with you, for the record?

MR. MCCURRY: Your Honor, my client Joy Gillespie, Joy Lester. She's now remarried. Lester.

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1 THE COURT: Okay.

2 MR. MCCURRY: And her mother, Ms. Chavis.

3 THE COURT: Okay. And Ms. Chavis's first name is?

4 MS. CHAVIS: Linda.

5 THE COURT: Linda Chavis.

6 MR. MCCURRY: Linda. Ms. Linda Chavis.

7 THE COURT: All right. This is an appeal from Probate
8 Court. And am I hearing this, Mr. Blanchard, as
9 Special Circuit Judge, I take it; is that --

10 MR. BLANCHARD: Yes. Yes, Your Honor.

11 THE COURT: This has not been referred. Okay. All
12 right. So it's your appeal, Mr. Blanchard. I'll
13 be glad to hear from you.

14 MR. BLANCHARD: Thank you, Your Honor.

15 THE COURT: Let me put, before you start: We have
16 agreed to put into evidence a number exhibits that
17 include your record on appeal, and, Mr. McCurry,
18 some exhibits you've put in. And all are just
19 Court exhibits and have been marked and numbered,
20 and by agreement, all of those are in evidence; is
21 that correct?

22 MR. BLANCHARD: That's correct, Your Honor. I've got
23 what's been marked as Exhibits 1 through 11 that
24 I'm going to -- excuse me, 1 through 13 that I'm
25 going to put together as the record on appeal and

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1 electronically file, but they'll also be -- the
2 hard copies will be attached to the transcript
3 from the hearing.

4 THE COURT: And, Mr. McCurry, your exhibits are
5 numbers?

6 MR. MCCURRY: Fourteen through 18, I believe, Your
7 Honor.

8 THE COURT: All right. Thank you. Mr. Blanchard, glad
9 to hear from you.

10 MR. BLANCHARD: Thank you, Your Honor. We are here
11 today for an appeal from the Orangeburg County
12 Probate Court, and essentially the issue, the big-
13 picture issue on appeal is the interpretation of a
14 deed of distribution. And I've broken down the
15 arguments in my brief, trying to kind of simplify
16 what is a little complicated, complicated just in
17 the chain of events and in the interpret -- or the
18 language that was used in the deed of
19 distribution. The -- I'll kind of try to briefly
20 run through the facts to make sure Your Honor has
21 got what we need for the hearing.

22 But Catharine Inabinet Fairey died July 31,
23 2003, and her estate was filed here in Orangeburg
24 County Probate Court, 2003-416 were the last three
25 digits on the -- that case. And her -- when she

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1 passed away, she had title to 9.7 -- a 9.7-acre
2 tract of land. And she devised that property in
3 her will. A deed of distribution was done July
4 21, 2005, filed in February 2005 with the
5 Orangeburg County Register of Deeds. And the deed
6 of distribution, which is one of the exhibits
7 that'll be in the record on appeal, indicates that
8 the land, 9.7-acre tract of land should go to
9 Martha Ann Fairey Gillespie, for her lifetime;
10 remainder unto Mark Allen Gillespie, if he
11 survives; contingent remainder unto L. Wilson
12 Fairey, Jr. So the deed of distribution pretty
13 clearly sets out what is to happen with the 9.7-
14 acre tract of land.

15 Ms. Martha Ann Fairey Gillespie passed away
16 January 13, 2015. Her estate is also filed here
17 in Orangeburg County Probate Court.

18 Her son, Mark Gillespie, passed away before
19 her December 20, 2014.

20 The inventory and appraisement for Martha
21 Ann Fairey Gillespie's estate listed this 9.7-acre
22 tract of land as an asset of her estate. As a
23 result, my client, the Appellant, filed a petition
24 to remove the PR. And essentially the issue was
25 whether or not this land should be part of Ms.

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1 Martha's estate. A hearing was held on that
2 petition. The transcript of that hearing is going
3 to be in the record. And the Probate Court issued
4 a decision February 26, 2016. A motion to
5 reconsider was filed again by the Appellant. That
6 was denied without a hearing, just by an order,
7 also in the record, April 11, 2016. And then this
8 appeal was filed April 21, 2016.

9 THE COURT: And the probate judge decided what?

10 MR. BLANCHARD: The probate judge decided that the 9.7-
11 acre tract of land should be included in the
12 Estate of Martha Ann Fairey Gillespie as an asset
13 of the estate, decided essentially that she held
14 fee simple title at her death to this property.
15 Now, the -- it's our argument, essentially, that
16 the Probate Court, primarily and most importantly,
17 didn't have subject matter jurisdiction to make
18 the decision it made, and ultimately that it made
19 the wrong decision either because the Court
20 incorrectly interpreted -- or, yeah, incorrectly
21 interpreted the language of the deed or
22 incorrectly interpreted the language of the will.
23 So the subject matter jurisdiction issue I think
24 is the -- obviously the biggest issue, which can
25 be raised at any point, hadn't been raised before,

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1 but we raised it in the brief. The subject
2 matter jurisdiction argument is simply that the
3 Probate Court has limited subject matter
4 jurisdiction. Statute, the South Carolina
5 statutes outline what subject matter, what the
6 Probate Court can and cannot hear as subject
7 matter jurisdiction.

8 In this case, what the Probate Court did is
9 interpreted a deed of distribution, did it
10 wrongly. But the Probate Court doesn't have the
11 subject matter jurisdiction to interpret a deed of
12 distribution, or any deed for that matter. That
13 circuit -- that subject matter jurisdiction lies
14 with the Circuit Court, not the Probate Court.

15 The statute --

16 THE COURT: Let me interrupt you and ask you this, and
17 I'll ask both of you this, because this is an age-
18 old question. But what effect does a deed of
19 distribution really have?

20 MR. BLANCHARD: There's a --

21 THE COURT: You know, again, there's the old argument
22 that a deed of distribution doesn't do anything.
23 The title pops upon the death of the deceased.
24 And if passed by will, a deed of distribution
25 should set forth whatever the will says, right?

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1 MR. BLANCHARD: Well, and what the deed of distribution
2 does, again, based on the statute, and this is
3 South Carolina Code 62-3-907, says that the deed
4 of distribution operates as proof of ownership to
5 the distributee and his purchasers or
6 encumbrancers.

7 So what we've got in this case is a deed of
8 distribution that very clearly lays out who owns
9 this property. There's nothing ambiguous about
10 it. There's nothing difficult to understand. It
11 very clearly says, and I quoted it back in the
12 beginning, that the property is owned by Martha
13 Ann Fairey Gillespie, for her lifetime; -- which
14 would be life estate to Martha Ann Fairey
15 Gillespie -- remainder unto Mark Allen Gillespie,
16 if he survives; contingent remainder unto Lyle --
17 L. Wilson Fairey, Jr. Under -- when you read
18 that, it very clearly says, when Martha Ann
19 Gillespie passes away, her life estate ends;
20 remainder goes to Mark, if he survives; -- in this
21 case, he didn't -- contingent remainder goes to
22 Wilson Fairey. So, reading the deed of
23 distribution, the property would be owned at
24 Martha Ann Fairey Gillespie's death by L. Wilson
25 Fairey, Jr.

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1 THE COURT: And your position is that that deed of
2 distribution reflects what the will said?

3 MR. BLANCHARD: Yes.

4 THE COURT: Of Ms. Catharine?

5 MR. BLANCHARD: Yes. And I can -- I'll kind of get
6 back to that at the end. But the --

7 THE COURT: I assume the will -- all these documents
8 are --

9 MR. BLANCHARD: All these documents are in. And I'm
10 going to talk about the will, because the wording
11 of the will is -- well, I'll get to that.

12 THE COURT: All right.

13 MR. BLANCHARD: But the subject matter jurisdiction, I
14 think, is the primary issue.

15 THE COURT: Okay.

16 MR. BLANCHARD: Because the Probate Court --

17 THE COURT: Well, I threw you off, so go ahead. I'm
18 sorry.

19 MR. BLANCHARD: No, that's okay. The Probate Court has
20 -- obviously, has to make the determination of
21 what assets are and are not part of the estate.

22 THE COURT: Right.

23 MR. BLANCHARD: But in doing that, the Probate Court is
24 limited to reading the deed of distribution, which
25 very clearly sets out this would not be an asset

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1 of the estate. The only way the Probate Court can
2 do what it did, and the Probate Court's order
3 actually says this is what the Probate Court did,
4 is to look outside the deed of distribution to
5 interpret the deed of distribution using extrinsic
6 evidence, which you can't do in this case because
7 it is a very clear unambiguous statement, both in
8 the granting and the addendum clause, as to what
9 the deed of distribution, or as to who gets the
10 property. So there is no reason to look to any
11 outside evidence, but once we get there, you'll
12 see that that's what the Probate Court did.

13 So, first off, Probate Court can't interpret
14 this deed. The estate was closed at the time this
15 matter was being dealt with, so the Probate Court
16 doesn't have the ability to say, personal
17 representative, you have to do something
18 different. All the Probate Court can do to carry
19 out its mandate under the statute is figure out if
20 this is an asset of the estate or not, but you
21 can't interpret the deed to do that; only the
22 Circuit Court can do that. So, for that reason, I
23 don't think there's subject matter jurisdiction,
24 and this whole matter should be kicked out and
25 dealt with through the appropriate court.

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1 Looking beyond subject matter, assuming
2 somehow that the Probate Court could interpret a
3 deed, what they did is, as I said, they looked to
4 extrinsic evidence. And what the case law says is
5 when you're interpreting a deed, you only look to
6 extrinsic evidence if the deed is somehow
7 ambiguous. In this case, there's no ambiguity in
8 what that deed said. It is very, very clear.
9 This is what happens; under these circumstances,
10 this is who gets it. There's no -- no debate
11 about who passed away when, no debate about order.
12 Very clear, if you're interpreting the deed, this
13 is what should happen.

14 Probate Court didn't do that. They used
15 extrinsic evidence and looked at the will. And
16 the Probate Court determined that the will
17 contradicted the deed of distribution. I don't
18 think that was the correct determination, above
19 and beyond the fact that the Probate Court wasn't
20 supposed to take that additional step to get
21 there.

22 But skipping ahead to the third argument
23 that I was -- that I laid out in my brief, if you
24 get to that point, if somehow you get beyond
25 subject matter jurisdiction issue and you get

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1 beyond the fact that this is a perfectly
2 unambiguous deed of distribution and you go to
3 interpreting the language in the will, what the
4 language in the will says is a little bit longer
5 than what the deed of distribution says, but I'm
6 going to read through it. The will refers to the
7 9.7-acre tract of land and says:

8 I give and devise unto my daughter, Martha
9 Ann Fairey Gillespie, subject to the
10 following conditions, for and during the
11 term of her natural life and after her death
12 to my grandson, Mark Allen Gillespie, if he
13 shall survive her, the real estate described
14 below. If my said daughter shall die and at
15 the time of her death be married to Henry L.
16 Gillespie and not survived by Mark Allen
17 Gillespie, I give and devise said real
18 estate unto my son, Lyle Wilson Fairey, Jr.
19 If during my daughter's lifetime she shall
20 become the widow of Henry L. Gillespie, then
21 I direct that this gift of real estate to my
22 said daughter shall be in fee simple.

23 That's the much longer segment of the will. No
24 dispute, that refers to the 9.7-acre tract of land
25 we're dealing with. Everybody agrees on that. So

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1 if you're going to, incorrectly in my opinion,
2 look to the will to try to interpret the deed of
3 distribution, you can -- you still get to the same
4 conclusion, which is that Mr. Wilson Fairey owns
5 the property at Martha Gillespie's death. And the
6 reason is, what Martha Gillespie owned was a life
7 estate subject to a condition subsequent. She had
8 a life estate that could be changed to fee simple
9 if an event happened during her lifetime, but what
10 --

11 THE COURT: That event being the death of her husband?

12 MR. BLANCHARD: That event being the death of Henry L.
13 Gillespie.

14 THE COURT: All right. What happened to him?

15 MR. BLANCHARD: Henry L. Gillespie did pass away during
16 her lifetime. But the problem is no action was
17 taken by Martha Ann Gillespie. She didn't do
18 anything. The deed of distribution stood as it
19 was, as it had been since it was filed in '05.
20 And Henry -- I think I've got his date of death
21 somewhere, but no action was taken by Martha at
22 Henry's death to change anything. So the deed of
23 distribution says what it says, said what it said
24 during her lifetime. She passed away without
25 having taken additional action to change what she

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1 had into what she could have had. And that's --
2 that's the bigger issue. And I think that's what
3 the Probate Court completely ignored in trying to,
4 again, incorrectly, interpret the deed of
5 distribution by factoring in what the will said.

6 And that's a -- the -- one of the other
7 things, bigger picture to think about on this
8 appeal is obviously the standard of review. And
9 the standard of review on the issue of
10 interpreting the will and/or the deed, that would
11 be an equitable issue. And on an equitable issue,
12 the Circuit Court standing in place of the
13 Appellate Court can make any kind of findings of
14 fact that it wants. Completely a de novo review.

15 The previous two issues that we talked about
16 would be an issue of law, so that changes that.
17 But, again, if we're looking getting beyond
18 subject matter jurisdiction, getting beyond
19 whether or not you need to interpret this deed,
20 which I would argue you don't, you as the Court of
21 Appeals now have perfect ability to find any facts
22 you want, look into all this, and make a decision
23 different from the Probate Court, and I would
24 argue should make a decision different from the
25 Probate Court based on a reading -- if you get

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1 there, a reading of the will in a determination of
2 what Ms. Martha Ann Gillespie actually had. And
3 I'm glad to walk back through any of that with any
4 questions, Your Honor, now.

5 THE COURT: Well, let me ask you this. You indicated
6 that Ms. Catharine should have done something at
7 the death of her husband beyond what she did.

8 MR. BLANCHARD: Right.

9 THE COURT: What is it that you propose she should have
10 done?

11 MR. BLANCHARD: Martha should have done something at
12 the death of her husband.

13 THE COURT: I'm sorry, Ms. Martha.

14 MR. BLANCHARD: That's okay. Yes, so Martha should
15 have -- at that point, she could have taken action
16 to modify the deed of distribution if she wanted
17 to. She could have filed an action to modify that
18 deed in the Circuit Court or she could have
19 attempted to -- I don't know if the estate was
20 closed at that point. She probably could have
21 petitioned to reopen the estate and have the PR
22 make changes. That wasn't done. But she had to
23 do something, because what she has is a deed of
24 distribution that says to anybody, anybody who
25 wants to purchase that property, it says, you read

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1 this deed and you figure out who's passed away and
2 this is who owns it.

3 So if I come into it and I read that deed of
4 distribution, it says, if Martha passes away and
5 her son has predeceased her, Lyle Wilson owns this
6 property. So she needs to take some action --
7 needed to take some action to fix that. And she
8 had actions available and just didn't.

9 THE COURT: Okay. Anything further?

10 MR. BLANCHARD: Nothing further at this time, Your
11 Honor.

12 THE COURT: Mr. McCurry, I'll be glad to hear from you.

13 MR. MCCURRY: Yes, sir. May it please the Court. The
14 question, Your Honor, is whether this property
15 should be a part of Martha Gillespie's estate.
16 It's been discussed, but we disagree with almost
17 everything that the Appellant indicates.

18 THE COURT: I'm shocked at that, that there would be a
19 disagreement.

20 MR. MCCURRY: Firstly, the Probate Court had the same
21 question before it, and it -- it, as a probate
22 court is allowed to do, had the ability, Your
23 Honor, to construe wills and determine the
24 property which the estate of the decedent has an
25 interest. And so we feel that the Probate Court

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1 did exactly what it was supposed to do. And
2 that's Plaintiff's -- that's Exhibit Number 14.
3 That the Probate Court had the right to do exactly
4 what it did, which was to determine what assets
5 are part of the estate. And --

6 THE COURT: But the Court was doing it by interpreting
7 a will of a closed estate; is that correct?

8 MR. MCCURRY: That's correct. And, Your Honor, the
9 Probate Code also, in Section 62-3-908, speaks of
10 improper deeds of distribution. And an improper
11 deed of distribution is a deed of distribution in
12 which the instrument or deed of distribution is
13 found to be inconsistent with the terms of a will.
14 And we maintain, without any question whatsoever,
15 that the deed of distribution very much tried to
16 crystalize what the will said and in fact left out
17 the condition upon which the whole -- this whole
18 matter turns.

19 And so we argue that the will of Catharine
20 Fairey controls and not the deed of distribution.
21 The Court agreed and -- the Probate Court agreed
22 and indicated that in item third -- I'm sorry.
23 I'm sorry, I thought you said something. The
24 Probate Court decision said that Item 3 of the
25 Last Will and Testament indicates that the subject

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1 property was owned in fee simple. The denial of
2 the motion for reconsideration says the same
3 thing. And, Your Honor, the denial is also in
4 Exhibit Number 16. Your Honor, so it's therefore
5 necessary -- it's necessary to return to the deed,
6 to the will itself. And I've got a copy of the
7 will excerpt, the pertinent page, and highlighted.
8 And I've highlighted it, Your Honor, because it is
9 -- it is somewhat confusing. Right, wrong, or
10 indifferent, Charlton Horger prepared this will
11 and it was executed by Judith Smith, Nancy
12 Faulling, Roxanne Rawleigh in our office. And so
13 but I think it helps --

14 THE COURT: I guess I can't fuss at Mr. Horger.

15 MR. MCCURRY: That's true. And but I highlighted it
16 for this reason: The -- we take the position that
17 this will set forth a life estate, in all
18 likelihood with a contingent remainderman.

19 Now, Your Honor, there's a later case I
20 might reference that the Supreme Court of South
21 Carolina speaks of trying to classify things that
22 could be dangerous because there are different
23 interpretations.

24 But certainly this will sets forth certain
25 conditions upon which the vesting of the remainder

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1 will occur. Condition number one, it says --
2 after -- after Martha is left a life estate,
3 condition one: After her death, to my grandson,
4 Mark, if he survives me. That fails. Mark died a
5 month and a half before Ms. Gillespie, Ms. Martha,
6 if you will. Then number two: If my daughter
7 shall die and at the time of the death be married
8 to Henry Gillespie. You really don't need to go
9 any further than that, Your Honor. You can. But
10 upon her death, she was not married to Henry.
11 Henry had passed away. It ultimately says it goes
12 to Lyle, but, again, that condition fails when it
13 says if she's married to Henry. That was not
14 true. Number three, part three of the conditions,
15 the last condition: If during my daughter's
16 lifetime she shall become the widow of Henry, then
17 I direct that this gift of real estate should be
18 in fee simple. That's it. Henry died in 2012.

19 Martha died --

20 THE COURT: Well, suppose Mark had outlived her.

21 MR. MCCURRY: But Mark didn't.

22 THE COURT: Which one of those -- I understand that.

23 But suppose he had. Then one and three would have
24 both happened. What would have happened then?

25 MR. MCCURRY: If Mark had outlived her, the property

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1 would have been Mark's.

2 THE COURT: Why?

3 MR. MCCURRY: Because --

4 THE COURT: Because she was the widow of Henry and both
5 of those would have applied.

6 MR. MCCURRY: It -- but we take -- I would take the
7 position that that would control, that Mark would
8 have --

9 THE COURT: The first?

10 MR. MCCURRY: The first one, yeah.

11 THE COURT: Okay.

12 MR. MCCURRY: The first in time. So, Your Honor, that
13 paragraph 3, when you contrast the last will and
14 testament with the deed of distribution, which is
15 Exhibit 18, clearly, the deed of distribution is
16 lacking.

17 And, goodness, any -- but the Court did
18 exactly what a court should do, what an attorney
19 would do, what an abstractor would do. They
20 looked not to the deed of distribution, but looked
21 to the will to see if the -- you know, to make
22 sure the will says what it says.

23 And so Exhibit Number 18 is an improper deed
24 of distribution. And so it is our position that
25 the deed of distribution discussion is really

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1 totally irrelevant here. One has to properly
2 determine what -- who owned the property. The
3 place to look for that is the last will and
4 testament, looking at the four corners of the
5 will.

6 And, Your Honor, as an aside that I don't
7 think would be disagreed with, the totality of the
8 circumstances here, Henry Gillespie was ten years
9 Martha's senior, had been married twice prior to
10 meeting Martha while she was a nursing school
11 student, and had -- he had four children. And so
12 the intent of Martha was to make sure -- excuse
13 me, the intent of Ms. Catharine Fairey, who didn't
14 want her daughter to marry Henry -- I mean, it's
15 acknowledged; the family would acknowledge that.
16 She -- she -- Catharine wanted to make sure that
17 Henry --

18 THE COURT: Didn't get anything?

19 MR. MCCURRY: -- didn't get it. And so there's another
20 piece of property that was granted to Martha.
21 Martha's own home that she lived in was only
22 granted to her for life, then to her son. She did
23 not want Henry to take. And this effectively made
24 sure that wasn't happening. It was going to go to
25 Mark, it was going to go to Lyle if it had to, but

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1 then number three is what controls. It went to
2 Martha because Henry was no longer here. Okay.
3 So, Your Honor, we certainly take the position
4 that the language is clear. The deed of
5 distribution was improper. Your Honor, the second
6 argument of the Appellant we think is also
7 incorrect, because the Court did not modify the
8 deed of distribution; the Court simply interpreted
9 who the owner of the property was pursuant to the
10 very document that controlled who the person who
11 owned it was, and that was the last will and
12 testament. The -- and, again, we -- there's that
13 three-part contingent remainder or condition, the
14 three-part condition, it was what -- is what
15 controls here. And I'm trying not to be
16 repetitive, Your Honor. Let's see.

17 The Appellant argues that, at some point in
18 time, a right of entry was created, that something
19 needed to be done upon the -- upon Henry's death.
20 And we certainly take the position that that's not
21 true. I've never heard of anyone modifying a deed
22 of distribution. I've never -- I just, I don't
23 think -- I don't think that's correct. There was
24 nothing that Martha was required to do, because
25 her ownership became fee simple pursuant to the

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1 terms of the will. She didn't -- I can't hardly
2 read my own writing, Your Honor. There was no
3 payment she had to make.

4 THE COURT: I have the same problem.

5 MR. MCCURRY: There was no payment she had to make.
6 There was no charge she had to pay. There was
7 nothing she had to exercise. Immediately upon
8 Henry's death, it vested, if you will, the -- her
9 life estate and the remainder interest merged and
10 became fee simple in Martha's name. Let's see.
11 Therefore, the Appellant's argument in the third
12 item, in the third argument made, also fails,
13 because it indicates that there was some action to
14 be taken, that there was some right that had to
15 occur, some right of entry.

16 The Appellant relies on a case, McAlhaney(as
17 pronounced) versus Clapp, which is really an
18 action for specific performance of the contract of
19 sale. It involves a deed. Property was given to
20 Furman University for use as an educational
21 institution. And subsequently Furman had sold a
22 piece to a third party. The third party
23 contracted to sell. The buyer's attorney looks
24 into it, says, wait a minute, Furman shouldn't
25 have sold this; it's not for educational purposes.

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1 The Court said that that language was -- that
2 language did not carry today as long as the
3 proceeds were used by Furman for educational
4 purposes. If it didn't, it found that there was
5 no conditions subsequent.

6 And, by the way, Your Honor, I think what I
7 -- as I read it, a condition subsequent is a
8 situation in which a -- subsequent to the vesting
9 of title, something must occur. There are several
10 cases, several cases that I looked at in which
11 someone was -- a life tenant had property from the
12 death of so and so as long as they paid \$600.00 to
13 someone after death. In one case, they paid
14 \$300.00. Here, there was no -- there was no
15 condition, condition attached to the vesting of
16 the property to Martha. When Henry died --
17 THE COURT: The condition would have been Henry's
18 death.

19 MR. MCCURRY: When Henry died, it vested. Yeah. And
20 so there was no other condition of what had to --
21 needed to be done that needed to be taken care of.
22 Your Honor, let's see, I did have -- and I don't
23 know if you need it, Your Honor. I did make a
24 copy of the McManus(as pronounced) case which was
25 cited by the plaintiff, and it had some -- again,

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1 a differing case. I'm not sure if that's
2 necessary to give that to the Court. But again it
3 indicates that -- that's the Furman case --

4 An important consideration in determining
5 whether a clause is a condition subsequent
6 or something else is the presence or absence
7 of a re-entry clause by the grantor or his
8 heirs, or of forfeiture of the estate for
9 breach of condition.

10 Again, that doesn't apply in this particular
11 situation. And I'll just give you a -- I did not
12 mark this because it's a case. And I'm going to
13 staple it. But what I just quoted I believe is
14 right there. That's on the bottom of page 251,
15 was what I quoted from, Your Honor.

16 THE COURT: Okay. And for the record, Mr. McCurry,
17 your little notes and -- I'm not going to consider
18 any of that.

19 MR. MCCURRY: Oh, that's fine.

20 THE COURT: I'm going to read the whole document.

21 MR. MCCURRY: That's correct, Your Honor. And --

22 THE COURT: I won't consider the highlights or any of
23 that.

24 MR. MCCURRY: Certainly. On the will, which I've
25 highlighted for discussion purposes, I also

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1 attached to that the entire will behind it.

2 THE COURT: Right. I saw that. I appreciate that.

3 MR. MCCURRY: And, of course, the will is in the
4 record.

5 THE COURT: Right.

6 MR. MCCURRY: Certainly.

7 THE COURT: And I'm going to look at the whole
8 document.

9 MR. MCCURRY: I understand, Your Honor. In the instant
10 case, again, there's no vesting subject to
11 something later or any kind of condition, because
12 the condition was automatic. Martha became the
13 widow of Henry. Her ownership became fee simple
14 absolute. And we believe that the decision of the
15 Probate Court was the correct decision given the
16 factors indicated in my arguments. I have nothing
17 further, Your Honor.

18 THE COURT: Thank you. Anything in reply, Mr.
19 Blanchard?

20 MR. BLANCHARD: Yes, Your Honor, a couple things.
21 First off, I want to go back to the language
22 discussing what is, I believe it was the son, what
23 does he have. In that conversation, I think the
24 Court asked Mr. McCurry, you know, what happens if
25 both of those events occurred, who gets the

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1 property? And I think that's a pretty telling
2 question, because under that question, the first
3 issue was, well, if Ms. Martha has a life estate
4 and her son is alive when she passes away but her
5 husband is not, who gets the property? Well, I
6 believe the answer that Mr. McCurry gave was that
7 Mark would be first up for the property. So if
8 Mark is first up for the property, what that means
9 and what that says is necessarily all Martha had
10 was the life estate, because if Mark couldn't get
11 the -- if -- for Mark to get the property, she
12 couldn't have fee simple. So if the only thing
13 that has to happen to get fee simple is her
14 husband has to die, that you can't -- it can't all
15 lead to that conclusion. You've got to go one way
16 or the other. You can't have both. So I think
17 that is -- I think that's a very telling question.

18 If we're getting in -- if we're going to get
19 to the will and say, all right, what does the will
20 mean, I think the will still means, under the
21 scenario we have, if Ms. Martha did not take any
22 action at her death and she had the right to take
23 that action, then Mr. Fairey will end up with the
24 property.

25 Now, going to the -- some of the statutes

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1 and the Probate Code that Mr. McCurry cited,
2 talking about the improper distribution, that this
3 is an improper deed of distribution, if this was
4 an improper distribution, there was a remedy for
5 that. Somebody could have petitioned the Probate
6 Court to reopen the estate and either appoint a
7 new personal representative to fix it or make the
8 old personal representative fix it. Nobody did
9 that. The statute, looking at 62-3-908, it says
10 -- first off, it says:

11 Proof that a distributee has received an
12 instrument or deed of distribution of assets
13 in kind whether real or personal, or
14 payment, from a personal representative is
15 conclusive evidence that the distributee has
16 succeeded to the interest of the estate in
17 the distributed assets, against all persons
18 interested in the estate, except that the
19 personal representative may recover the
20 assets or value if the distribution was
21 improper.

22 So that tells me it's --

23 THE COURT: Where are you quoting from?

24 MR. BLANCHARD: 62-3-908. It's on page 2 of Exhibit --

25 Mr. McCurry's Exhibit 15.

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1 THE COURT: Right. Right.

2 MR. BLANCHARD: So that tells me two things. One, it
3 says the deed of distribution is proof of who owns
4 this property. And the deed of distribution would
5 put this property into Lyle Wilson Fairey's name
6 at the point at which the deed of distribution
7 was, I'll say, attacked. The second thing that
8 tells me is, if the deed of distribution is
9 improper, the proper thing to do is, if the estate
10 is still open, petition the Probate Court to have
11 the personal representative recover the assets,
12 fix the deed of distribution. That was not done.
13 No one asked the personal representative of the
14 Estate of Catharine Fairey to do anything to fix
15 the deed of distribution.

16 If we skip down on the same page, 62-3-909,
17 it talks more about improper distribution. It
18 says, "unless the distribution or payment no
19 longer can be questioned because of adjudication,
20 estoppel, or limitation." In this case, the
21 estate's closed, so I think that's one. I think
22 it would be an adjudication that would prevent the
23 challenging of the deed of distribution. And then
24 we're also -- the deed of distribution was done in
25 2005. This case comes up in, let's see, I believe

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1 it's two thousand -- February 4th, 2016, so that's
2 over ten years later that somebody -- that a
3 hearing occurs.

4 THE COURT: Let's -- and being fair, Mr. Blanchard,
5 there's nothing she could have done until Mark
6 passed away in December of 2014. And she died in
7 January of 2015, so she'd have had 30 days or so
8 to have done anything, correct?

9 MR. BLANCHARD: There's nothing she could have -- well,
10 prior to his death, she could not have taken
11 action to change the -- or to -- she could not
12 have filed a petition through the Circuit Court to
13 change the deed. However, anyone -- not anyone,
14 excuse me. She could have, as an heir of the
15 estate, she could have petitioned the Probate
16 Court at any point after February 2005 and said,
17 hey, this deed of distribution is wrong; somebody
18 needs to fix this. But she didn't. No one did.
19 Because that deed of distribution is public record
20 filed with the Register of Deeds and it was --
21 nobody disputes it was filed in February -- or in
22 2005. No one challenged it. And this statute,
23 62-3-909 --

24 THE COURT: And the personal representative of
25 Catharine's estate was your client, right?

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1 MR. BLANCHARD: Yes. Yes.

2 THE COURT: So he did the deed?

3 MR. BLANCHARD: He -- well, a lawyer did the deed. The
4 -- let's see.

5 THE COURT: He signed it?

6 MR. BLANCHARD: Yes, he signed the deed; lawyer
7 prepared it. But the beneficiaries of the estate,
8 specifically Martha, could have challenged it and
9 said, hey, wait, this deed of distribution doesn't
10 say what it needs to say, the will says something
11 different, we need to fix it. She didn't do that.

12 THE COURT: Okay.

13 MR. BLANCHARD: So, arguably, her son with this
14 remainder interest also could have done something.
15 He didn't do anything. Nobody did. Nobody did
16 anything. Nobody challenged the deed of
17 distribution. But I think the statute clearly
18 sets up what should have been done to challenge
19 the deed of distribution, and none of that was
20 done.

21 The -- let's see. The same statute mentions
22 adjudication, which I think occurs when the
23 Probate Court issues an order stating this estate
24 is closed and the personal representative is
25 relieved from their duty, estoppel, or limitation.

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1 In this case, it's been -- it was more than
2 ten years after the deed was done. Typically the
3 statute of limitations to challenge a transfer of
4 property I believe is about ten years. I know
5 there's some varying statutes for different
6 things, but it had been a significant period of
7 time and no one had done anything. So I think
8 that statute is going to, at this point, prevent
9 anybody from doing anything, if we're getting
10 there. I don't think we have to get there because
11 I think there are other issues. But if you're
12 getting to interpretation, I think those two
13 statutes are pretty telling. And the -- and I
14 don't have anything further at this time, Your
15 Honor.

16 THE COURT: All right. Briefly, Mr. McCurry?

17 MR. MCCURRY: Your Honor, just to touch upon those
18 points, 62-3-908 and the several statutes after
19 that in several cases speak to a subsequent third-
20 party purchaser, which doesn't apply here. So we
21 don't have the issue of a third-party purchaser.
22 Thank goodness, Ms. Martha Gillespie retained that
23 property as a life estate and paid the taxes as a
24 life tenant all that time there.

25 Also, to say that there's a responsibility

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1 upon the recipient of a deed of distribution to
2 take some action for an improper deed of
3 distribution places a burden on that individual
4 that I think is not required by any court, by
5 anything. I don't know of a -- I don't know of a
6 situation in which you would be required to revise
7 a deed of distribution.

8 Also, from -- I'm afraid we all know from
9 our practice of law that real estate has no
10 statute of limitations. It's an error that's --
11 it can be many, many years ago; it's still viable
12 and present. And so the timing is not a big issue
13 here.

14 And also, as indicated by the Court, until
15 Mark's death a month before Ms. Martha Gillespie,
16 she may not have even needed to look at the deed
17 of distribution. So I think, Your Honor, that
18 it's clear that the improper deed of distribution
19 is fatal to the deed of distribution; you need to
20 look back to the last will and testament.

21 THE COURT: All right. Thank you. I appreciate
22 everybody being here. I obviously haven't read
23 all this, all the documents and all the exhibits.
24 I'll review all that stuff and I'll get back with
25 you with a decision.

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1 MR. BLANCHARD: Thank you, Your Honor.

2 MR. MCCURRY: Thank you, Judge.

3 THE COURT: Thank you very much. I appreciate
4 everybody coming.

5 (Whereupon, there being nothing further, the
6 hearing concluded at 10:54 a.m.)

7 (*This transcript may contain quoted material. Such
8 material is reproduced as read or quoted by the
9 speaker.)

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CALHOUN) CERTIFICATE

3

4 Be it known that I took the foregoing hearing.

5 That I was then and there a notary public in and
 6 for the State of South Carolina-at-Large;

7 That the witnesses were first duly sworn to
 8 testify the truth, the whole truth, and nothing but the
 9 truth, concerning the matter in controversy aforesaid;

10 That the foregoing hearing was taken down by me
 11 and reduced to written form by means of Stenomask with
 12 backup;

13 That the foregoing transcript represents a true,
 14 accurate and complete transcript of said hearing to the
 15 best of my skill and ability;

16 That this transcript may contain quoted material;
 17 said material is transcribed as read or quoted by the
 18 speaker.

19 That I am neither employed by nor related to any
 20 of the parties in this matter nor their counsel; nor do I
 21 have any interest, financial or otherwise, in the outcome
 22 of this matter.

23 Witness my hand and seal this 5th day of August,
 24 2021.

25

Gretchen H. Wise



Gretchen H. Wise
 Notary Public for South Carolina
 My Commission Expires: 10/12/2027

STATE OF SOUTH CAROLINA
COUNTY OF ~~LEXINGTON~~ ORANGEBURG.

PROBATE COURT

IN THE MATTER OF ESTATE OF CATHARINE INABINET FAIREY

CASE NUMBER 2003-ES-38-00416

DEED OF DISTRIBUTION

WHEREAS, the decedent died on the 31st day of July, 2003; and,

WHEREAS, the estate of the decedent is being administered in the Probate Court for Orangeburg
County, South Carolina in File # 2003-ES-38-00416; and,

WHEREAS, the grantee herein is either a beneficiary or heir at law, as appropriate, of the decedent; and,

WHEREAS, the undersigned Personal Representative is the duly appointed and qualified fiduciary in this matter; and,

NOW, THEREFORE, in accordance with the laws of the State of South Carolina, the Personal Representative has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release to: **MARTHA ANN FAIREY GILLESPIE, for her lifetime; Remainder unto MARK ALLEN GILLESPIE, if he Survives; Contingent remainder**

Name: c/o Martha Ann Fairey Gillespie unto L. WILSON FAIREY, JR.
Address: _____

the following described property:

All that certain piece, parcel or tract of land, with any improvements thereon, containing **9.73 Acres**, situate, lying and being in Orange Township, Orangeburg County, South Carolina, being more specifically shown and delineated as **TRACT B ON A** Plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the Office of the Clerk of Court for Orangeburg County in Plat Book 52, at Page 124. Said property having such metes and bounds as shown by reference to said Plat which is incorporated herein.

Derivation: Being a portion of the property conveyed unto Catharine Inabinet Fairey by Deed of Distribution, Estate of Lyle Wilson Fairey (1987-ES-38-00489), dated August 5, 1988, recorded August 9, 1988, Book 538, Page 449, Orangeburg County Records.

Tax Map Number: (PORTION) 50-0233-00-00-004-000

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises/Property belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises/Property unto the said Martha Ann Fairey Gillespie, for / her lifetime; Remainder unto Mark Allen Gillespie, if he Survives; Contingent remainder unto L. Wilson Fairey, Jr., their heirs and assigns forever.

IN WITNESS WHEREOF, the undersigned, as Personal Representative of the estate of the decedent, has executed this Deed, this 21st day of January, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

Estate of: CATHARINE INABINET FAIREY
by Signature: L. Wilson Fairey Jr. / Per. Repres.
L. Wilson Fairey, Jr. / Per. Repres.

Witness:

Witness:

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON.

PROBATE

PERSONALLY appeared before me Linda L. Puder

and made oath that he/she saw the within named

Personal Representative(s) sign, seal, and as their act and deed, deliver the within writted Deed, and that he/she with

Linda L. Puder Brandy witnessed the execution thereof.

SWORN to before me this 21st day of January, 2005

Witness Signature:

Brandy Chapman

Linda L. Puder

Notary Public for South Carolina

My Commission Expires: 10-30-2007

Dooley Law Firm
218 E. Main Street
Lexington, SC 29072

STATE OF SOUTH CAROLINA,
COUNTY OF ORANGEBURG.

LAST WILL AND TESTAMENT

I, Catharine Inabinet Fairey, of the County and State aforesaid, being of sound mind and memory, do make, publish and declare this to be my Last Will and Testament, hereby revoking any and all Wills or instruments of a testamentary nature that may have been heretofore made by me, to-wit:

FIRST: I direct my Personal Representative hereinafter named to pay all of my just and lawful debts as soon after my death as may be practicable.

SECOND: I give and devise unto my son, Lyle Wilson Fairey, Jr., in fee simple absolute the following tracts of land:

A. All that certain piece, parcel or tract of land, containing 61.12 acres, situate, lying and being in Orange Township, Orangeburg County, South Carolina, and delineated as TRACT "A" on a plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the office of the Clerk of Court for Orangeburg County in Plat Book 52, at page 124;

B. All that certain piece, parcel or tract of land, containing 8.94 acres, situate, lying and being in Orange Township, Orangeburg County, South Carolina, and delineated as TRACT "D" on a plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the office of the Clerk of Court for Orangeburg County in Plat Book 52, at page 124.

THIRD: I give and devise unto my daughter, Martha Ann Fairey Gillespie, subject to the following conditions, for and during the term of her natural life and after her death to my grandson, Mark Allen Gillespie, if he shall survive her, the real estate described

C. J. F. Page 2

below. If my said daughter shall die and at the time of her death be married to Henry L. Gillespie and not survived by Mark Allen Gillespie, I give and devise said real estate unto my son, Lyle Wilson Fairey, Jr. If during my daughter's lifetime she shall become the widow of Henry L. Gillespie, then I direct that this gift of real estate to my said daughter shall be in fee simple. If my daughter and grandson desire to sell the below described real estate which is the subject of this devise, I grant unto my son Lyle Wilson Fairey, Jr., if he is then living, the right of first refusal to purchase the said lands for the same price and under the same terms and offered by a bona fide purchaser for value. It is also my wish and desire that the subject property be sold or be offered at the time of any sale to a member of the Fairey family under the same terms as offered to a third party for sale. This wish and desire, however, is strictly precatory, not mandatory, and shall not be deemed to be required or shall it be deemed to be a charge or lien on the subject property. The real estate which is the subject of this gift is described as follows:

A. All that certain piece, parcel or tract of land, containing 9.73 acres, situate, lying and being in Orange Township, Orangeburg County, South Carolina, and delineated as TRACT "B" on a plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the office of the Clerk of Court for Orangeburg County in Plat Book 52, at page 124;

B. All that certain piece, parcel or tract of land,

containing 42.17 acres, situate , lying and being in Orange Township, Orangeburg County, South Carolina, and delineated as TRACT "C" on a plat surveyed for Lyle W. Fairey, made by Edisto Surveyors & Associates, dated February 22, 1982, and recorded in the office of the Clerk of Court for Orangeburg County in Plat Book 52, at page 124.

FOURTH: I give and bequeath unto my son, Lyle Wilson Fairey, Jr., all of my tools and farm equipment, including any truck that I might own at the time of my death, lawn mowers and any other items which are listed on a separate sheet and attached to this Will.

FIFTH: I give and bequeath unto my daughter, Martha Ann Fairey Gillespie, all household furniture, except as to those items which are listed on a separate sheet and attached to this Will, and I direct that the distribution of those items be made in accordance with the terms of the said list attached hereto. Also, I give and bequeath unto my said daughter, Martha Ann Fairey Gillespie, any automobile which I may own at the time of my death.

SIXTH: I give, devise and bequeath all of my stock in Winn Dixie Corporation, or its successor, and Wachovia National Bank, or its successor, unto First National Bank, Orangeburg, South Carolina, as Trustee, to be held, administered and distributed as follows:

A. Commencing with the date of my death my Trustee shall divide from this trust in equal shares, providing one share for each child of mine surviving, or each deceased child of mine who shall leave issue;

C. S. J. Page 3

B. Commencing with the date of my death my Trustee shall pay to or apply for the benefit of each child of mine or said child's issue all the net income from said trust payable in convenient installments, but no less frequently than quarter annually.

C. During the term of this trust my trustee shall pay to or apply for the benefit of each child or said child's issue from the respective share an amount of principal as in its sole discretion shall be necessary or advisable from time to time for the medical care, comfortable maintenance and welfare of my child or said child's issue, taking into consideration to the extent my trustee deems advisable any other income or resources of my said child known to my trustee.

D. From the principal of each share of this trust upon written request during the month of December of each calendar year my child or issue of a deceased child shall have the right to receive Ten (10%) percent of the aggregate value of the principal at December 31 of such year without reduction for the principal payment of such year. This right of withdrawal is noncumulative so that any amount not withdrawn shall lapse at the end of such calendar year.

E. At the tenth (10th) annual anniversary of this trust the Trustee shall pay over to my child or issue surviving my child their respective shares free of trust and this trust shall

C. S. J. Page 4

terminate.

F. For its services as Trustee hereunder, my Trustee shall receive an amount of compensation as agreed by me with the Trustee prior to my death.

SEVENTH: All the rest and residue of my property, I give, devise and bequeath unto my son, Lyle Wilson Fairey, and my daughter, Martha Ann Fairey Gillespie, in equal shares to share and share alike.

EIGHTH: I hereby name, nominate, constitute and appoint my son, Lyle Wilson Fairey, Jr., as Personal Representative of this my Last Will and Testament, with all the powers incident thereto under the laws of the State of South Carolina; and I ask that he be allowed to serve without bond. If for any reason he is unable to serve, I hereby name, nominate, constitute and appoint my daughter, Martha Ann Fairey Gillespie, as Personal Representative of this my Last Will and Testament, with all the powers incident thereto under the laws of the State of South Carolina; and I ask that she be allowed to serve without bond.

NINTH: By way of illustration and not of limitation and in addition to any inherent, implied or statutory powers granted to personal representatives and trustees generally, my Personal Representative and Trustee is specifically authorized and empowered: to allot, assign, buy, care for, collect, contract with

119. v. Page 6

respect to, continue any business of mine, convey, convert, deal with, dispose of, enter into, exchange, hold, improve, incorporate any business of mine, invest, lease, manage, mortgage, grant and exercise options with respect to, take possession of, pledge, receive, release, repair, sell, sue for and in general, to exercise all of the powers in the management of my estate which any individual could exercise in the management of similar property owned in his own right, upon such terms and conditions as to my Personal Representative and Trustee may seem best, and to execute and deliver any and all instruments and to do all acts which my Personal Representative and Trustee may deem proper or necessary to carry out the purposes of this Will, without being limited in any way by the specific grants of power made, and without the necessity of a court order.

IN WITNESS WHEREOF I, Catharine Inabinet Fairey, do sign this instrument this 31 day of March, A.D. 1992, and being first duly sworn, do hereby declare to the undersigned Notary Public that I sign and execute this instrument as my Last Will And Testament, and that I sign it willingly and as my free and voluntary act for the purposes herein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Catharine Inabinet Fairey (SEAL)
Catharine Inabinet Fairey

C. J. J. Page 1

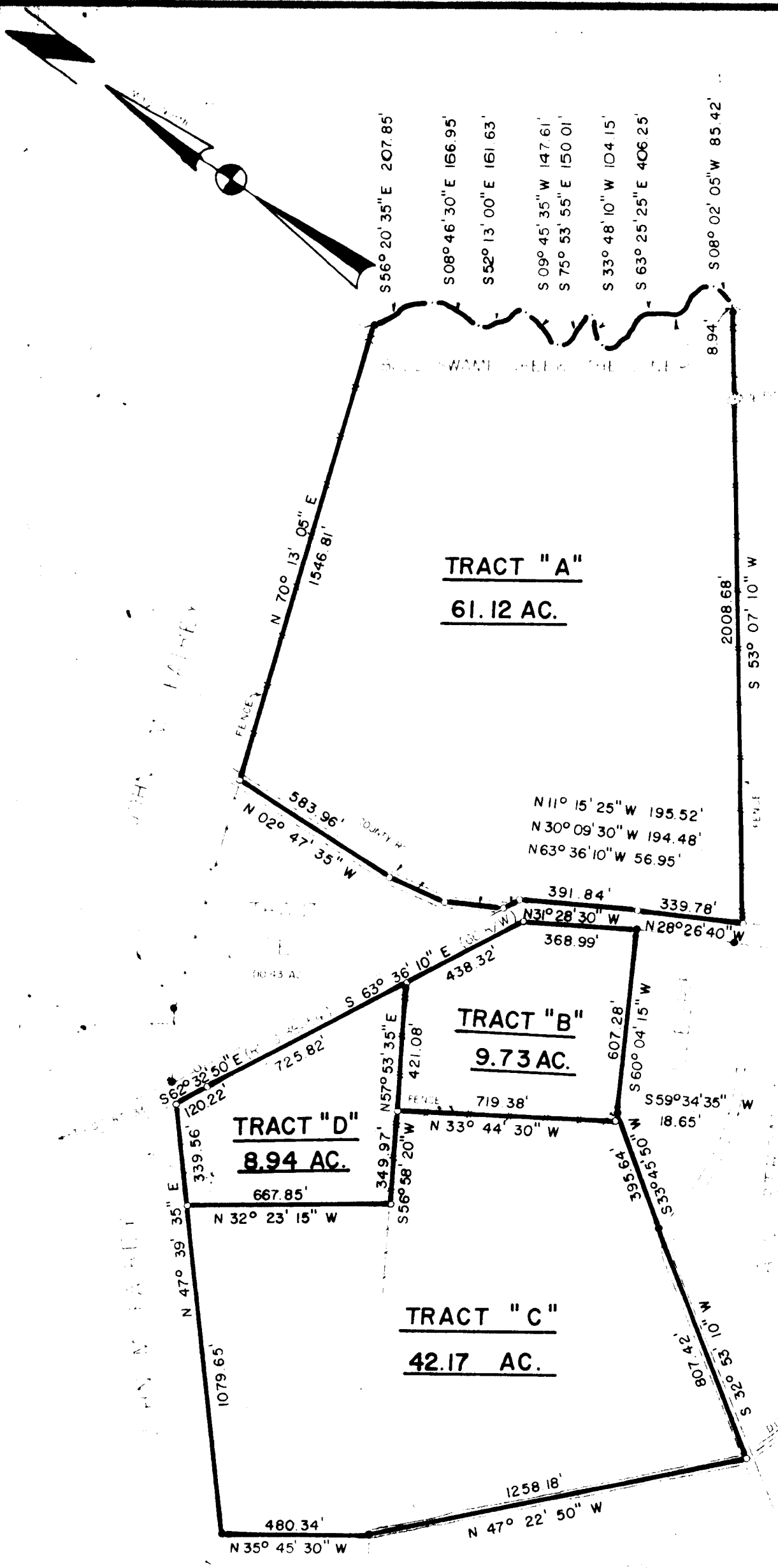
We, the undersigned, Judith Q. Smith and Roxanne O. Rawleigh, at the request of Catharine Inabinet Fairey in her presence and in the presence of each of us, have hereunto subscribed our names as witnesses to her Last Will and Testament, by her so declared to be; further, being duly sworn, we do hereby declare to the undersigned Notary Public that the said Catharine Inabinet Fairey has signed and executed this instrument as her Last Will and Testament, and that the said Catharine Inabinet Fairey has signed willingly and as her voluntary act, and that the said Catharine Inabinet Fairey is eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence:

Judith Q. Smith Residing at Orangeburg, SC
Roxanne O. Rawleigh Residing at Orangeburg, SC

SWORN to before me by the within named Catharine Inabinet Fairey and witnesses this 31st day of March A.D. 1992.

(SEAL) Nancy J. Mullins
Notary Public, S. C.

My Commission Expires: 3-17-98



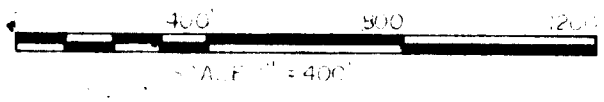
FILED FOR RECORD
52
124

121.96 ACRES
STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
ORANGE TOWNSHIP

LYLE W. FAIREY

HEREBY CERTIFY THAT THE RATIO OF PRECISION
IN THE FIELD SURVEY IS AT LEAST 1/27,500 AS
SHOWN HEREON AND THE AREA WAS DETERMINED BY
UMD METHOD OF AREA CALCULATION

REF. PLAT BY H. FRANK O'CAIN, CE
DTD. APRIL 11, 1970
PLAT BY C. JOSEPH WILSON, DTD. JULY 1968
PLAT FOR MARTHA F. GILLESPIE BY EDISTO
SURVEYORS, INC. DTD. SEPT. 17, 1980
PLAT FOR ARTHUR STROMAN BY C. A. FERRIS,
RLS, DTD. FEB. 3, 1977, REC. PB 44, PG. 107



[Signature]
A. R. PARLER, JR.
S.C. REG. L.S. NO. 5301
EDISTO SURVEYORS & ASSOCIATES
ORANGEBURG, SOUTH CAROLINA

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

PROBATE COURT

IN THE MATTER OF MARTHA ANN GILLESPIE

CASE NUMBER 2015ES3800105

FIDUCIARY LETTERS

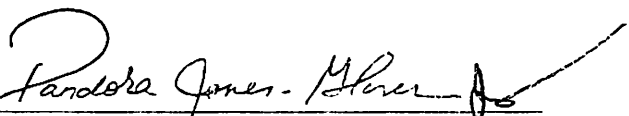
- ☒ Personal Representative
- ☐ Guardian
- ☐ Conservator
- ☐ Trustee
- ☐ _____

On February 19, 2015, Joy A. Gillespie now known as Joy C. Lester was appointed and qualified as Fiduciary (ies) of the above matter by this Court, with all the authority granted to a fiduciary by law.

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

RESTRICTIONS:

Executed this January 5, 2018



Pandora Jones-Glover, Probate Court Judge

STATE OF SOUTH CAROLINA
CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-15-002106

DECEDENT'S NAME: *MARTHA ANN GILLESPIE*

SEX: FEMALE

SOCIAL SECURITY NUMBER: 249-92-7032

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: APRIL 25, 1951

AGE: 63 YEARS

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

COUNTY OF DEATH: ORANGEBURG

NAME AND ADDRESS OF PLACE OF DEATH: REGIONAL MEDICAL CENTER, ORANGEBURG, SC 29118-1498

PLACE OF DISPOSITION: CAMERON CEMETERY

DISPOSITION LOCATION: CAMERON, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 116 RICKENBAKER ROAD, ORANGEBURG, ORANGEBURG COUNTY, SC, 29115

PLACE OF BIRTH: SOUTH CAROLINA

MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: LYLE WILSON FAIREY

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: EMILY CATHARINE INABINET

INFORMANT'S NAME: REENA MYERS

RELATIONSHIP: FAMILY MEMBER

MAILING ADDRESS: 116 RICKENBAKER ROAD, ORANGEBURG, SC, 29115

FUNERAL HOME: DUKES-HARLEY FUNERAL HOME, 3379 COLUMBIA RD., ORANGEBURG, SC, 29118

FUNERAL DIRECTOR: AZEL J. HUTTO III

EMBALMER'S NAME: NOT EMBALMED

LICENSE NUMBER: 1787

ACTUAL OR PRESUMED DATE OF DEATH : JANUARY 13, 2015

ACTUAL OR PRESUMED TIME OF DEATH: 2050

CAUSE OF DEATH - PART I

CARDIOPULMONARY ARREST

MYOCARDIAL INFARCTION

LICENSE NUMBER: NOT EMBALMED

MANNER OF DEATH : NATURAL

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD GEORGE E. CASTRO

LICENSE NUMBER: 15900

CERTIFIER'S ADDRESS: 1137 COOK RD, ORANGEBURG, SC, 29118

DATE FILED: JANUARY 29, 2015

DATE OF ISSUANCE: JANUARY 30, 2015

SPECIAL INSTRUCTIONS :

NA

SC03810770

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine Templeton

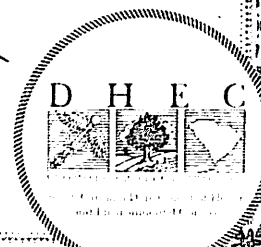
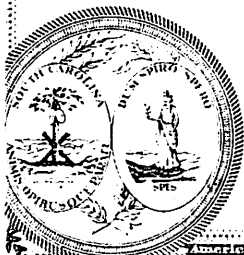
Catherine Templeton
Director and State Registrar

Barbara E. Derrick

Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 01/24/2014



DEATH CERTIFICATION

STATE FILE NUMBER : 139-14-044121 AMENDED

DECEDENT'S NAME: *MARK ALLEN GILLESPIE*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: FEBRUARY 17, 1975

TYPE OF PLACE OF DEATH: DECEDENT'S HOME

NAME AND ADDRESS OF PLACE OF DEATH: 1022 TILL ROAD, ORANGEBURG, SC 29115

PLACE OF DISPOSITION: DUKES-HARLEY FUNERAL HOME AND CREMATORY

DISPOSITION LOCATION: ORANGEBURG, SOUTH CAROLINA

METHOD OF DISPOSITION: CREMATION

DECEDENT'S RESIDENCE: 1022 TILL ROAD, ORANGEBURG, ORANGEBURG COUNTY, SC, 29115

PLACE OF BIRTH: SOUTH CAROLINA

SEX: MALE

SOCIAL SECURITY NUMBER: 250-63-7551

AGE: 39 YEARS

COUNTY OF DEATH: ORANGEBURG

MARITAL STATUS: DIVORCED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: HENRY LEE GILLESPIE

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: MARTHA ANN FAIREY

INFORMANT'S NAME: MARTHA GILLESPIE

MAILING ADDRESS: 1022 TILL ROAD, ORANGEBURG, SC, 29115

FUNERAL HOME: DUKES-HARLEY FUNERAL HOME, 3379 COLUMBIA RD., ORANGEBURG, SC, 29118

FUNERAL DIRECTOR: AZEL J. HUTTO III

EMBALMER'S NAME: NOT EMBALMED

ACTUAL OR PRESUMED DATE OF DEATH : DECEMBER 20, 2014

ACTUAL OR PRESUMED TIME OF DEATH: 1020

CAUSE OF DEATH - PART I

RESPIRATORY DEPRESSION

MIXED DRUG INTOXICATION (COCAINE, OXYCODONE)

RELATIONSHIP: MOTHER

LICENSE NUMBER: 1787

LICENSE NUMBER: NOT EMBALMED

MANNER OF DEATH : ACCIDENT

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? YES AUTOPSY AVAILABLE? YES

DATE OF INJURY: DECEMBER 20, 2014

TIME OF INJURY: NOT LISTED INJURY AT WORK? NO

PLACE OF INJURY: RESIDENCE

LOCATION OF INJURY: 1022 TILL ROAD, ORANGEBURG, ORANGEBURG COUNTY, SC, 29115

HOW THE INJURY OCCURRED?

TOOK TOO MANY DRUGS

CERTIFIER NAME AND TITLE: DEPUTY CORONER PHILLIP L BASS

LICENSE NUMBER: NA

CERTIFIER'S ADDRESS: 1558 ELLIS AVE, ORANGEBURG, SC, 29118

DATE FILED: JANUARY 02, 2015

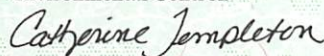
DATE OF ISSUANCE: MAY 07, 2015

SPECIAL INSTRUCTIONS :

CAUSE OF DEATH AMENDED BY: DHEC 627 PER SEAN FOGLE, DEPUTY CORONER, , INJURY INFO AMENDED BY: DHEC 627 PER SEAN FOGLE, DEPUTY CORONER, , , , , , , , , MANNER OF DEATH AMENDED BY: DHEC 627 PER SEAN FOGLE, DEPUTY CORONER, , ,

SC04296179

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.


Catherine Templeton
Director and State Registrar
Barbara E. Derrick
Assistant State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 09/10/2014

