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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Please

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No.: 2021-001413

Jacquelyn Gladden and Patricia Reed, Respondents,

v.

Cyndy Reed Stewart, Appellant.

INITIAL BRIEF OF APPELLANT

Robert B. (Sam) Phillips
SC Bar #16954
The Phillips Firm, LLC
Attorney & Counselor at Law
1025 Calhoun Street, Box 3
Columbia, SC 29201
Sam@PhillipsFirm.Net
(803) 726-4268

Attorney for Appellant.

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE CIRCUIT COURT ERRED IN DENYING DEFENDANT CYNDY REED STEWART'S MOTION TO DISMISS THE CASE DUE TO A LACK OF SUBJECT MATTER JURISDICTION.

2. WHETHER THERE WAS SUFFICIENT EVIDENTIARY SUPPORT FOR THE CIRCUIT COURT TO FIND DEFENDANT CYNDY REED STEWART WILLFULLY AND WANTONLY COMMITTED THE STATUTORY CRIME OF FORGERY AND IS THEREBY LIABLE TO RESPONDENTS FOR ATTORNEY'S FEES AND COSTS.

STATEMENT OF THE CASE

Proceedings Before the Richland County Probate Court (2008-2010).

This matter is but one skirmish in a long dispute between Respondents and the Appellant regarding the custody and control of their mother, Theodocia Reed (hereinafter "Mother"), during her life and of her estate following her death on 15 August 2015. During their mother's life, Respondents Jacquelyn Gladden and Patricia Reed filed an action in 2009 with the Richland County Probate Court (Case No.s 2009-GC-40-00009 & 00010) to have Mother declared incompetent and her financial affairs placed under the control of someone other than their sister, Appellant Dr. Cynthia Reed Stewart (hereinafter "Dr. Stewart"). In that action, Respondents Jacquelyn Gladden and Patricia Reed (hereinafter singularly and collectively referred to as "Sisters") challenged Mother's decisions to, *inter alia*, live with Dr. Stewart's family in Florida, allow Dr. Stewart to assist Mother with her financial decision, and allow Dr. Stewart to hold a Power of Attorney for Mother. During a hearing on 19 October 2009, Probate Court Judge Jacqueline D. Belton examined Mother *in camera* and determined she had sufficient capacity to make her own financial and healthcare decisions. Accordingly, Judge Belton denied Sisters' request to appoint a conservator or guardian. *Order Re: Hr'g* (29 Dec 2009) at pp. 4 & 7. The Court noted Mother's decision to permanently reside in Florida with Dr. Stewart and her family

and that Mother's capacity to delegate additional authority over her affairs as she saw fit. *Id.* at p. 8. The Court found that the Sisters had wrongfully used $8,000.00 of Mother's funds to pay their lawyer to bring the actions and had wrongfully transferred additional funds belonging to Mother into a trust account that was under the Sisters' control. The Court ordered the return of all the funds transferred by the Sisters. *Id.* at p.11.

The parties were back before Judge Belton on 28 June 2010 to address several allegations of non-compliance with the Court's 2009 order. Based on her limited observation of Mother during this hearing, Judge Belton found that Mother "appears" to meet the definition of an incapacitated person and indicated that any "springing" powers of attorney executed by the Mother should be followed by the holders of those powers. *Order Re: Rule to Show Cause* (30 Dec 2010) at p.3. The Court specifically held that Dr. Reed should continue to manage Mother's financial affairs and "continue to be as involved as possible in her affairs, as dictated by her functional capacity and the directives of her powers of attorney. *Id.* at p.4.

Proceedings Before the Bamberg County Probate Court (2015-Present).

Mother passed away in August of 2015. Dr. Stewart opened an Estate for her with the Bamberg Probate Court on 8 September 2015 (Case No. 2015-ES-05-00091). Although Mother's 2008 Will appointed all three (3) of her daughters as Personal Representatives, the Probate Court appointed Dr. Stewart as the sole Personal Representative (hereinafter "PR"). *Order* (02 Oct 2017) at pp.1-2. Respondent Jacquelyn Gladden challenged Dr. Stewart's appointed as sole PR to both the Probate Court, which denied the challenge, and later appeal the Probate Court's decision to the Bamberg County Circuit Court. In a decision entered 2 October 2017, Circuit Court Judge Perry M. Buckner III affirmed the Probate Court and dismissed Ms. Gladden's appeal finding ample evidence to uphold the Probate Court's determination that Ms. Gladden was "unsuitable to act as

personal representative for a number of reasons." *Order* (Case No. 2017-CP-05-00024) (02 Oct 2017) at p.4. As of the this filing, this action has not been resolved.

Proceedings Before Orangeburg County Circuit Court Leading to this Appeal (2018-Present).

The Sisters filed the action giving rise to this appeal with the Orangeburg County Circuit Court on 9 July 2018. Sisters alleged Causes of Action against Dr. Reed for Forgery, Fraud, Misrepresentation, Lack of Capacity, Insanity, Infirmity of Mind, Breach of Fiduciary Duty, Breach of Trust, Self-Dealing, Duress, Undue Influence, Lack of Consideration, Unconscionability, Intentional Interference with Expected Inheritance, Unjust Enrichment, Lack of Good Faith, Quantum Meruit, Quiet Title, and Reformation of Deed. *Summons & Complaint* (Case No. 2018-CP-38-00874) (09 July 2018). The relief requested included, *inter alia*, an award of attorney's fees. These causes of action all relate to the title of a residential property located at 126 Dickson Street, Orangeburg (TMS#0173-15-17-009.000) (hereinafter "Property") that Sisters contend Dr. Stewart wrongfully transferred to herself prior to Mother's death using a Florida power of attorney provided by Mother. *Id.* at p.1.

Dr. Stewart filed a *Motion to Strike, Motion to Dismiss* and *Answer and Counterclaim* on 6 September 2018. Dr. Stewart was represented by attorney Aaron Ness during this initial phase of the case. Mr. Ness[1] and defense counsel subsequently negotiated a *Consent Order* which was entered into the record on 31 October 2018. The *Order* struck "all references in the Complaint to attorney's fees" and ordered that "no award for attorney's fees or pendente lite relief shall be granted in this action." *Consent Order* (Case No. 2018-CP-38-00874) (31 Oct. 2018) at p.1.

[1] Mr. Aaron Ness, who also served as attorney for Mother's Estate, filed a *Motion to be Relieved as Counsel* for Dr. Stewart in the pending Circuit Court matter on 10 December 2018. Respondent's counsel filed a *Return* to that Motion on 26 December 2018 and he was relieved by order of the Circuit Court on 14 February 2019. *Order* (Case No. 2018-CP-38-00874) at p.1.

Respondents filed several motions in 2018 and 2019 in the underlying matter including a *Return to Motion to Dismiss, Notice of Motion and Motion on the Pleadings or in the Alternative Motion for Summary Judgment* on 13 February 2019; a *Motion to Compel Discovery Responses* on 6 May 2019; and *Memorandum in Opposition to Defendant's Motion to Dismiss and in Support of Plaintiff's Motion for Judgment on the Pleadings or in the Alternative, Summary Judgment* also on 6 May 2019. A hearing for these pending motions was set for the week of 9 July 2019; however, Dr. Stewart applied for and was granted additional time to obtain replacement counsel. *Order* (Case No. 2018-CP-38-00874) (07 Sept 2021) at p.2.

The case was placed on the Orangeburg County Circuit Court docket for the week of 23 September 2019. Attorney David Melnyk filed a *Notice of Appearance* for Dr. Stewart on 2 August 2019 but did not appear at the call of the case. Dr. Stewart appeared and asked for a continuance to obtain alternative counsel which was granted. *Id.* The case was again placed on the Orangeburg County docket for the week of 4 November 2019. *Id.* Attorney Evert Comer, Jr. filed a *Notice of Appearance* that same day and appeared asking the Circuit Court for a continuance, which was denied. The Circuit Court heard the pending motions and entered an Order on 10 January 2020 granting reformation of the Property's "deed by putting the deed in the name of all three sisters (the siblings) with equal shares … [a]ll other motions are DENIED." *Order* (Case No. 2018-CP-38-00874) (07 Sept 2021) at p.3. A second motions hearing was held on 4 November 2019. Following that hearing, the Circuit Court issued an *Order* finding that the pending motions (for dismissal of complaint, summary judgment for plaintiffs, deem admission admitted and compel certain discovery) were resolved by the September 7th *Order* reforming the Property's deed. The Court denied Respondents' Request to Reinstate Attorney's Fees pursuant to the parties *Consent Order* of 31 October 2018 as well as the Respondents' *Motion for Sanctions*

on the same grounds. *Order* (Case No. 2018-CP-38-00874) (10 Jan 2020) at p.3. Respondents filed a *Motion to Reconsider this Rule or in the Alternative Leave to Seek Damages from the Probate Court* on 16 January 2020. By *Order* filed 29 January 2020, the Court explained that of the many causes of action raised in the respondent's Complaint, only the reformation issue was resolved by Dr. Stewart's concession and that the "remaining causes of action were not addressed" by the Court's earlier order. *Order* (Case No. 2018-CP-38-00874) (29 Jan 2020) at p.1.

The matter was eventually tried before the Honorable Diane S. Goodstein without a jury on 19 and 20 April 2021. Undersigned Counsel filed a *Notice of Appearance* on 15 April 2021 and represented Dr. Stewart during the trial of this matter. Judge Goodstein rendered her *Final Order and Judgment* in this matter on 7 September 2021. Dr. Stewart filed a *Motion to Reconsider* on 17 September 2021 which was denied by Order filed 08 November 2021. A Notice of Appeal was filed with the South Carolina Court of Appeals on 09 December 2021.

Additional Proceedings Before Bamberg County Probate Court (2020-Present).

On 6 July 2020, Sisters filed a petition with the Bamberg County Probate Court to remove Dr. Stewart as the PR of Mother's Estate on the same grounds advanced in the 2018 lawsuit before the Orangeburg County Circuit Court - the transfer of the Property from Mother to Dr. Stewart. *Probate Court Petition* (Case No. 2015-ES-05-00091) at p.1. A copy of the summons and complaint from the circuit court case was attached to probate court petition. Sisters sought an award of attorneys fees in the Probate Court pursuant to S.C. Code Ann. §62-8-17.[2] *Id.*

[2] The Circuit Court awarded the Sisters attorney's fees pursuant to this same statutory provision in the Order that is the subject of this appeal.

STANDARD OF REVIEW

The first issue on appeal primarily pertains to the subject matter jurisdiction of both circuit and probate courts. Subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong. *Gantt v. Selph*, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018). While the power of a circuit court is set forth in South Carolina's Constitution, the subject matter of the probate court is defined by statute. *Compare S.C. Const. art. V, §11* ("The Circuit Court shall be a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts.") *with S.C. Code Ann.* §62-1-302(a)(1) ("To the full extent permitted by the Constitution, and except as otherwise specifically provided, the probate court has exclusive original jurisdiction over all subject matter related to: estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protected person has an interest … except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court." In both instances, the issue of whether a court has subject matter jurisdiction is a question of law that is reviewed "de novo" by an appellate court. *Simmons v. Simmons*, 392 S.C. 412, 414, 709 S.E.2d 666, 667 (2011); *see also Canady v. Charleston County School Dist*., 265 S.C. 21, 24, 216 S.E.2d 755, 757 (1975) (an appellate court "has both the power and duty to review the entire record and find therefrom the jurisdiction facts … and will decide the jurisdiction question in accord with the preponderance of the evidence.").

The second issue on appeal primarily pertains to an action at law tried by the trial judge wherein "the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings." *Townes Assocs., Ltd. v. City of*

Greenville, 266 S.C. 81, 86, 221 SE.2d 773, 775 (1976); *abrogated on other grounds by In re Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018).

ARGUMENTS

1. WHETHER THE CIRCUIT COURT ERRED IN DENYING DEFENDANT CYNDY REED STEWART'S MOTION TO DISMISS THE CASE DUE TO A LACK OF SUBJECT MATTER JURISDICTION.

Dr. Stewart, by and through her attorney, moved to have this action dismissed due to lack of subject matter jurisdiction. Trial Tr. p.25, ln. 13 to p.26, ln. 5. Section 62-1-302 sets forth the jurisdiction of the probate court and provides in pertinent part that the court has "exclusive original jurisdiction over all subject matter related to estates of decedents, including the contest of wills, construction of wills, determination of property in which the estate of a decedent or a protect person has an interest" subject to the limitation that "the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition, quiet title, and other actions pending in the circuit court." S.C. Code §62-1-302(a)(1) (2021). The Probate Code specifies a specific process required to move matters from the exclusive jurisdiction of the probate court to the circuit court:

> Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion, made not later than ten days following the date on which all responsive pleadings must be filed, must be removed to the circuit court and in these cases the circuit court shall proceed upon the matter de novo.

S.C. Code §62-1-302(d). Actions to "try title concerning property in which the estate of a decedent or protected person asserts an interest" is subject to this motion process for removing matters to circuit court. Id. at Section 62-1-302(d)(3). In this action, there was no motion made to the Bamberg County Probate Court to remove the dispute over the Property to the Orangeburg County

Circuit Court. Although title to the Property was transferred to Dr. Stewart just prior to Mother's death, many of the issues surrounding the Property were before the Probate Court such as the fidelity of Dr. Stewart as the personal representative (PR) and fiduciary to the Estate, Dr. Stewart's claims to reimbursement for person funds she advanced regarding maintenance of the Property, and the viability of the Sisters' claims for attorneys fees which is addressed in greater detail in next Issue. While the Sisters will now claim a separation of the Property from the Estate in order to find jurisdiction for this action, their own actions acknowledge the connection of the Property to the Estate. After Dr. Stewart agreed to relinquish her sole title to the Property in January 2020, Respondents' attorneys prepared a Warranty Deed conveying title to the Property from Dr. Stewart to Mother's Estate rather then to each of the parties individually. Trial Ex. 11. Although title to real property is generally considered to transfer at death, it is subject to requirements falling under the exclusive jurisdiction of the probate court.

> The power of a person to leave property by will and the rights of creditors, devisees, and heirs to his property are subject to the restrictions and limitations contained in [the Probate] Code to facilitate the prompt settlement of estates, including the exercise of the powers of the [PR]. Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them … or in the absence of testamentary disposition, to his heirs … subject to the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration.

Estate of Livingston v. Livingston, 404 S.C. 137, 744 S.E.2d 203 (Ct. App. 2013); see also S.C. Code §62-3-709 ("Except as otherwise provided by a decedent's will, every [PR] has a right to, and shall take possession or control of, the decedent's property, except that any real property or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless or until, in the judgment of the [PR], possession of the property by him will be necessary for purposes of administration.").

In a similar action, our Supreme Court considered the interaction between the jurisdictions of the circuit and probate courts in a dispute over real property that was part of an estate in *Judy v. Judy*, 393 S.C. 160, 712 S.E.2d 408 (2011). The *Judy* court recognized that a probate court's jurisdiction over "claims" encompasses "liabilities of the decedent or protected person whether arising in contract, *in tort*, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator...." 712 S.E.2d 413, *citing* S.C. Code Ann. §62-1-201(4). The *Judy* court held that the probate court had jurisdiction over a tort action for waste, even though such claims "are generally file in circuit court" because "the General Assembly has provided limited jurisdiction for the probate court to consider actions for waste in the context of testamentary matters." *Id.* *Judy* follows the precedent of *Vaughn v. Landford*, 81 S.C. 282, 62 S.E. 316 (1908) wherein our Supreme Court found that an action for partition, waste, betterments and rent, which would ordinarily be adjudicated in different forums, should be handled by a single court based on the principle that "when all the parties and the property are before the court of equity, it will do full justice to all before releasing its hold." 712 S.E.2d at 414.

The transfer of the Property back to Mother's Estate also renders Sisters' claims in this matter moot. Generally, the "threshold inquiry for any court is a determination of justiciability, i.e., whether the litigation presents an active case or controversy." *Lennon v. S.C. Coastal Council*, 498 S.E2d 906, 906 (S.C. Ct. App. 1998). "The concept of justiciability encompasses the doctrines of … mootness." *Jackson v. State*, 489 S.E.2d 915, 917 n.2 (S.C. 1997). "A case becomes moot when judgment, if rendered, will have no practical effect upon [an] existing controversy." *Seabrook v. City of Folly Beach*, 523 S.E.2d 462, 463 (S.C. 1999). The retitling of the Property in the name of Mother's Estate effectively removed the Property from the jurisdiction of this Court by placing it under the exclusive jurisdiction of the Bamberg Probate Court. See S.C. Code Section

62-1-302(a)(1) ("To the full extent permitted by the Constitution … the probate court has exclusive original jurisdiction over all subject matter related to … estates of decedents."); see also *Venture Engineering v. Tishman Const. Corp*., 600 S.E.2d 547 (S.C. Ct. App. 2004) (sale of property that was part of a bankruptcy estate rendered claims against that property moot).

In this matter, Plaintiffs have deliberately and simultaneously pursued claims of impropriety against Dr. Stewart in two pending lawsuits: the instant action and the probate matter of *In re Carrie Theodocia K. Reed*, Case No. 2015-ES-05-0091. Now that the Property is an Estate asset, the Probate Court will have to consider the distribution of the Property amongst the sisters and determine whether Dr. Stewart is entitled to reimbursement of the funds she personally advanced to the Estate as well as whether she is entitled as a beneficiary under Mother's will. *Naturally, any ruling by this Court in this Action will be prejudicial to the ability of the Bamberg Probate Court to fully adjudicate Mother's pending estate.*

2. WHETHER THERE WAS SUFFICIENT EVIDENTIARY SUPPORT FOR THE CIRCUIT COURT TO FIND DEFENDANT CYNDY REED STEWART WILLFULLY AND WANTONLY COMMITTED THE STATUTORY CRIME OF FORGERY AND IS THEREBY LIABLE TO RESPONDENTS FOR ATTORNEY'S FEES AND COSTS.

Appellant maintains it was error to enter judgment against her pursuant to the statutory provisions of Sections 62-8-117 and 16-13-10. Section 16-13-10 makes it a criminal offense punishable up to ten years in prison and a $10,000 fine to falsely make, forge, or counterfeit or willfully assist in the false making, forging, or counterfeiting of any writing or instrument of writing. S.C. Code Ann. §16-13-10(A). The Court held that the Deed transferring the Property was "willfully and wantonly forged." *Order* (Case No. 2018-CP-38-00874) (07 Sept 2021) at p.8.

As a preliminary matter, Appellant maintains it was an error of law for the Circuit Court, sitting as a Court of Common Pleas adjudicating civil allegations of fraud, to find a violation of a criminal statute such as Section 16-13-10. While the circuit court is "a general trial court with

original jurisdiction in civil and criminal cases" it is only when sitting as a "court of general sessions [that it] has subject matter jurisdiction to try criminal cases." *Compare S.C. Const. art. V, §11 with State v. Smalls*, 364 S.C. 343, 346, 613 S.E.2d 754, 756 (2005). In *Hazel v. State*, the Attorney General argued it was error for the Court of Common Pleas to determine whether the defendant's prior criminal kidnapping offense required him to register as a sex offender. 377 S.C. 60, 659 S.E.2d 137, 139 (2008). The Court rejected the argument noting that the common pleas court relied on a "civil statute" to make its finding under SC Declaratory Judgment Act, S.C. Code Ann. §15-53-20, thereby upholding the ruling of the court that was within the boundaries of that court's subject matter jurisdiction. In this matter, the Court relied on a criminal statute to make a civil ruling; thereby, straying from the jurisdictional limitations of a Court of Common Pleas.[3]

As to the merits of the Order finding of a willful and wanton forgery, Appellant maintains the trial court lacked sufficient evidence to find willful and wanton misconduct in executing the Deed. Our appellate courts have defined willful and wanton conduct as "the conscious failure to exercise due care." *Beneficial Fin. I, Inc. v. Windham*, 431 S.C. 256, 277, 847 S.E.2d 793, 804 (Ct. App. 2020), *quoting Yaun v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964). Of course, due care is the defining quality of negligence causes of action. Willful and wanton conduct is on the high end of the continuum of negligent behavior wherein simple negligence is at the bottom being mere carelessness or inadvertence whereas willful and wanton conduct requires a knowing act, the highest standard. *Id.* The evidence presented in this case does not support the inference of willful and wanton misconduct. Dr. Stewart testified at trial she relied on a notary public to properly execute the deed transferring the Property to herself, just as she had done with

[3] This issue was not raised to the trial court but is properly raised for the first time on appeal pursuant to *Travelscape, LLC v. South Carolina Dept. of Rev*. 391 S.C. 89, 705 S.E.2d 28 (2011) (recognizing that a party need not raise a jurisdictional issue before the trial court in order to preserve the issue for appeal).

other real estate transactions she had conducted in Florida. When asked on cross-examination if a notary was an attorney, Dr. Stewart explained a notary is

> an official that's registered by the state. So usually when a notary tells me to sign when I closed my mortgage, I sign where the notary tells me to sign as a notary tells me to sign. When I go to the bank, the notary tells me how to sign and I sign. I don't typically question a notary. So I assumed she -- I had at the top of it power of attorney. She knew I was coming in as power of attorney because I showed her my power of attorney. Okay. So I didn't deceive her, come in with this quitclaim Deed and say sign, you know, the notaries are scrupulous in terms of do you have your documents? Do I have your ID? Do you have this? I had all of the paperwork I needed to have to have it done. So, no, I didn't come in there without my power of attorney.

Trial Tr. p.287, ln.13 to p.233, ln.3. The deed at issue in this matter, *Trial Ex. 9*, supports this testimony. Dr. Stewart is acknowledged as a "POA" at the top left corner of the document on page 1 and the notary, Heather Reeves, relies on the customary language of notaries to indicate she was "provided satisfactory evidence of … the identification" of all persons who signed the Deed. *Id*. at p.2. Nothing in the record demonstrates, or even suggests, the notary was not aware that anyone other than Dr. Stewart signed Mother's name on the deed. She acknowledged Dr. Stewart was her mother's POA on page 1 of the Deed and while it would have been more appropriate to repeat that moniker on page 2 also, the omission is not evidence of a willful and wanton forgery.

Under South Carolina law, punitive damages are usually awarded upon sufficient proof of reckless, willful, or wanton conduct. The burden of proof for such damages requires clear and convincing evidence. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established. The clear and convincing standard is the highest burden of proof known to civil law." *Duncan v. Ford Motor Co.*, 682 S.E.2d 877, 385 S.C. 119 (S.C. App. 2009) (citations omitted). Here, there is no real evidence that the deed was falsely made, forged or executed. The Deed was reviewed and executed by a public official whose purpose was to authentic signatures and there is no suggestion

that here attestations of authenticity are fraudulent other than the failure to note Dr. Stewart's POA status of BOTH page 1 and 2 of the Deed.

In addition to the technical irregularities of the Deed, the trial court concludes that Dr. Stewart took title to the Property "to herself for her own benefit." *Order* (Case No. 2018-CP-38-00874) (07 Sept 2021) at p.8. Dr. Stewart's testimony clearly establishes she sought to maintain the Property for the legacy value it had to her family and community. She explained the Property was not just a house, it was owned by "my great-grandfather, George Washington Scott Kennedy, … an early educator after Slavery and he has a prominent tombstone near Honey Ford Baptist Church which is the church that my mother went to as a child." Trial Tr. p.253, ll. 19-25. Dr. Stewart would stay at the Property while a student at South Carolina State and began being financially responsible for the home's maintenance in 2003 or 2005, before Mother came to live with her. Trial Tr. p.240, ll. 4-7 & p.241, ll.18-21. She further explained she executed the Deed transferring title to herself so she could "keep [the Property] as a legacy home so it will never be sold. And because it's a historical monument in many ways to our family's legacy, the hard work that they put into that. The fact that through all of the history of African Americans in the south that my great-grandfather was able to amass this beautiful home and keep it for over one hundred years. So the house has significant – has significant value to my mother in terms of not its property value, but in terms of its legacy. And I shared that value system about the house." Trial Tr. p. 258, ll14-24. In light of this legacy, Dr. Stewart explained

> Dr. Stewart: [Mother] did not name this [P]roperty specifically and I think that was intentional.
>
> Cross Examination: So you don't think that in your mother's will where it says that all real property is to be equally divided between the three of you that does not include the Orangeburg property?
>
> Dr. Stewart: That's correct. I do not think she wanted that property to be divided because you can't divide it. And she needed to it to be maintained and she knew that

> I would maintain it as I always -- as I had a history of maintaining and protecting and looking out for that property. So she knew it would be in good hands.

Trial Tr. p.286, ll.12-25. The Respondents, who have battled Dr. Stewart for more than ten (10) years over Mother's assets testified they were not aware of this legacy value. For example, Respondent Jacquelyn Gladden testified:

> Cross Examination: So would you agree with me then that your mother treated the Orangeburg house differently than her other property?
>
> Ms. Gladden: Yes, I would say that.
>
> Cross Examination: If I represent to you and you can tell me I'm a liar, the Judge will smile and not do anything about it. Okay. If I represent to you that your grandfather was a prominent minister, built that home as a gathering center for the African American community shortly after slavery in Orangeburg, would you say I'm right or wrong? Or you don't know?
>
> Ms. Gladden: I would not be able to tell you if you're right or wrong. I can't make that determination.
>
> Cross Examination: Do you believe -- do you have any knowledge that your mother was aware of the legacy of that house?
>
> Ms. Gladden: No. If she was, she never talked to me about it.

In order to transfer the Property to herself, Dr. Stewart relied on a Power of Attorney Mother executed with the help of the health care provider she was seeing while living in Florida with Dr. Stewart in June of 2014. Tr. Ex. 6. The Trial Court found that Dr. Stewart "intentionally executed the Florida Power of Attorney to obfuscate the South Carolina Power of Attorney." *Order* (Case No. 2018-CP-38-00874) (07 Sept 2021) at p.8. Naturally, there can be no direct testimony from Mother about her motivations for executing the Florida Power of Attorney, but Dr. Stewart testified to the circumstances of the creation of that document she observed. She explained she thought the Florida Power of Attorney was necessary because such documents were routinely prepared by Florida healthcare providers and "I just thought because we were having to update

everything we were going to update mom's power of attorney since it was suggested." Trial Tr. p281, ll.6-9. She elaborated during cross-examination:

> I just updated things because mom was in a facility and the social worker thought it was time to make sure everything is updated so there's no hindrance to making any decisions that affects mom's health. And mom was living with me at that time. She may have visited South Carolina every now and then, but mom was my full responsibility 90 percent of the time. And so I needed to be able to take care of her as I did to the best of my abilities to speak for her and with her and on behalf of her. And so that's why I executed it.

Trial Tr. p.282, ln.16 to p.283, ln.1. Dr. Stewart used the Florida Power of Attorney to execute a quitclaim deed for the Property.

Although Respondents entered into a Consent Agreement with Dr. Stewart on 31 October 2018 to strike all claims for attorneys fees from this action, and the trial court's subsequently refused to overturn that Agreement in a subsequent Order entered on 10 January 2020, the Court did award attorney fees pursuant to Section 62-8-117(2). While this statute has not been interpreted by a state appellate court, on its face, it does not appear to apply to this action. In pertinent part, an agent who violates the requirements of the South Carolina Uniform Power of Attorney Act must restore to the principal "the value of the principal's property to what it would have been had the violation not occurred" and reimburse the principal for the "attorney's fees and costs paid on the agent's behalf." S.C. Code §62-8-117(1) & (2). The Property was restored to Mother's Estate when Dr. Stewart executed a Warranty Deed prepared by Respondent's attorney on 4 February 2021. Tr. Ex. 11. The trial court made no finding about what section, if any, Dr. Stewart violated of the Uniform Power of Attorney Act, and while not explicitly mentioned, the restoration of the Property to Mother's Estate "restored" the value of the principal's property. Absent some outstanding injury to the principal's property, the only liability created by Section 62-8-117 is the attorney fee provision in subsection 2, and that section is not relevant in this

proceeding because it applies to fees and costs "paid on the agent's behalf." Nothing in the Order appeal from or the record of this matter suggest Respondents or Mother's Estate paid any attorney's fees or costs on Dr. Stewart's behalf. As noted above, Respondent's seek attorney's fees and costs under this statute in the Bamberg County Probate Court for the same conduct at issue in this matter, and such would be an appropriate role for the Probate Court as Dr. Stewart has served at the Estate's Personal Representative since 2015. See S.C. Code Ann. §62-1-403(2)(ii) ("orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate") and §62-3-808(b) ("A personal representative is individually liable for obligations arising from ownership or control of the estate or for torts committed in the course of administration of the estate only if he is personally at fault."). This conflation of the Circuit Court and Probate Court cases lies at the heart of the jurisdiction argument in Issue 1; however, nothing in the record establishes liability pursuant to Section 62-8-117.

CONCLUSION

For the reasons set forth above, jurisdiction over this matter is property before the Bamberg County Probate Court in the action that has been pending since 2015 regarding both the Property at issue in this action and all other assets belonging to the Estate of Theodocia K. Reed.

Respectfully submitted,

7 April 2022

/s/ Robert B. (Sam) Phillips
SC Bar #16954
The Phillips Firm, LLC
Attorney & Counselor at Law
1025 Calhoun Street, Box 3
Columbia, SC 29201
Sam@PhillipsFirm.Net
(803) 726-4268
Attorney for Appellant.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Please

The Honorable Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No.: 2021-001413

Jacquelyn Gladden and Patricia Reed, Respondents,

v.

Cyndy Reed Stewart, Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that a copy of Initial Brief of Appellant has been served upon counsel listed below by emailing a copy of the same addressed as shown below on April 7, 2022.

Margaret A. Collins, Esq.
Elizabeth D. Moore, Esq.
2241 Bush River Road
Columbia, SC 29210
Phone: (803) 708-7442
meg@pslawsc.com
lizzy@pslawsc.com
Attorneys for Respondents

s/ Robert B. Phillips
Robert B. (Sam) Phillips
SC Bar #16954
The Phillips Firm, LLC
Attorney & Counselor at Law
1025 Calhoun Street, Box 3
Columbia, SC 29201
Sam@PhillipsFirm.Net
(803) 726-4268
Attorney for Appellant