

**RECEIVED**  
**May 23 2022**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

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Appellate Case No. 2021-001413

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Jacquelyn Gladden and Patricia Reed, ..... Respondents

v.

Cyndy Reed Stewart ..... Appellant.

**APPELLANT’S RETURN TO RESPONDENTS’ MOTION TO STRIKE**

**and**

**APPELLANT’S MOTION FOR SANCTIONS FOR A FRIVOLOUS MOTION**

On 12 May 2022, Plaintiff/Respondents Jacquelyn Gladden and Patricia Reed (hereinafter individually and collectively referred to as “Respondents”) filed a Motion to Strike portions of Defendant/Appellant Cyndy Reed Stewart’s Initial Brief of Appellant and the accompanying Designation of Record. Respondents claim “[t]hese document were not proffered to or considered by the trial Court and cannot now be raised for consideration. Additionally, such document were not relevant and are not relevant to the matters at trial and now on appeal.” Mot. to Strike, p.1. (emphasis added). Respondents also object to Appellant’s Designation of Record #21 which is an order entered by the trial court below on 10 January 2020. Additionally, they seek to strike several

portions of Appellant’s Initial Brief to this Court. For the reasons set forth below, Respondents Motion to Strike is entirely without merit as it relies on numerous misstatements or misrepresentations of fact and other disparaging comments concerning the Appellant. Appellant therefore prays that the Motion to Strike be dismissed and appropriate sanctions imposed.

### **APPELLANT’S RETURN TO MOTION TO STRIKE**

To fully understand Respondents’ Motion to Strike, a bit of context is required. Respondents Jacquelyn Gladden and Patricia Reed and Appellant Cyndy Stewart are sisters. Their mother, Theodocia Reed, suffered from an extended illness late in life that sometimes required assistance from others. Starting in 2009, Respondents began contesting Appellant’s involvement with her mother by bringing an action in the Richland County Probate Court to have Mrs. Reed declared incompetent and have her financial affairs placed under the control of someone other than Appellant Cyndy Reed Stewart. After two (2) years of litigation, Cyndy Stewart overcame Respondents’ objections and was allowed to continue to oversee her mother’s affairs. When Mrs. Reed died in August of 2015 at the age of 90, Cyndy Stewart was appointed the Personal Representative (“PR”) of her mother’s Estate by the Bamberg County Probate Court in Case No. 2015-ES-05-00091. Respondents objected to Cyndy Stewart’s PR appointment and instituted litigation against her that is still not resolved. As of the filing of this Return, Mrs. Reed’s 2015 Estate is still open and being litigated by the Respondents. See Exhibit 1, Motion to Dismiss for Lack of Jurisdiction (also contains a more detailed background statement).

The specific documents<sup>1</sup> and legal arguments Respondents claim “were not proffered to or considered by the trial Court” relate to their mother’s 2015 Probate Estate that is still pending before the Bamberg County Probate Court. Contrary to the Respondents’ claims, the trial record

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<sup>1</sup> “Petition to Remove Personal Representative, Order of Appointment of Personal Representative, and Order Dismissing Jacquelyn Gladden Appeal in Bamberg County Probate Court.” Motion to Strike, p.1.

clearly demonstrates the arguments and documents Respondents complain of were raised to and ruled on by the trial court. Ms. Stewart's counsel filed a Motion to Dismiss the underlying action due to a lack of subject matter jurisdiction on 18 April 2021. Exhibit 1, pp. 1-5<sup>2</sup>. The Motion to Dismiss was served on Respondents and their current appellate counsel on 18 April 2021 (Exhibit 1, p.6) and they were all present when the Motion to Dismiss was argued to the trial court before the trial of this matter. Two of the documents Respondents now claim "were not proffered to or considered by the trial Court," namely the "Petition to Remove Personal Representative [Cyndy Stewart]" and "Order Dismissing Jacquelyn Gladden's Appeal in Bamberg County Probate Court" were attached as exhibits to the Motion to Dismiss. See Exhibit 1, at p.33 and pp.27-32 respectively. The third document Respondent's seek to strike, "Order of Appointment of Personal Representative" is referenced in the two attached documents and challenged that Order.

Respondents have not only misrepresented what documents were presented to the trial court, they go on to falsely claim that the jurisdiction arguments associated with those documents were not made to the trial court and therefore should not be a part of this appeal. Respondents ask this Court to strike numerous portions of the Appellant's Initial Brief the refers to the Bamberg Probate proceedings. Additionally, Respondents seek to strike trial court documents associated with a consent order entered into between Appellant, the Respondents and their current counsel whereby the Respondents voluntarily agreed to remove all claims to attorney's fees from their complaint. Mot. to Strike, pp.2-3. Not only does Appellant Motion to Dismiss discredit these claims, the legal arguments Respondents seek to exclude were clearly raised to and ruled on by the trial court on 19 April 2021, just one day before the trial of this matter on April 20<sup>th</sup>. See generally Exhibit 2, Trial Transcript Excerpts from 19 April 2021. Respondents lodged no

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<sup>2</sup> Undersigned Counsel electronically retrieved the attached copy of this document from the Judicial Department's website on 22 May 2022.

contemporaneous objection to the admission of these documents or jurisdictional arguments to the trial judge, but now seeks to exclude them through this combination of artifice and subterfuge.

By and through her counsel, Appellant Cyndy Stewart argued to the trial judge that the Bamberg Probate case and the case that is the subject of this appeal were “inextricably linked by the [Respondents] own pleadings” and that those pleadings filed by the Respondents seek to have “this same controversy ... adjudicated in two different [courts].” Exhibit 2, p.7, lines 4 to 9. Mrs. Stewart further argued it is “almost axiomatic that subject matter jurisdiction exists to prevent exactly what we’re trying to do today. [Respondents] want you to hear their allegations – their specific allegations against [Appellant] and maybe award attorneys fees and damages ... even though early on in this case there was a Consent Order that attorney’s fees weren’t on the table.” Exhibit 2, p.8, lines 10-17. “[W]e’re here today to talk about a dispute that the [Respondents] have brought in the [Bamberg] probate court. They’re asking you to rule on issues that they raised to the probate court. And I understand they’ve represented that they didn’t, but in their own filings with that court, they raised it.” Exhibit 2, p.11, lines 1-7. Respondents raised no objection to the Motion to Dismiss, its attached probate court pleadings (including the 3 they complain of in their Motion to Strike) or counsel’s argument of that Motion to the trial judge. In fact, just the opposite occurred. Respondent’s current counsel acknowledged to appropriateness of the jurisdictional issue to the trial court: “Your Honor, I do understand the subject matter jurisdiction issues, those need to be resolved.” Exhibit 2, p.9, line 25 to p.10, line 2. Following argument by all parties, the trial court resolved those issues and denied Appellant’s Motion to Dismiss. That ruling is one of the issues raised in this appeal. Exhibit 2, p.16, line 22 to p.18, line 8.

Additionally, Respondents seek to strike a trial court order filed on 10 January 2020 and identified as number 21 on Appellant’s Designation of Matter to Be Included in the Record of

Appeal. The Order at issue denied several of Respondents' motions including, *inter alia*, Respondent's motion to rescind a consent order they had entered into with the Appellant on 31 October 2018 which struck "all references in the Complaint to attorney's fees." The instant Motion to Strike asserts that "[n]o such order exists," but it clearly does. A copy of said order has been a part of the record of the underlying matter throughout this case and a copy of it was retrieved by undersigned counsel on 22 March 2022 and is attached hereto as Exhibit 3. Respondents additionally argue that the January 10<sup>th</sup> Order is not a "separate order" or that the consent order striking attorney's fees from the complaint was somehow rescinded by the trial court based on certain comments by the trial judge. See Mot. to Strike, pp.1-2 (citing to Transcript Page 49-50). Contrary to Respondents' assertions, the trial judge's remarks on the cited pages did not "revive[] all pleading Motions." Mot. to Strike, p.2. The context of the Judge's remarks can be found on Page 48 of the Trial Transcript and demonstrate that the trial court was addressing a Motion to Deem certain discovery documents admitted, there is no indication the Judge was referring to any other motion and certainly not the motion to revisit the consent order. Even if the trial court's remarks did pertain to Respondent's attempts to set aside the consent order striking all claims to attorney's fees, the trial judge was simply discussing the revival of certain motions, not the granting of the relief sought by those motions. Revival of a motion requesting relief is not the same as granting the relief sought. The consent order issue was not specifically ruled on by the trial court.

The gravamen of Appellant's first issue on appeal is the trial court's lack of subject matter jurisdiction. As set forth above, this jurisdictional issue was raised to the trial court in Appellant's Motion to Dismiss, argued at the beginning of the trial, and the motion was denied by the trial judge. Exhibit 2, p.16, line 22 to p.18, line 8. A ruling by a circuit court judge during a trial that

is recorded in the trial record is sufficiently preserved for appeal and does not need to be raised again in a post-trial motion. *Wilder Corp. v. Wilke*, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998); *Eubank v. Eubank*, 347 S.C. 367, 555 S.E.2d 413, 416 n. 2 (Ct. App. 2001). The denial of a motion to dismiss due to a lack of subject matter jurisdiction is not an interlocutory ruling that can be immediately appealed and therefore the appeal of such a ruling must necessarily occur at the conclusion of the underlying trial. *Allison v. W.L. Gore & Assocs.*, 394 S.C. 185, 714 S.E.2d 547, 549 (2011). Because a denial to dismiss due to a lack of subject matter jurisdiction “does not finally determine anything,” it is therefore not immediately appealable. *Woodard v. Westvaco Corp.*, 319 S.C. 240, 460 S.E.2d 392, 394 n.2 (1995), *overruled on other grounds*, *Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231 (2002). While the record of this matter is more than adequate to demonstrate preservation of the issues and documents Respondents seek to strike, the nature of the appeal, a challenge to subject matter jurisdiction, requires the liberal allowance of record materials because such challenges can be raised, at any time including for the first time on appeal. *In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009). A jurisdictional issue could not be fully explored for the first time on appeal if there were limitations on the record. Here, the documents and legal argument Respondents seek to exclude do not raise or support any unique fact that would otherwise not be raised by a jurisdictional appeal. The relationship of the parties and the existence of the Estate are not denied, and were the gravamen of the action appealed from. In fact, part of the relief sought was to transfer title to a piece of real property from Appellant to the Estate that is still pending before the Bamberg County Probate Court. The exclusions sought would only serve to exclude necessary context for the Appellant’s jurisdictional argument thereby weakening it. Accordingly, the Respondents

Motion to Strike should be DENIED as the trial record clearly demonstrates that the material Respondents seek to strike were properly raised to and ruled on by the trial judge.

### **APPELLANT’S MOTION FOR SANCTIONS FOR A FRIVOLOUS MOTION**

Pursuant to Rules 240 and 269 of the South Carolina Rules of Appellate Practice, Appellant Cyndy Reed Stewart, by and through her undersigned counsel, moves for sanctions against Respondents and their attorneys for the filing of a Motion to Strike on 12 May 2022. As set forth more fully in Appellant’s Return to the Motion to Strike above, Respondents Motion is based entirely on misrepresentations of the trial below. Respondents claim that certain probate court documents were not “proffered or considered” by the trial court is definitively disproven by the trial court’s records and the jurisdictional arguments associated with those documents were argued by all parties to the trial court. Respondents use their misrepresentations about the documents to baselessly argue that “all discussions, references, and legal arguments presented, supported, or otherwise utilizing these document also be stricken.” Mot. to Strike, p.2. In other words, Respondents seek to misrepresent the record below to strike Appellant’s jurisdictional argument even though that argument was raised to and ruled on by the trial judge. Despite employing this artifice to remove from consideration Appellants jurisdictional arguments, Respondents raised no objection to those arguments at trial. Not content to misrepresent the trial record, Respondents also disparage Appellant and her counsel by claiming that the documents and jurisdictional argument are being raised “to obfuscate the matters before the Appellate Court” and seek the “inclusion of inappropriate materials on the record.” Appellant is offended by this conjecture and notes for the Court that she is the only heir to her Mother’s Estate that has used her personal funds to pay for Estate costs that exceed the Estate’s resources while Respondents two (2) lawsuits

against her are litigated. Appellant is a public elementary school teacher with limited resources and has struggled since 2015 to fulfill the financial obligations as both the Estate's PR and litigant in the two (2) lawsuits brought by the Respondents. Significantly, Respondents have presented no evidence of any financial injury other than the accrual of attorney's fees in both matters. This Motion to Dismiss has caused her to incur additional legal expenses in the amount of one thousand, seven hundred and fifty dollars (\$1,750.00). She would ask this Court to award her an appropriate sanction based on the many misrepresentations in that Motion and the extra time and expense required to adequately respond to it.

23 May 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.**

Other Counsel of Record:

Margaret A. Collins (SC Bar 13290)  
Elizabeth D. Moore (SC Bar 103671)  
Palmetto Law Group LLC  
2241 Bush River Road  
Columbia, SC 29201  
803.708.7442

**Attorneys for Respondents.**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

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Appellate Case No. 2021-001413

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Jacquelyn Gladden and Patricia Reed, ..... Respondents

v.

Cyndy Reed Stewart ..... Appellant.

# EXHIBIT 1

**Motion to Dismiss Due to Lack of Subject Matter Jurisdiction  
(filed with Trial Court on 18 April 2021)**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FIRST JUDICIAL CIRCUIT  
 ) CASE NO.: 2018-CP-38-00874

Jacquelyn Gladden and Patricia Reed, )  
 )  
 ) Plaintiffs, )  
 )  
 ) v. )  
 )  
 ) Cyndy Reed Stewart, )  
 )  
 ) Defendant. )  
 )  
 )

**Motion to Dismiss  
for Lack of Jurisdiction**

**TO: THE HONORABLE DIANE S. GOODSTEIN AND PLAINTIFFS JACQUELYN GLADDEN AND PARTICIA REED, BY AND THROUGH THEIR COUNSEL PALMETTO STATE LAW GROUP, LLC.**

YOU WILL PLEASE TAKE NOTICE that Defendant Cyndy Reed Stewart, by and through her undersigned counsel, will move before the Orangeburg County Circuit Court, 1406 Amelia Street, Orangeburg, South Carolina on the tenth (10<sup>th</sup>) day after service hereof or at such other time and place as the Court may set, for an Order dismissing this action pursuant to Rule 12(h)(3), SCRCF for a lack of jurisdiction over the subject matter of this action and Rule 19, SCRCF due to the pendency of an action involving an essential party that is currently pending before the Bamberg County Probate Court (In re Carrie Theodocia K. Reed, Case No. 2015-ES-05-0091).

**Background**

The parties to this action have been engaged in prolonged litigation over the care and finances of their mother, control of her real property and ultimately the disposition of her estate since 2009. Plaintiffs, Jacquelyn Gladden and Patricia Reed (hereinafter singularly and collectively "Plaintiffs") filed two actions in the Richland County Probate Court (In the Matter of Theodocia Reed, Case No.s: 2009-GC-40-00009 & -00010) seeking, *inter alia*, to have the court declare their mother, Theodocia Reed (hereinafter "Mother"), to be incompetent and have

Mother's affairs placed under the control of someone other than their sister Dr. Cynthia Reed Stewart ("Dr. Stewart") with whom Mother had been residing with at Dr. Stewart's home in Florida. In that action, Plaintiffs specifically challenged their 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 Plaintiffs' request to appoint a conservator or guardian. Order Regarding Hearing (dated 29 Dec 2009) at pp. 4 & 7 attached hereto as **Exhibit A**. The Court noted Mother's decision to permanently reside in Florida with the Defendant and her family and that Mother capacity to delegate additional authority over her affairs as she saw fit. **Exhibit A** at p. 8. The Court found that Plaintiffs 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 Plaintiff's control. The Court ordered the return of all the funds wrongfully taken by the Plaintiffs. **Exhibit A** at p.11.

The parties were back in court before Judge Belton on 28 June 2010 to address several allegations that the parties had not fully complied with the Court's 2009 order. Based on her limited observation of Mother during the 2010 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 Regarding Rule to Show Cause (dated 30 December 2010) at p.3 attached hereto as **Exhibit B**. The Court ordered the parties to fulfill the individual requirements of the 2009 Order and recognized the authority of Mother's existing Powers of Attorney. **Exhibit B** at pp. 4-5.

Theodocia K. Reed passed away several years later on 15 August 2015 at the age of 90. Although her will appointed all three of her daughters as joint personal representatives, such a relationship proved unworkable thereby prompting a contest over who would serve as the Estate's personal representative. Dr. Stewart was appointed personal representative by an order of Probate Judge Sarah G. Noel in an order that was upheld on appeal on by Circuit Court Judge Perry M. Buckner, III filed 2 October 2017, attached hereto as **Exhibit C**.

When the instant action was filed 9 July 2018, Dr. Stewart had been serving as the Personal Representative of Mother's Estate overseeing its assets as she worked with an attorney to settle the Estate in the Bamberg County Probate Court (In re Carrie Theodocia K. Reed, Case No. 2015-ES-05-0091). Unfortunately, the Estate that Dr. Stewart represents is without any funds to maintain the Estate's real property or to pay its expenses, such as that of its legal counsel. To cover these deficiencies, Dr. Stewart has been advancing her personal funds to the Estate to cover the cost of upkeep of the Estate's real property. This action pertains to a residential property located at 126 Dickson Street, Orangeburg (TMS#0173-15-17-009.000) (hereinafter "Property") that Plaintiffs contend Dr. Stewart wrongfully transferred prior to Mother's death using a Florida power of attorney provided by Mother. It is undisputed that if that transfer is set aside, the Property will become an asset of Mother's Estate. On 6 July 2020, Plaintiffs filed a petition with the Bamberg County Probate Court further challenging the transfer of the Property on many of the same grounds at issue in this action. Petition is attached hereto as **Exhibit D**. Based on an earlier hearing in this matter, Dr. Stewart executed a deed transferring the Property back to Mother's Estate that was filed with the Orangeburg County ROD on 31 March 2021. See **Exhibit E**.

### Argument

The transfer of the Property back to Mother's Estate renders Plaintiffs' claims in this matter moot. The centrality of the Property to this action was discussed with Circuit Judge Diane S. Goodstein during a hearing in this matter held on 4 November 2019. Attorney Evert Comer, Jr. appeared at that hearing on behalf of Dr. Stewart and explained both the centrality of the Property to this dispute and informed the court of the pendency of the same issues before the Bamberg Probate Court. Relevant portions of the transcript are attached hereto as Exhibit F.

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.E.2d 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). More importantly, the rendering of a judgment is improper where that judgment would affect the jurisdiction of another court over a pending matter. 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.

WHEREFORE, Defendant Cyndy Reed Stewart respectfully requests an order from this Honorable Court dismissing this action due to a lack of jurisdiction over the subject matter of the action and the failure to join a necessary party in the proceeding, as well as any other such relief the Court deems appropriate and equitable.

**The Phillips Firm, LLC  
Attorney & Counselor at Law**

/s Robert B. Phillips  
by Robert B. (Sam) Phillips, Esq.  
2001 Assembly Street, Suite 101  
Columbia, SC 29201  
(803) 726-4268  
Sam@PhillipsFirm.Net

**Attorney for Defendant**

Columbia, South Carolina  
18 April 2021

## Certificate of Electronic Notification

### Recipients

**Robert Phillips** - Notification transmitted on 04-18-2021 11:12:41 PM.

**Margaret Collins** - Notification transmitted on 04-18-2021 11:12:40 PM.

**David Melnyk** - Notification transmitted on 04-18-2021 11:12:40 PM.

**Evert Comer** - Notification transmitted on 04-18-2021 11:12:40 PM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

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**A filing has been submitted to the court RE:** 2018CP3800874

**Official File Stamp:** 04-18-2021 11:11:19 PM

**Court:** CIRCUIT COURT

Common Pleas

Orangenburg

**Case Caption:** Jacquelyn Gladden , plaintiff, et al VS Cyndy  
Reed Stewart

**Document(s) Submitted:** Motion/Dismiss

- Exhibit/Filing of Exhibits

**Filed by or on behalf of:** Robert Sam Phillips

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

Evert Comer, Jr. for Cyndy Reed Stewart

David W. Melnyk for Cyndy Reed Stewart

Margaret A. Collins for Jacquelyn Gladden et al

Robert Sam Phillips for Cyndy Reed Stewart

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Cyndy Reed Stewart for Cyndy Reed Stewart

Cyndy Reed Stewart for Cyndy Reed Stewart

2009

ELECTRONICALLY FILED - 2009 APR 18 08:11:29 PM - ORANGEBURG - COMMON PLEAS - CASE# 2008CR3800874

STATE OF SOUTH CAROLINA )  
 COUNTY OF RICHLAND )  
 IN THE MATTER OF: )  
 THEODOCIA REED )  
 Jacquelyn Gladden and Patricia Reed, )  
 Petitioners, )  
 vs. )  
 Cynthia Stewart, )  
 Respondent, )  
 and )  
 Theodocia Reed, )  
 An Allegedly Incapacitated Person.)

IN THE PROBATE COURT  
 Case Numbers: 2009-GC-40-00009  
 2009-GC-40-00010

2009 DEC 29 PM 5:50  
 AMY W. SCULLION  
 PROBATE JUDGE  
 ORANGEBURG, S.C.

FILED

ORDER REGARDING HEARING

THIS MATTER IS BEFORE THE COURT upon the filing of a Summons and Petition for Appointment of Guardian and Conservator on January 16, 2009, by Jacquelyn Gladden and Patricia Reed; both of whom are represented by Charles Black, Jr., Esq. The Petitioners are the daughters of Theodocia Reed (hereinafter, "Mrs. Reed"). In their Petition, Jacquelyn Gladden and Patricia Reed allege that Mrs. Reed's remaining daughter, Cynthia Stewart, who is designated as Mrs. Reed's attorney-in-fact under a General Power of Attorney executed December 12, 2008, is not capable of properly caring for and supervising Mrs. Reed. Petitioners further allege that Cynthia Stewart used this document to make several changes to bank accounts held jointly by all three daughters with Mrs. Reed, and made an improper disbursement of \$7,000.00, subsequent to the execution of the December 12, 2008 General Power of Attorney.

On January 27, 2009, Cynthia Stewart responded to the Petition, contending that she is capable of, and has been, providing adequate care for Mrs. Reed. She further asserts in her answer that the alleged bank account designations have not been altered and that the Petitioners



are still listed as joint owners. Cynthia Stewart also alleges that any disbursements made from this account, were done for the benefit and care of Theodocia Reed.

Subsequent to that, a status hearing was held on March 23, 2009, and the parties were given until April 24, 2009, to resolve all outstanding issues by their own agreement. As the parties did not reach a full resolution of the disputed issues between them, they were directed to mediation, pursuant to the Probate Court Pilot Mediation Program. The parties, including Mrs. Reed and her court-appointed Guardian ad Litem, N. Bruce Holland, Esq., met with mediator Tim Harbeson, Esq., on June 22, 2009. The parties attempted to resolve their differences through mediation, and all parties signed a mediation agreement at the conclusion of the mediation conference, but the agreement was repudiated the following day by Cynthia Stewart. Mrs. Stewart then retained Stephen Fitzer, Esq., to represent her in these proceedings.

After Mr. Fitzer was retained, he, Mr. Holland, and Mr. Black discussed the case further in an attempt to come to some agreement, but were unable to resolve all issues. Mr. Fitzer's client's position is that Mrs. Reed was not incapacitated and, therefore, she had the capacity to revoke her prior power of attorney, and to execute a new power of attorney on December 12, 2008, which designated her as her mother's attorney-in-fact. Mr. Black's clients' position is that Mrs. Reed was incapacitated and, therefore, unable to revoke the power of attorney that was in effect prior to December 12, 2008, which would then give all three daughters joint decision-making authority, under the power of attorney in effect prior to December 12, 2008. Finally, Mr. Holland's position, on behalf of Mrs. Reed, is that she has capacity, that she is capable of making all of her own decisions about health care and her finances, and that she desires that all three of her daughters get along and make decisions together.

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A hearing was held in this matter on October 19, 2009. Present were: Theodocia Reed; N. Bruce Holland, Esq., the court-appointed GAL for Mrs. Reed; Jacquelyn Gladden and Patricia Reed, the Petitioners; Charles Black, Jr., Esq., attorney for the Petitioners; Cynthia Stewart, the Respondent; Stephen Fitzer, Esq., attorney for the Respondent, Elizabeth Stubbs, sister of Mrs. Reed, Jesse Stewart, ~~son-in-law of Mrs. Reed, Barline Williams, and Hayward Garvin.~~ The purpose of the hearing was to discuss and resolve the capacity of Mrs. Reed; payment of allocation of attorneys' fees and mediator's fees by the parties; the Motion for Transfer of Venue filed by Cynthia Stewart; and the continuation of these actions in Richland County.

The Court gave Counsel and the Guardian ad Litem the opportunity to make statements regarding the issues to be discussed, and the Court asked several questions in response to the information presented by the attorneys, including seeking clarification as to why a mediation agreement had been signed and later repudiated by Mrs. Stewart. Mr. Holland informed the Court that it continued to be his position on behalf of his client that she had capacity and, therefore, the ability to make her own decisions about her health care and her financial affairs. He encouraged the Court to meet privately, in chambers, with Mrs. Reed to make its own assessment as to her capacity. As the ability to make or revoke a power of attorney is based on contractual capacity, the Court agreed to speak with Mrs. Reed privately to determine whether she appeared to have the necessary capacity to make her own decisions, including the ability to designate who would handle her financial affairs. The parties agreed that if the Court could determine from its questions of Mrs. Reed that she possessed such capacity, that she should be allowed to make her own decisions and that neither a Physician's Affidavit or an Examiner's Report would be necessary.

4 7:00AM - COMMON PLEAS - CAS# 2018080000007

The Court went into recess to meet privately with Mrs. Reed in chambers for approximately twenty-five minutes. Also present was the Court's judicial law clerk, Jesse Near. The conversation with Mrs. Reed included questions from the Court about Mrs. Reed and her family, including her age, where she lived, with whom she lived, the status of her health, what conditions she was seeing a doctor for, her medications, and how often she sees the doctor. The Court also asked about current events, such as who the President of the United States is, and the year, date and month of the year.

Throughout this meeting, Mrs. Reed was oriented as to date, time, and place. When asked if she understood the dispute that was going on between her daughters, she answered affirmatively and indicated that they were disagreeing about who should make decisions for her and where she should live. The Court also inquired as to her understanding of a health care power of attorney and a power of attorney for her business affairs. Mrs. Reed answered that the health care power of attorney lets someone make decisions for her about her medical treatment, who her doctor will be, and where she will live. However, Mrs. Reed firmly indicated that she wanted to choose her own doctor and make decisions about her health care, and that she would want her daughters to make decisions together about her health care if she could not make the decisions herself. In addition, she indicated that the power of attorney would let someone handle her money and pay her bills. Mrs. Reed said that she needed assistance with paying her bills, but wanted to make her own decisions about her finances. If she needs someone to make decisions about her finances in the future, Mrs. Reed indicated that she would want Cynthia Stewart to take care of her finances, because it would be more convenient, but she would want Jacquelyn Cladden and Patricia Reed to know about everything going on with her finances.

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When asked where she wanted to live, Mrs. Reed indicated that she wanted to live in Florida with Mrs. Stewart and her family, because she likes it there. However, she wants to be able to visit with her other daughters in South Carolina whenever she desires, and for as long as she desires. Mrs. Reed was aware that she owns property in Bamberg County, South Carolina, and indicated that she did not want that house to be sold, but wanted it to be kept for her to go visit whenever she wished to do so.

Mrs. Reed clearly had an understanding of what it meant to give authority to someone under a health care power of attorney and a power of attorney for business affairs. She also had very definite ideas about the fact that she could make her own decisions, but may not be able to do so in the future. She acknowledged some health issues, stating that she is 84 years old, but those conditions do not seem to have affected her ability to be aware of the type of decisions she would need to make for herself, or to actually make those decisions for herself.

Finally, as Mrs. Reed has the ability to make her own decisions, the Court asked her if she would want to have new powers of attorney done that reflect exactly what she stated regarding her wishes, or if she wanted the Court to do an order. She firmly stated that she wanted the Court to do an order, because she was tired of the disagreements and wanted everyone to try to work together. The Court explained to Mrs. Reed that an order could be issued stating that she had the ability to make her own decisions and that she did not need a guardian or conservator at this time. Mrs. Reed stated her desire that the Court make a ruling on her capacity and enter an order addressing the specific things she previously indicated.

The Court reconvened to advise the other parties of its assessment of Mrs. Reed's capacity, giving a summary of the aforementioned information. At that point, Mr. Holland added that he had met with Mrs. Reed on three separate occasions, the latest being prior to the hearing

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on October 19, 2009, and that he found her understanding and answers to be the same. He reasserted his statement that his client is not incapacitated.

The other issues to be addressed at the hearing were those regarding whether venue should be transferred to Bamberg County, and who should pay attorneys' fees in this action. As the Court did not have any indication that Mrs. Reed was incapacitated, the petitions should be dismissed. This eliminates the need for a transfer of these actions to Bamberg County. With regard to attorneys' fees, the Court expressed its opinion, but also sought input from Mrs. Reed. Mrs. Reed conferred with Mr. Holland, and then stated that she wanted each of her daughters to be responsible for the fees and costs for their own attorneys. The cost of mediation is to be split between Mrs. Reed and her daughters, with each of them paying one-fourth of the cost of the mediation. The bills of Mr. Holland and of Mrs. Clingman will be paid from Mrs. Reed's funds.

After reviewing the entire record, the Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Jurisdiction. That this Court has subject matter jurisdiction of these proceedings, pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. Venue. That Theodocia Reed currently resides with her daughter Cynthia Stewart in Florida. Mrs. Reed also owns property in Bamberg County, South Carolina, where she resided prior to moving to Florida. Therefore, pursuant to S.C. Code Ann. § 62-5-302, 1976, as amended, venue for these proceedings would properly be laid in either Florida or Bamberg County. However, Mrs. Reed, with advice of counsel, has requested that this Court make findings and enter an order in this matter, since these are before it at this time. Mrs. Reed indicated that she wants the issue concluded now, and desires that her daughters follow her wishes.



copies of all bank statements for accounts held in Mrs. Reed's name or held for her benefit, and keeping them informed of other matters affecting Mrs. Reed's finances (such as lease arrangements for the Orangeburg County property and the management and any renovations of Mrs. Reed's real property in Bamberg County, etc.).

8. Delegation of Additional Authority Mrs. Reed may delegate additional authority as she deems appropriate. In the interim between the filing of this Order and the execution by Mrs. Reed of new planning documents, Cynthia Stewart, Patricia Reed, and Jacquelyn Gladden shall take direction from their mother as to who she wants to handle specific tasks, including those related to the management of any and all farmland lease arrangements.

9. Bamberg County Residence That neither Cynthia Stewart, Jacquelyn Gladden, nor Patricia Reed will be permitted sell any property owned by Mrs. Reed, which includes the former residence in Bamberg County. This house will be retained by Mrs. Reed for future visits of open duration. All of Mrs. Reed's daughters shall have equal access to the Bamberg County residence, but other family members may only visit that property when accompanied by one of the daughters. None of these individuals, as well as any other individuals at their direction, shall sell, disturb, or remove the contents of this house, unless specifically authorized to do so by Theodocia Reed.

10. Living Arrangements and Visits That Theodocia Reed will decide when and where she wishes to reside, for any length of time, whether it is in Florida, or South Carolina. As detailed above, Mrs. Reed indicated at the hearing that she wishes to reside permanently in Florida, but wishes to visit her daughters in South Carolina for as long as she desires.

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Given the above finding of capacity, Ms. Reed will be permitted to change her current place of residence in the future, if she so desires.

11. Expenses During Visits. That Mrs. Reed may incur expenses during visits to her home in Bamberg County, or with her daughters, and should have a means for meeting such expenses even when absent from her primary place of residence. Therefore, Mrs. Reed's daughters shall cooperate in providing a meaningful process for Mrs. Reed to pay such expenses herself (e.g., by cash, check, credit card, debit card, prepaid debit card, etc.).

Should any expenses be personally incurred on Mrs. Reed's behalf by any individual, Mrs. Reed shall have the sole discretion to determine whether those expenses should be reimbursed. No one shall have the authority to reimburse themselves from Mrs. Reed's funds for any expenses unless specifically authorized to do so by Mrs. Reed.

12. Healthcare Matters. That Mrs. Reed indicated her desire for all three of her daughters to be involved in her healthcare decisions, if she cannot make those decisions for herself. To that end, the daughters shall keep each other reasonably informed of Mrs. Reed's healthcare status and any issues that arise in connection therewith. In addition, they shall provide full and complete information to each other concerning Mrs. Reed's medications and any other health-related requirements as may be necessary and appropriate to maintain Mrs. Reed's health and well-being at all times. Absent emergency or exigent circumstances, all three daughters shall be informed of, and allowed to participate in, any major health-related decisions for Mrs. Reed, if she cannot make those decisions for herself. If any emergency or other exigent circumstances preclude such information and participation, then every reasonable effort shall be made to provide full and complete information to all of the daughters as soon as possible.

13. Payment of Attorneys' Fees. That based on the requests of Theodocia Reed, as well as this Court's equitable considerations, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart will each bear the cost of their own attorneys' fees. The attorneys' fees of Bruce Holland and Sarah Citrigan will be paid from the funds of Mrs. Reed.

14. Payment of Guardian ad Litem's Fees. That Bruce Holland, Esq., the Court-appointed attorney and Guardian ad Litem for Theodocia Reed is entitled to payment for his extensive services in this matter, in the amount of \$190.00 per hour.

15. Payment of Mediation Fees and Costs. That total fees and costs of \$1,560.00 were incurred by Mediator at the June 22, 2009 mediation conference (7.8 hours at \$200.00 per hour = \$1,560.00). Of this total, \$1,365.00 in fees and costs are approved by the Court (7.8 hours @ \$175.00 = \$1,365.00) and will be split equally among Mrs. Reed, Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart. Each one-fourth share of this \$1,365.00 in Court-approved fees and costs equals \$341.25. The additional \$195.00 in fees and costs were incurred due to the fact that the Mediator's rate of \$200.00 per hour as actually charged exceeds the Court-approved rate of \$175.00 per hour. This additional \$195.00 will be split equally among Jacquelyn Gladden, Patricia Reed, and Cynthia Stewart, with each one-third share of this amount being \$65.00. The Mediator's total charges of \$1,560.00 have been paid out of the funds of Mrs. Reed that were paid to Warner, Payne & Black, L.L.P. by Patricia Reed and Jacquelyn Gladden at the commencement of these actions.

16. Reimbursement to Mrs. Reed. At the commencement of these actions, a net sum of \$2,000.00 was paid by Patricia Reed and Jacquelyn Gladden to Warner, Payne & Black, and L.L.P... The source of these funds was a bank account whose funds belong to Mrs.

Reed. Because the Court finds that each party should bear its own fees and costs, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed for the \$8,000.00 that was transferred from her account for the purpose of paying Patricia Reed's and Jacquelyn Gladden's legal fees and costs. As noted above, \$1,560.00 of these funds were paid to the mediator for fees and expenses that are to be born by the four parties as specified in paragraph 15. Therefore, Cynthia Stewart's share of the mediator fees (\$341.25 + \$65.00 = \$406.25) should be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden, and Cynthia Reed should pay her share of such fees (\$406.25) directly to Mrs. Reed. Likewise, Mrs. Reed's share of the mediator fees (\$341.25) should also be credited against the amount to be reimbursed by Patricia Reed and Jacquelyn Gladden. As a result, Patricia Reed and Jacquelyn Gladden shall reimburse Mrs. Reed a total of \$7,252.50 and Cynthia Stewart shall reimburse Mrs. Reed a total of \$406.25. These payments shall be made within sixty (60) days of the issuance of this Order, and will result in total reimbursement to Mrs. Reed of \$7,658.75 of the \$8,000.00 (\$7,252.50 from Reed and Gladden plus \$406.25 from Stewart), with the remaining \$341.25 representing Mrs. Reed's contribution to the mediator fees.

17. Restoration of Bank Accounts. In addition to the \$8,000.00 transfer of Mrs. Reed's funds as discussed above, additional monies from Mrs. Reed's accounts were transferred by Patricia Reed and Jacquelyn Gladden into a newly-created account at NBSC entitled "Theodocia K. Reed, by Patricia Reed & Jacquelyn Gladden, Trustees" (Account # XXX-XXX-140-9). The transfers of Mrs. Reed's certificates of deposit were previously reversed by the banks, but some funds do remain in this account. Within ten (10) days of the issuance of this Order, this account shall be closed and the proceeds of the account



paid to Mrs. Reed. Mrs. Reed shall also be furnished with copies of all statements for this account. In addition, all other accounts containing Mrs. Reed's monies shall be restored to the "original" ownership status as established by Mrs. Reed prior to any actions by any agent under a Power of Attor~~ney~~ or other person with access to any such account. No person other than Mrs. Reed acting individually shall take any action to alter any account from this "original" ownership status.

- 18. Safe Deposit Box. All three of Mrs. Reed's daughters shall be made aware of the location of any safe deposit box to which Mrs. Reed is a party or which contains any items belonging to her. No one shall remove any items from any such safe deposit box without the express consent of Mrs. Reed, and the notification of all three daughters.
- 19. Timber Contracts. That any information or documentation that any of Mrs. Reed's daughters have with respect to any timber contracts concerning Mrs. Reed or her property shall be provided to Mrs. Reed within ten (10) days of the issuance of this Order, with copies to all of her daughters.
- 20. Farming Leases. That any information or documentation that any of Mrs. Reed's daughters have with respect to any farming leases concerning Mrs. Reed or her property shall be provided to Mrs. Reed within thirty (30) days of the issuance of this Order, with copies to all of her daughters.
- 21. Cooperation. That in order to meet Mrs. Reed's expectations, all three daughters will need to cooperate with each other. In order to facilitate the same, each daughter shall keep her sisters apprised of current contact information, including home address, home telephone number(s), work telephone number(s), cellular telephone number(s), and any other information materially impacting their ability to contact and communication with

one another (e.g., extended travel plans, etc.). No party shall unduly interfere with or restrict access to Mrs. Reed by any other party hereto, or access by any other family member except as set forth herein. The parties shall make reasonable efforts to contact and communicate with each other on a regular basis concerning Mrs. Reed and her affairs. ~~The parties shall only involve law enforcement, social services agencies or like entities in an emergency and as a last resort after having first made reasonable efforts to resolve any issues or questions among themselves.~~

22. Enforcement. That all provisions of this Order are subject to enforcement by way of agreement reached by all parties at the October 19, 2009 hearing.

23. Further Consultation. That it would be of benefit to Mrs. Reed for her to confer with Mr. Holland, and, as mentioned previously, to have an attorney draft a durable power of attorney and a health care power of attorney for her that addresses the desires and concerns she expressed to the Court, including any type of "triggering clause" that the attorney and Mrs. Reed might find acceptable. Any attorney preparing any such documents on behalf of Mrs. Reed shall be provided with a copy of this Order prior to drafting the documents.

**THEREFORE, IT IS HEREBY ORDERED that:**

- A. The Petition for Appointment of Guardian for Theodocia Reed, filed June 16, 2009, and the Petition for Appointment of Conservator for Theodocia Reed, filed June 16, 2009, shall be dismissed. Based on the findings of this Court, Theodocia Reed shall be deemed to have capacity with the authority to make her own healthcare and financial decisions.

B. Cynthia Stewart, Patricia Reed, and Jacquelyn Gladden shall each bear the cost of their own attorneys' fees litigating this matter, as set forth above. The costs and attorneys fees of Bruce Holland, Esq., and Sarah Clingman, Esq., shall be paid immediately from the funds of Theodocia Reed.

C. ~~The requests and desires of Theodocia Reed, as detailed in the provisions of this order, shall govern her healthcare and financial matters, unless and until Mrs. Reed consults an attorney and has new planning documents prepared that reflect her desires and concerns regarding the circumstances under which someone else will make decisions for her regarding her business affairs, her living arrangements, and her healthcare.~~



**IT IS SO ORDERED.**

*Jaqueline D. Belton*  
Jaqueline D. Belton, Associate Judge  
Richland County Probate Court

December 29, 2009  
Columbia, South Carolina



All parties acknowledged that for various reasons the amounts ordered returned to Mrs. Reed's accounts pursuant to this Court's Order of December 29, 2010 had not been completed. Ms. P. Reed and Ms. Gladden felt that they were entitled to additional explanations from Ms. Stewart prior to depositing funds into Mrs. Reed's accounts, and Ms. Stewart felt that because she had spent some of her own funds for the benefit of Mrs. Reed that she was entitled to an offset that "cancelled out" the amount that she was ordered to put back in Mrs. Reed's accounts. Given the lack of trust that exists between these sisters, the Court understands the perspectives of Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart; however, the Court does not agree with and does not condone the actions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart in ignoring the specific directives of this Court to repay funds to Mrs. Reed's accounts. The discord that exists between these sisters apparently prevented them from understanding that the directives of the Order were to be followed and that addressing the Court with their individual concerns was the proper way to handle the matter. Accordingly, all three are in contempt of this Court's December 29, 2009 Order, but sanctions will not be imposed as long as Ms. P. Reed, Ms. Gladden, and/or Ms. Stewart abide by the directives given from the bench on June 28, 2010 and any additional directives stated in this Order.

It should also be noted that the Court conducted a brief examination of Theodocia Reed to determine how she was functioning on the day of the hearing. Based on Mrs. Reed's responses to the Court's questions, she did not appear to be fully oriented as to time, but she did seem to know other facts, such as who she was. Ms. Gladden and Ms. P. Reed indicated that Mrs. Reed is more alert on some days than on others, and that she sees a geriatrician in Columbia, S.C. for health care treatment. All three daughters agreed that Mrs. Reed's capacity has diminished since the last hearing in October 2009, and that at present they believe she is

incapacitated.

After reviewing the entire record, the Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. That this Court has subject matter jurisdiction of these proceedings pursuant to S.C. Code Ann. § 62-5-102, 1976, as amended.
2. That Theodocia Reed has been residing with her daughter, Jacquelyn Gladden, in Columbia, South Carolina since the previous hearing, held in October 2009. In addition, the purpose of this hearing is to address the directives of the Order executed on December 29, 2009, which makes Richland County the proper venue for these proceedings. Furthermore, Mrs. Reed, with advice of counsel, previously elected to have this Court make findings and enter an order in this matter.
3. That the Court hereby finds that Theodocia Reed appears to currently meet the definition of an incapacitated person, as defined in S.C. Code Ann. § 62-5-101(1), 1976, as amended, though no designated examinations have been conducted to confirm the suspicions of Ms. P. Reed, Ms. Gladden, and Ms. Stewart that their mother is presently incapacitated. Mrs. Reed has valid powers of attorney; if they contain a springing clause the agent is to follow the directives of the power of attorney in establishing her powers to act under the document(s).
4. That this Court has the power to punish for contempt, "which is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, order, and writs of the courts, and consequently to the due administration of justice." Floyd v. Floyd, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App. 2005) (citing Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982)).


5. That Ms. P. Reed, Ms. Gladden, and Ms. Stewart all owe funds back to Mrs. Reed's accounts, which should be paid pursuant to this Court's Order of December 29, 2009, minus the offset of any funds paid from their own funds, for which appropriate documentation has been submitted to this Court.
6. That an accounting would be appropriate from all individuals who have spent funds belonging to Mrs. Reed, either at her direction or for her benefit.
7. That an appropriate visitation schedule should be set for Mrs. Reed, which her daughters have proposed be six (6) months in South Carolina and six (6) months in Florida. The terms of the visitation, including who will provide transportation and how Mrs. Reed's expenses will be handled while she is in each location is to be worked out between Ms. P. Reed, Ms. Gladden, and Ms. Stewart and their attorneys. This is not the family court, and this Court will not micro-manage those details, though the final agreement should be committed to writing as an agreement between Ms. P. Reed, Ms. Gladden, and Ms. Stewart, for the benefit of Mrs. Reed.
8. Based on the copies of the powers of attorney provided to this Court by Mr. Fitzer after the hearing, Ms. Stewart has the authority as Mrs. Reed's agent to accept funds for deposit into Mrs. Reed's accounts, and to make payment from the accounts for any expenses owed by Mrs. Reed to any party who presents a legitimate claim for payment.
9. Mrs. Reed should continue to be as involved as possible in her affairs, as dictated by her functional capacity and the directives of her powers of attorney.

**THEREFORE, IT IS HEREBY ORDERED that:**

- A. Patricia Reed, Jacquelyn Gladden, and Cynthia Stewart shall pay all funds ordered by this Court's order of December 29, 2009 to Mrs. Reed's accounts,

G. All directives of this Court's Order of December 29, 2009 shall remain in full force and effect, except as modified by this Order or by the powers of attorney executed by Mrs. Reed in January 2010.

IT IS SO ORDERED.

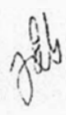
  
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Jacquelin D. Belton, Associate Judge  
Richland County Probate Court

December 30, 2010  
Columbia, South Carolina

ATTEST  
CLERK

Amy W. McCulloch



Page 6 of 6 

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BAMBERG )  
 )  
 )  
 )  
IN THE MATTER OF: THE ESTATE )  
OF THEODOCIA K. REED )  
 )  
Jacquelyn Gladden, )  
 )  
 )  
Appellant, )  
 )  
v. )  
 )  
Cyndy R. Stewart, )  
 )  
 )  
Respondent. )

IN THE CIRCUIT COURT  
Appeal from the Probate Court  
for Bamberg County

Case No.: 2017-CP-05-00024

**ORDER**

This matter came before the Court on August 28, 2017, in Bamberg County, upon an appeal from the Bamberg County Probate Court. Jacquelyn Gladden (Appellant) appeals the findings of the Honorable Sarah G. Noel dated January 26, 2017, in the Probate Court for Bamberg County. Bakari Sellers, Esquire, appeared on behalf of the Appellant, Jacquelyn Gladden. Richard B. Ness, Esquire, and R. Aaron Ness. Esquire, appeared on behalf of the Respondent, Cyndy Stewart. For the reasons stated herein, the appeal is denied and the Order of January 26, 2017, is affirmed.

**FACTS**

This matter is before the Circuit Court for an appeal of a case that has been pending in Bamberg County Probate Court for the Estate of Theodocia K. Reed since 2016. Theodocia K. Reed passed away on August 15, 2015, at the age of 90. The Last Will and Testament of Theodocia K. Reed, dated June 10, 2008, appointed all three daughters, Patricia Reed, Jacquelyn



Gladden, and Cyndy Stewart, to serve as joint personal representatives.<sup>1</sup> On September 13, 2016, Council for the Respondent sent a letter to Ms. Jacquelyn Gladden and her sister requesting that they renounce their right under the Last Will and Testament to serve as joint personal representatives. The Honorable Sarah G. Noel sent a letter to Jacquelyn Gladden and Patricia Reed, asking if they were in agreement to renounce their right to serve as Personal Representative. Jacquelyn would not consent, and declined to renounce her right to serve as joint Personal Representatives.

Richard B. Ness, attorney for the Respondent, sent official mail enclosing a Renunciation which renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Mrs. Gladden failed to claim this official mail sent to her known address. On November 8, 2017, a petition was filed with the Probate Court of Bamberg County to have Cyndy Stewart appointed as sole Personal Representative for the Estate of Theodocia K. Reed. Patricia Reed failed to answer or otherwise respond, evidenced by the return receipt of the Summons and Petition, to Cyndy Stewart's petition to be appointed as sole Personal Representative. Furthermore, Jacquelyn Gladden never formally petitioned the Probate Court to be appointed personal representative.

### DISCUSSION

Appeals taken from the probate court are governed by the provisions of the Probate Code. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993). Pursuant to S.C. Code Ann. § 62-1-308(a) (Supp. 1994), an order or decree of the probate court shall be appealed to the circuit court. The circuit court must hear and determine the appeal "according to the rules of law." S.C. Code Ann. § 62-1-308(d) (1987). The phrase "according to the rules of law" means according to the

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<sup>1</sup> The Probate Court admitted a copy of the will into probate, however, the original will has not been located to date. No party disagrees or objects to a copy of the will being an accurate document.

rules governing appeals. Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993).

The standard of review by an appellate court of matters originating in the probate court is controlled by whether the cause of action is at law or in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993); *see also* Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). To make this determination, the appellate court must look to the essential character of the cause of action alleged by the petitioners in the court below.

Id.

"When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's finding of fact unless a review of the record discloses there is no evidence to support them." Byrd v. McDonald, 417 S.C. 474, 478, 790 S.E.2d 200 (S.C. Ct. App. 2016), *citing* Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (S.C. 2005).

If the essential character of the petitioner's cause of action is grounded on equitable rights and equitable relief is sought, the case is regarded as equitable and the appellate court has jurisdiction to make findings in accordance with its own view of the preponderance of the evidence. Eagles v. South Carolina Nat'l Bank, 301 S.C. 402, 392 S.E.2d 187 (S.C. Ct. App. 1990). A request to remove a personal representative seeks affirmative relief that lies in equity. Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (S.C. Ct. App. 1993).

Under S.C. Code § 62-3-203(d)(3), the appointment of the personal representative who has equal or lower priority is within the discretion of the Probate Court, in formal proceedings. S.C. Code § 62-3-203(e)(2), explains that "[n]o person is qualified to serve as a personal representative who is... a person whom the Court finds unsuitable in formal proceedings." The

Bamberg County Probate Court has the discretion to find that a person is not qualified to serve as a personal representative. *see* S.C. Code § 62-3-203(e)(2).

"[T]he Judge of Probate may deny administration to the person first entitled under the statute if upon the showing made before him he is satisfied that such person is not properly qualified for the position, and among other things the court calls attention to the fact that the granting of letters of administration is not automatic...." Parkman v. Hanna, 311 S.C. 20, 21, 426 S.E.2d 743 at 744 (S.C. 1992), *citing* In re McClam's Estate, 245 S.C. 315, 319, 140 S.E.2d 478 at 478 (1965) (omitting italics).

Probate Court Judge Noel found Jacquelyn Gladden unsuitable to act as personal representative for a number of reasons. First, Judge Noel found that Jacquelyn Gladden acted irresponsibly by failing to claim Richard B. Ness', attorney for the Respondent, official mail, which enclosed a Renunciation to renounced Patricia Reed and Jacquelyn Gladden's right to serve as Personal Representatives, and appointed Cyndy Stewart as sole Personal Representative. Secondly, Judge Noel found Jacquelyn Gladden unsuitable by her failing to Answer Cyndy Stewart's petition to be appointed as sole Personal Representative. Finally, Jacquelyn Gladden was found unsuitable when she failed to file her own petition requesting to be appointed as the personal representative or counter request her own appointment. Regardless of whether the underlying cause of action is legal or equitable, there is ample evidence to support Probate Court Judge Noel's final Order.

### CONCLUSION

The Court has considered the arguments of all attorneys, the submitted memoranda of law, the case law and statutes of South Carolina, and the prior Order of the Bamberg County

Probate Court. The Court finds that the Order of the Probate Court is AFFIRMED. AND IT IS SO ORDERED!

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The Honorable Perry M. Buckner, III  
Presiding Circuit Court Judge

\_\_\_\_\_, South Carolina

\_\_\_\_\_, 2017

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**Bamberg Common Pleas**

**Case Caption:** Jacquelyn Gladden VS Cyndy R Stewart  
**Case Number:** 2017CP0500024  
**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BAMBERG )  
 )  
IN THE MATTER OF: )  
CARRIE THEODOCIA K. REED, )  
(Decedent) )

IN THE PROBATE COURT

CASE NUMBER: 2015-ES-05-0091

Jacquelyn Gladden & Patricia Reed,  
Petitioner(s)

\*PETITION FOR REMOVAL OF  
PERSONAL REPRESENTATIVE

vs.

Cyndy Reed Stewart  
Respondent(s)

We request an Order for the removal of Cyndy Reed Stewart, 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: In 2009 the Richland County Probate Court issued an Order restraining all of Decedent's children from disposing of her real property. In August 2015 Respondent disposed of Decedent's Orangeburg property to herself. Further, the Personal Representative has also failed to comply with a Court Order of the Circuit Court of Orangeburg County by re-conveying certain property back to the Estate. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.
- The Personal Representative has become incapable of carrying out his/her assigned duties. Additional information:
- The Personal Representative has mismanaged the Estate. Additional Information: This Estate has been pending since 2015 and Petitioner's have not received any information despite being equal beneficiaries under the will and having filed a Demand for Notice. Upon information and belief, she has also failed to account for Estate Income by way of farm leases. Petitioners request an award of attorney's fees and costs pursuant to §62-8-117..
- The Personal Representative failed to perform a required duty. Additional information: See above.
- Removal is in the best interests of the Estate because: Respondent interfered with the Petitioners' expected inheritance and breach duties of loyalty, trust, and her fiduciary duty to Decedent during Decedent's last illness. See Complaint and Order filed in Orangeburg County Circuit Court attached hereto and incorporated herein by reference as Exhibits A and B. (Attach additional sheets if necessary.) Petitioners request an award of attorney's fees and costs pursuant to §62-8-117.

Executed this 1 day of July, 2020.

Signature: Jacquelyn Gladden  
 Print Name: Jacquelyn Gladden  
 Address: 402 Koonstore Road  
Columbia, SC 29203  
 Telephone: 803-754-4739  
 Email: yaladden@assistedserviceside.com  
 Relationship to Decedent/Estate: Daughter/Devisee

Signature: Patricia Reed  
 Print Name: Patricia Reed  
 Address: P.O. Box 105  
Georgetown, SC 29203  
 Telephone: 843-527-3068  
 Email: redbirdreed@gmail.com  
 Relationship to Decedent/Estate: Daughter/Devisee

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Summons\_Estate.dot



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Prepared By and Return To:  
Palmetto State Law Group, LLC  
Margaret A. Collins, Attorney  
2241 Bush River Road  
Columbia, SC 29210

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AT 10:05:00 AM  
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COUNTY  
DEMETRICE WILLIAMS  
REGISTER OF DEEDS

ELECTRONICALLY FILED - 2021 Apr 18 11:11 PM - ORANGEBURG - COMMON PLEAS - CASE#2018CP3800874

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF ORANGEBURG )

**WARRANTY DEED**

**KNOW ALL MEN BY THESE PRESENT**, That **CYNDY REED STEWART** (hereinafter referred to as the "GRANTOR"), in the State of South Carolina, pursuant to a Court Order in C/A # 2018-CP-38-00874 in the Orangeburg County Court of Common Pleas, at and before the sealing of these Presents, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain and release unto **THE ESTATE OF THEODOCIA K. REED** (hereinafter referred to as "GRANTEE"), its heirs, successors and assigns Forever, all of our right, title and interest in and to the following described property to-wit:

**ALL the certain, piece, parcel or lot of land, with improvements thereon, situate, lying and being in the City of Orangeburg, County of Orangeburg, State of South Carolina, fronting and measuring on Dickson Street sixty-five (65) feet and measuring on the rear line sixty-five (65) feet and on the respective side lines one hundred and sixty-five (165) feet and bounded formerly or now as follows: On the North by lot of H.L. Smoak; On the East by Dickson Street; On the South by lot of Sinclair Sweat; On the West by lot of Jennie Geddings.**

**Being the same property conveyed to Cyndy Reed Stewart by Cyndy Reed Steward as Power of Attorney for Theodocia K. Reed and signed as if by the Grantor individually, by Deed recorded in the office of the Clerk of Court for Orangeburg County in Deed Book 01634 at Page 0323.**

**TMS No.: 0173-15-009.000**

**Property & Grantee's Address: 126 Dickson Street, Orangeburg, SC**

This conveyance is made subject to all existing reservations, easements, rights-of-way, zoning ordinances, setback lines, restrictions and conditions appearing of record affecting subject property. Hereby releasing and waiving all rights under and by virtue of the Homestead Exemption Laws of the State of South Carolina.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said Premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said Grantee, her Heirs, Successors and Assigns forever.

AND the said Grantor does hereby bind herself, her heirs, successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee from any and all liens

ENTERED IN THE OFFICE OF THE ASSESSOR  
DATE: 03-31-2021  
JIM MCLEAN, ORANGEBURG COUNTY ASSESSOR

Appellant's Return to Mot to Strike, Ex. 1, p.034





STATE OF SOUTH CAROLINA  
COUNTY OF ORANGEBURG

**AFFIDAVIT FOR TAXABLE OR  
EXEMPT TRANSFERS**

**PERSONALLY**, appeared before me the undersigned, who being duly sworn, deposes and says:

- 1. I have read the information on this affidavit and I understand such information.
- 2. The property being transferred is located at 126 Dickson Street, Oranburg, SC, bearing 0173-15-009.000 Orangeburg County Tax Map Number, was transferred by Cyndy Reed Stewart on the 4<sup>th</sup> day of February, 2021.

3. Check one of the following: The deed is

- (a)  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
- (b)  subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c)  exempt from the deed recording fee because (see information section of affidavit):

(If exempt, please skip items 4 - 7 and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty?  
Check Yes  or No

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit):

- (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ .
- (b)  The fee is computed on the fair market value of the realty, which is \$ .
- (c)  The fee is computed on the fair market value of the realty, as established for property tax purposes, which is \$ .

5. Check Yes  or No  to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract or agreement

between the lien holder and the buyer existing before the transfer.) If "Yes," the amount of the outstanding balance of this lien or encumbrance is: \$

6. The deed recording fee is computed as follows:

(a) Place the amount listed in item 4 above here: \$ \_\_\_\_\_

(b) Place the amount listed in item 5 above here: (If no amount is listed, place zero here) \$0.00

(c) Subtract line 6(b) from line 6(a) and place result here: \$ \_\_\_\_\_

7. The deed recording fee due is based on the amount listed on line 6(c) above and the deed recording fee due is : **\$0.00**.

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this

4 day of February, 20 21

[Signature] (sign)

William Chadwick Spires (print)

Notary Public for FL

MY COMM. EXPIRES: July 22, 2024

\_\_\_\_\_  
Responsible Person Connected with the Transaction

[Signature]  
Cynay Reed Stewart (Typed Name)



William Chadwick Spires  
State of Florida  
My Commission Expires 07/22/2024  
Commission No. HH 22169

1 THE COURT: Can you let me see your hard copy? I'll  
2 give it right back.

3 (WHEREUPON, the Court reviews the document.)

4 THE COURT: All right. Let me hand that back to you.

5 (WHEREUPON, the document is returned to Mr.  
6 Comer.)

7 THE COURT: Now talk to me about your position  
8 regarding the request to admit and the summary judgement.

9 MR. COMER: Your Honor, Ms. Stewart is willing to  
10 grant the reformation or striking of the deed, which is  
11 new. So, Your Honor, if she's willing to do that, I don't  
12 think we need to take hours and hours and hours trying this  
13 case. And I guess it would be up to the Court whether you  
14 want to set the deed aside or reform it or add the other  
15 two on it, and that would take Orangeburg County out of the  
16 probate case in Bamberg. I mean if you strike it or set it  
17 aside, it will put it in Bamberg. If you reform it and add  
18 the sisters, ancillary over here, then you don't have to  
19 take the property over here to Bamberg -- I mean you  
20 wouldn't take it over there, we would have an ancillary  
21 here.

22 Well, Your Honor, with all these motions, if she's  
23 willing to have the deed set aside, whatever you decide, or  
24 be reformed, that ends the main prayer for relief; and I  
25 think that goes to summary judgement as well and then they

THIS TRANSCRIPT WAS PREPARED FOR EVERT COMER, JR., ESQ.



1 win the case, so to speak, on the main issue. And I think  
2 that order on the attorney's fees earlier ---

3 THE COURT: Is the law of the case.

4 MR. COMER: --- is the law of the case.

5 THE COURT: I understand.

6 MR. COMER: Okay.

7 THE COURT: I've got it.

8 Yes, ma'am.

9 MS. MOORE: The appeal of the probate court, briefly.

10 THE COURT: Yes, ma'am.

11 MS. MOORE: That was prior to discovery of this bad  
12 act, so I'm not sure what -- and again, I would have to do  
13 the research on that, but I'm not sure what that would do  
14 but I would posit that that order instating her as PR, at  
15 this point there's a new cause of action to have her  
16 removed. We're just asking that she voluntarily step down  
17 so that we don't have to pursue that action and cost more  
18 money at this point for either party.

19 The consent order for the case-in-chief, it was not  
20 before the Court. We did it together and we submitted it  
21 to the Court and it was -- and I believe there was a  
22 savings clause that says if we found a new cause of action.  
23 We're willing to walk away from that. We understand that  
24 we may have missed our chance on that part; however, that  
25 doesn't cover the attorney's fees that we have requested in

THIS TRANSCRIPT WAS PREPARED FOR EVERT COMER, JR., ESQ.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

---

Appellate Case No. 2021-001413

---

Jacquelyn Gladden and Patricia Reed, ..... Respondents

v.

Cyndy Reed Stewart ..... Appellant.

# EXHIBIT 2

**Excerpts from Trial Transcript  
(from proceedings on 19 April 2021)**

1 STATE OF SOUTH CAROLINA)  
 2 ) IN THE COURT OF  
 3 COUNTY OF ORANGEBURG ) COMMON PLEAS  
 4  
 5 JACQUELYN GLADDEN and )  
 6 PATRICIA REED, )  
 7 Plaintiffs, )  
 8 Vs. ) CASE NO. 2018-CP-38-00874  
 9 CYNDY REED STEWART, )  
 10 Defendant. )

11 APRIL 19-20, 2021  
 12 ORANGEBURG, SOUTH CAROLINA  
 13

14 HONORABLE DIANE S. GOODSTEIN, JUDGE

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

16 BY: MARGARET A. COLLINS, ESQUIRE

17 ELIZABETH D. MOORE, ESQUIRE

18 Attorneys for the Plaintiffs

19 BY: ROBERT B. PHILLIPS, ESQUIRE

20 Attorney for the Defendant  
 21  
 22

23 KATHERINE A. SPIRES,  
 24 REGISTERED PROFESSIONAL REPORTER  
 25

	<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	<b>JACQUELYN GLADDEN</b>			
4	Ms. Moore	67/131		197
5	Mr. Phillips		154	199
6	<b>PATRICIA REED</b>			
7	Ms. Moore	200		216
8	Mr. Phillips		209	
9	<b>CYNTHIA STEWART</b>			
10	Mr. Phillips	232		298
11	Ms. Moore		275	
12	Ruling of the Court		302	
13	Certificate of Reporter		304	
14				
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	<b>E X H I B I T S</b>			
	<b><u>NO.</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>ID</u></b>	<b><u>EX</u></b>
1				
2				
3	P-1	Will		132
4	P-2	Instructions		135
5	P-3	Order		71
6	P-4	Limited POA		75
7	P-5	Order-RTSC		81
8	P-6	General Florida POA		91
9	P-9	Deed		139
10	P-10	Inventory		146
11	P-12	Chart		151
12	P-14	POA		78
13	D-1	CD	162	
14	D-2	Check	163	
15				
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1 THE COURT: The case we are about today  
2 is Jacquelyn Gladden, Plaintiff verses Cyndy Reed  
3 Stewart. So, all right. Counsel, you have a  
4 motion?

5 MR. PHILLIPS: I do, Your Honor. I  
6 appreciate it. And, again, for the record, Sam  
7 Phillips appearing on behalf of the Defendant Cyndy  
8 Reed Stewart.

9 Your Honor, I appreciate your staff  
10 worked with us and I believe my client is appearing  
11 on the -- on your virtual courtroom. The -- it's  
12 nice to be back in our actual courtroom after over  
13 a year.

14 THE COURT: Yeah.

15 MR. PHILLIPS: But, unfortunately, I'm  
16 here to argue that we shouldn't be here. This  
17 matter -- let me give you -- it's a matter that has  
18 frankly gone on since 2008. So let me give you the  
19 thumbnail sketch of the procedural history.

20 2008, the -- Theodocia Reed, elderly  
21 lady, had three daughters. The Plaintiffs  
22 Jacquelyn Gladden and Patricia Reed are two of  
23 those daughters. My client Cyndy Reed is the third  
24 daughter. Litigation between the sisters began in  
25 2008 when the Plaintiffs filed a petition to have

1 the mother declared incompetent. Judge Belton held  
2 that -- held a merits hearing and determined she  
3 wasn't incompetent. And she made a series of about  
4 12 rulings, one of which was finding that the  
5 Plaintiffs have wrongfully transferred money,  
6 \$8,000 that belonged to her mother to pay for their  
7 legal fees. Also, to pay -- put money aside in a  
8 trust account that only they controlled.

9 Judge Belton undid all that in 2009 by  
10 Order. The Order hadn't been complied with in  
11 2010, frankly, brought everybody in, my client  
12 hadn't paid her portion of the mediation cost, all  
13 the monies hadn't been returned, so that kind of  
14 set the tone for this dispute.

15 The mother passes away in 2015. A  
16 estate is filed. Her will named all three sisters  
17 as joint personal representatives obviously because  
18 of the conflict, that didn't occur. So my client  
19 retained counsel and moved to be appointed the  
20 personal representative. I believe Ms. Gladden  
21 opposed that. There was litigation, probate court  
22 ruled in favor and appointed my client back in 2015  
23 the personal representative. That case was  
24 appealed to Judge Buckner. He affirmed it and it  
25 was appealed to the Court of Appeals.

1           So since then, my client has served as  
2 the personal representative of an estate that has  
3 essentially three pieces of real property and no  
4 other assets. There's a house here in Orangeburg,  
5 there's a house in Denmark, and then there's some  
6 timber property.

7           So as the case went on, the -- there  
8 has been challenges to my client's decisions in how  
9 she conducted herself as the personal  
10 representative. Up to and including an action that  
11 was filed July of last year seeking to remove my  
12 client as the personal representative. And as the  
13 Court knows, when you challenge a personal  
14 representative that stops their ability to manage  
15 the estate. So this estate, my client has been  
16 advancing funds to that estate since her  
17 appointment. Was looking for the timber sales to  
18 reimburse her and give her some other monies. The  
19 action that they filed stayed that.

20           When we started this hearing,  
21 Plaintiffs' counsel indicated that while all that's  
22 separate from what we're here today. We're here  
23 only to talk about the Orangeburg property and  
24 their allegations stemming from its transfer. Yet  
25 their own document belies that. And they raise as

1 their regard -- as their reason for pulling her  
2 back as the personal representative, the fact that  
3 this dispute exists.

4           So these cases are inextricably linked  
5 by the Plaintiffs' own pleadings. Not anything  
6 I've come up with. Although, I find plenty in the  
7 record to show that this same controversy,  
8 Plaintiffs to seek to have it adjudicated in two  
9 different spots. It's not really appropriate  
10 because my client as personal representative has  
11 some entitlement not only to her inheritance under  
12 -- or beneficiary under the will, but as the  
13 personal representative who's been advancing the  
14 funds to the estate.

15           And so we look back, why are we here  
16 now? Well, we're here over a piece of property.  
17 This case was filed back in 2018. My client  
18 answered and she admitted what happened. So the  
19 facts of this case have never been in dispute. Per  
20 her claim and her answer is simply that mom wanted  
21 me to have it. She issued me a power of attorney  
22 to do it. She asked me to transfer it into my name  
23 and I did it. And you'll hear testimony -- if this  
24 thing goes forward, you'll hear testimony about  
25 that. That wasn't contested.

1           But there's all these allegations about  
2 how well that was self-dealing and you robbed us of  
3 our inheritance. And I think there's nine or ten  
4 causes of action all stemming with this one piece  
5 of property. Well, Judge, that property is no  
6 longer in front of you. It was transferred by Deed  
7 back to the estate. So it will be decided by the  
8 Bamberg property court -- I mean, probate court.  
9 Apologies. Okay.

10           It's almost axiomatic that subject  
11 matter jurisdiction exists to prevent exactly what  
12 we're trying to do today. Plaintiffs want you to  
13 hear their allegations -- their specific  
14 allegations against my client and maybe award  
15 attorney's fees and damages because of that. Even  
16 though early on in this case there was a Consent  
17 Order that attorney's fees weren't on the table and  
18 you yourself, you heard this case about a year ago  
19 and you noted that was the law of the case. But  
20 we're here to try to overturn that today and try an  
21 aspect of this case and I don't think we should.

22           Because by Plaintiffs' own admissions,  
23 they move to have this case exempted from ADR, from  
24 Court ordered mandatory mediation. Judge Manning  
25 was in Orangeburg, middle of 2019, I believe, in

1 August, and he issued a Form 4 Order continuing the  
2 case and ordering the parties to mediate. That  
3 Order was entered -- I apologize, Your Honor, on  
4 July 29, 2019. Seven days later, Plaintiffs in a  
5 motion that I didn't see was filed, my client had  
6 no knowledge of, they moved to have the case exempt  
7 from ADR. And their explanation, again, I don't  
8 have the motion, so I don't know what the actual  
9 grounds are, but here's what got into the Order.

10 The Motion For Exemption of ADR  
11 requirements filed by the Plaintiff, again, no  
12 consultation, the motion is not in the record. In  
13 the motion, Plaintiffs' counsel indicated that she  
14 was unable to proceed, counsel was unable to  
15 proceed with the mediation because it could result  
16 in a violation of the rules of professional  
17 conduct. By either her, as Plaintiffs' counsel, or  
18 the mediator having discussions about the estate  
19 case. The estate case that they want you to ignore  
20 today is the reason they can't go forward with the  
21 mediation of this case. Now, I don't know what  
22 those grounds are, again, it's not in the Order --

23 THE COURT: Are you trying to object --

24 MS. COLLINS: I am trying to object,  
25 Your Honor. Very briefly. Your Honor, I do

1 understand the subject matter jurisdiction issues,  
2 those need to be resolved. But insofar as the  
3 mediation matter is concerned, Your Honor, first of  
4 all, we don't even see where it's been filed, if  
5 it's been filed, we don't have notice of it. He  
6 did give me paper copy of it during the roster  
7 meeting, but the chief administrative judge  
8 exempted this from mediation back in 2019 and that  
9 is the law of this case.

10 And I would argue that the matter  
11 relating to mediation, I can explain it further if  
12 necessary, Your Honor, but it's already resolved by  
13 this Court and is not before this Court properly  
14 today.

15 THE COURT: Okay.

16 MR. PHILLIPS: Your Honor,  
17 unfortunately, I was just retained on Wednesday of  
18 last week. Spoke briefly to opposing counsel  
19 indicated that I saw this issue. One circuit judge  
20 cannot overrule another circuit judge. I mean,  
21 that's been the law of South Carolina for the 25  
22 years I've practiced law. And yet we have an Order  
23 here that it does. So I would say on its face, the  
24 Order has some issues. But it's not the Order  
25 that's the issue.

1           The issue is, we're here today to talk  
2 about a dispute that the Plaintiffs have brought in  
3 the probate court. They're asking you to rule on  
4 issues that they raised to the probate court. And  
5 I understand they've represented that they didn't,  
6 but in their own filings with that court, they  
7 raised it. And if you give me a second just to  
8 look through, it is this issue over thllis piece of  
9 property that is all that's before this Court and  
10 now that the property has been returned to the  
11 probate court, it will be an issue there too.

12           They have raised their allegations of  
13 impropriety on the transfer of that property which  
14 has now been undone, they have asked for attorney's  
15 fees in that court, something that they waived in  
16 this one through their Order that's the law of the  
17 case.

18           So, we get down to what's the basis of  
19 subject matter jurisdiction and that is the right  
20 to be heard, have your one day in court in front of  
21 one judge. My client, if you go forward and make a  
22 ruling on this case where the probate matters, her  
23 monies that she spent for the probate court are not  
24 before you, what she's been ordered by the probate  
25 court is not before you, the fact that that case

1 has been stayed since July of last year because of  
2 their challenge to her as a -- none of that is  
3 going to be adjudicated. And so it can't be a  
4 complete adjudication of this matter.

5 Because the probate court has exclusive  
6 jurisdiction over the property which they asked for  
7 the Deed, my client executed it, and they filed it.  
8 So that now -- that's the law. That's the reality  
9 of the case. Not only that, but the law of the  
10 case. That property is not an issue here.

11 Mr. Comer appeared in front of you  
12 about a year ago at a hearing, this was brought up.  
13 My client, my client's, you know, witnesses who  
14 were there at that hearing, Mr. Comer, they all  
15 believed that this thing was settled back a year  
16 ago. When you just -- you ordered my client to  
17 transfer the property over there. In fact,  
18 Mr. Comer and I attach that part of the transcript  
19 to my motion, said look, you know, are we going to  
20 spend a lot of time trying these issues or we just  
21 want to resolve it with the property? And we did  
22 and you dismissed the motions. Well, to my client,  
23 that was a settlement of that case.

24 I understand that there was a  
25 subsequent Motion To Reconsider. Well, if you're

1 going to reconsider the Order, now that property,  
2 the disposition of it is the issue here and yet we  
3 -- you don't have jurisdiction over the property.  
4 So it would be -- it's -- it -- it -- always hate  
5 to tell a judge you can't do something because I  
6 know that's not what judges want to hear. But in  
7 this case, it is -- there's another judge who has  
8 this matter. She needs to hear it and be able to  
9 rule on it. She's already ruled on it.

10 The problem is, is in the probate  
11 court. The Plaintiffs have been challenging my  
12 client there and they've been losing since 2008. I  
13 mean, this is all -- this all boils down to the  
14 simple fact that these two sisters believe their  
15 other sister shouldn't have controlled their  
16 mother's property. Her health care decisions, all  
17 that.

18 Judge Belton did an in camera  
19 examination and determined that the mother was  
20 competent to make those decisions and issued very  
21 specific instructions. And those instructions were  
22 basically my client, Cyndy Stewart, handled --  
23 handle this. And not only did Judge Belton allow  
24 it to move forward, but allow -- for example, there  
25 was -- they were contesting that she lived in

1 Florida with my client as opposed to here in South  
2 Carolina with them. The Court recognized that she  
3 could make that decision. She was competent to do  
4 it. She wanted to live in Florida.

5 And then she put in there and she said,  
6 and because of the circumstances -- Judge Belton's  
7 pretty savvy and handles a lot of probate matters  
8 and a lot of feuding siblings. And she said, look,  
9 if you need to make other powers of attorney, do  
10 so. Ma'am, you're getting older and she gave some  
11 pretty specific guidance in her Order and  
12 recommended that that Order be referred to in any  
13 powers of attorney.

14 So, therefore, the mother did what she  
15 was instructed to do. She did some powers of  
16 attorney. And my client transferred that property  
17 pursuant to a power of attorney. Now, we could  
18 argue over whether it's legally flawed, we could  
19 argue about all these different things associated  
20 with this transfer of this property, but that  
21 matter is before the probate court.

22 And as a probate court looks to divide  
23 up this now estate asset between three people, she  
24 can assess damages, she can assess attorney's fees,  
25 they can make all these arguments here, but you

1 don't have to -- you wouldn't run the risk of two  
2 adjudications. And so because, you know, to me,  
3 subject matter jurisdiction is so contested here  
4 and so inappropriate, I filed a second motion to  
5 compel mediation.

6           Mediation -- I just don't believe Judge  
7 Buckner's Order, with all due respect, is valid. I  
8 mean, it doesn't contain any citation of any legal  
9 authority. It wasn't noticed. There was no  
10 hearing and it makes claims about an attorney who  
11 knew nothing about it. And has no idea what the  
12 conflict is.

13           So this case has been pulled out of  
14 mediation even though an earlier Order from a  
15 circuit court judge sent it to mediation and even  
16 though the rules of court required mediation, he  
17 pulled it out for reasons that really have no  
18 validity. And so -- but if that is an issue,  
19 mediate this case jointly with the probate court,  
20 have everybody together, see if there can be a  
21 resolution, and if not, the probate judge who's  
22 been dealing with this since 2014, much longer --  
23 2015, much longer than this case, this court has in  
24 2018, let them rule on it.

25           THE COURT: Got it. Thank you. Yes,

1           Again, my strong argument is it should  
2 be held in front of the judge with exclusive  
3 original jurisdiction over this estate asset and  
4 the conduct of the personal representative.

5           MS. COLLINS: And, in summary, Your  
6 Honor, it wasn't the estate asset and that's where  
7 we argue it here.

8           THE COURT: Right. At the time it was  
9 not an estate asset.

10          MS. COLLINS: Done by power of attorney  
11 not by her as personal representative.

12          THE COURT: Right. And the filing date  
13 of this action, I've got the filing, was that  
14 7/9/2018; is that right?

15          MS. COLLINS: Yes, Your Honor.

16          THE COURT: Okay.

17          MS. COLLINS: A les pendens was filed  
18 July 3rd and the Summons and Complaint -- I'm  
19 sorry. It was signed July 3rd, the Summons and  
20 Complaint was signed July 6th and they're shown as  
21 recorded as July 9th.

22          THE COURT: All right. We're going to  
23 take a little break and I'm going to go take a  
24 little -- I may come back with some additional  
25 questions, but I'm going to -- we're going to take

1 a little break while I contemplate and look at the  
2 probate code. We'll take about 15. Thank you.

3 (There was a short break taken)

4 THE COURT: All right. I think that  
5 the cite is a correct citation; however, the cited  
6 language that I think is on point is the language  
7 that says, "Except that the circuit court also has  
8 jurisdiction to determine heirs and successors as  
9 necessary to resolve real estate matters, including  
10 petition, quiet title," and here's the applicable  
11 language, "and other actions pending in the circuit  
12 court." This was an action pending in the circuit  
13 court, firstly.

14 Secondly, the issue that is remaining  
15 that I believe is relevant is that touching and  
16 concerning the forgery and the forgery as it  
17 relates to the alleged violation of the POA and the  
18 damages that I understand that the Plaintiffs are  
19 alleging occurred as a result of A, the alleged  
20 forgery; and then B, the duration of the period of  
21 time that it took to get the property titled in the  
22 estate.

23 Now, insofar as what happened to that  
24 piece of property, vis-à-vis the estate, I'm not  
25 going to hear that. That's for the probate court.

1 I think the issue that I am prepared to hear would  
2 be the issue regarding damages for the alleged  
3 forgery.

4 MR. PHILLIPS: Your Honor --

5 THE COURT: So I guess it would be A,  
6 was it forged; and B, if it was forged, what would  
7 the damages be.

8 MR. PHILLIPS: Yes, ma'am.

9 THE COURT: Okay. Got it? Got it?

10 MR. PHILLIPS: Yes, ma'am.

11 MS. COLLINS: Yes, Your Honor.

12 THE COURT: All right. Okay. Now, I  
13 just want to be sure that the Defendant, Ms.  
14 Stewart, is able to -- oh, there she is. She's a  
15 participant. Okay. Very well. Yes, ma'am, call  
16 your first -- or ma'ams, call your first witness.

17 MS. COLLINS: We're switching, Your  
18 Honor, so --

19 THE COURT: Look at that, musical  
20 chairs. No problem.

21 MS. MOORE: The Plaintiff calls Ms.  
22 Jacquelyn Gladden. And I have the exhibits all put  
23 together as a packet so that the Court can follow  
24 along. Would you like me to hand them up as I go  
25 or do you want the packet all at once? Oh, is

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )

COUNTY OF ORANGEBURG )

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Orangeburg County, South Carolina, on the 20th of April, 2021.

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

February 6, 2022

*s/Katherine A. Spires*

Katherine A. Spires

Registered Professional Reporter

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

---

Appellate Case No. 2021-001413

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Jacquelyn Gladden and Patricia Reed, ..... Respondents

v.

Cyndy Reed Stewart ..... Appellant.

# EXHIBIT 3

**Order of the Trial Court  
(filed 10 January 2020)**



The Defendant, while caring for the Decedent was named as purported Power of Attorney (“2014 POA”) on June 26, 2014 – four years after Decedent was judicially determined to be incompetent. Power of Attorney was executed in Tallahassee, Florida and attempted to name the Defendant sole POA, rather than having that power shared between the siblings as the previous Power of Attorney, signed in January 2010. This Tallahassee Power of Attorney was recorded in Bamberg County, South Carolina on August 4, 2015.

During her last illness, the Decedent was a patient at Georgetown Memorial Hospital and Tidelands Community Hospice from July 28, 2015 through August 7, 2015, eventually passing away on August 15, 2015. A probate is pending in Bamberg County, South Carolina, 2015-ES-05-00091 and Defendant is also currently the Personal Representative.

In addition to certain Bamberg property, Decedent also owned real estate in Orangeburg County, which is the subject of this action. This Orangeburg property was the subject of a Quitclaim deed purporting to transfer the property to the Defendant and was dated on August 4, 2015. This Quitclaim Deed was purportedly executed by Decedent herself in Georgia. However, this is the same time period when the Decedent was in hospice in Georgetown County, South Carolina, with one of the Plaintiffs assisting with her care. The signature on the Quitclaim Deed reads “Theodocia K. Reed, Grantor” despite the fact she was in hospital and hospice care over 100 miles away. In the Defendant’s Answer and Counterclaim, as well as in her discovery responses, the Defendant admits to signing the Deed. She claimed she signed it using the power granted in the 2014 Power of Attorney.

At the hearing on November 4, 2019, Defendant conceded and agreed to reform the deed by putting the property in the names of all three sisters (the siblings) with equal shares. The Plaintiffs counter-moved for a judgment on the pleadings, or in the alternative, for summary judgment.

## STANDARD OF REVIEW

The standard of review for a Rule 12(b)(6) Motion to Dismiss provides that the Court look at the complaint in a light most favorable to the nonmovant to determine if the “facts alleged and the interferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case.” *Williams v. Condon*, 347 S.C. 227, 233 (Ct. App. 2001). If the Court, resolving every possible doubt in favor of the plaintiff, finds that there is nothing to support a cause of action the movant should succeed in its motion. *Toussaint v. Ham*, 292 S.C. 415, 416 (1987). This does not mean that an action should be dismissed because the Court has doubts as to whether the plaintiff will prevail. *Id.*

Similarly, when considering a motion for judgment on the pleadings, the court will view “[a]ll properly pleaded factual allegations [as] deemed admitted. . . .” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122 (Ct. App. 2006). To succeed on a motion for summary judgment, the movant needs to show that there is no genuine issue as to any material facts and that they (the movant) are entitled to a judgment as a matter of law. Whereas a judgment on the pleadings is limited to the pleadings, a motion for summary judgment can at depositions, answers to interrogatories, admission, and affidavits. SCRCP 56.

## CONCLUSION

Due to the Defendant conceding during the hearing and agreeing to the reformation of the deed by putting the deed in the name of all three sisters (the siblings) with equal shares, Summary Judgment is GRANTED on behalf of the Plaintiff. All other motions heard on November 4, 2019 are DENIED.

**AND IT IS SO ORDERED!**

January \_\_\_\_\_, 2020  
St. George, South Carolina

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Judge Diane S. Goodstein  
First Judicial Circuit



Orangeburg Common Pleas

**Case Caption:** Jacquelyn Gladden , plaintiff, et al VS Cyndy Reed Stewart

**Case Number:** 2018CP3800874

**Type:** Order/Other

This Order is Hereby GRANTED!

S/ Diane S. Goodstein (2112)

Electronically signed on 2020-01-10 11:42:40 page 5 of 5

**RECEIVED**

**May 23 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY  
Court of Common Pleas  
Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No. 2021-001413

Jacquelyn Gladden and Patricia Reed, ..... Respondents

v.

Cyndy Reed Stewart ..... Appellant.

**PROOF OF SERVICE**

I certify I have served the foregoing Return to Motion to Strike and Motion for Sanctions by electronic filing and emailing an electronic copy of same to the Clerk of Court, South Carolina Court of Appeals (ctappfilings@sccourts.org) with additional copies being simultaneously sent via email to Respondents counsel at their email addresses: lizzy@pslawsc.com and meg@pslawsc.com pursuant to Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules, No. 2021-08-25-02 (Aug. 25, 2021). I certify I have mailed the required \$50.00 filing fee for Appellant’s Motion for Sanctions by depositing same in the US Mail in a letter addressed to Clerk of Court, P.O. Box 11629, Columbia, SC 29211.

23 May 2022

/s/ Robert B. (Sam) Phillips  
**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**