UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 20-2232

APRIL LEDFORD,

Plaintiff - Appellant,

v.

EASTERN BAND OF CHEROKEE INDIANS,

Defendant - Appellee.

Appeal from the United States District Court for the Western District of North Carolina, at Asheville. Martin K. Reidinger, Chief District Judge. (1:20-cv-00005-MR)

Submitted: April 22, 2021 Decided: April 26, 2021

Before GREGORY, Chief Judge, AGEE, Circuit Judge, and TRAXLER, Senior Circuit Judge.

Affirm as modified by unpublished per curiam opinion.

April Ledford, Appellant Pro Se. Dale Allen Curriden, Nevin Wisnoski, VAN WINKLE LAW FIRM, Asheville, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

April Ledford appeals the district court's order dismissing her complaint for lack of subject matter jurisdiction. We have reviewed the record and conclude that the district court correctly found that it lacked subject matter jurisdiction over Ledford's complaint. However, as the dismissal was based on the lack of subject matter jurisdiction, it "must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits." *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013). Accordingly, we affirm the district court's order dismissing Ledford's complaint, but we modify the judgment to reflect that Ledford's complaint is dismissed without prejudice for lack of subject matter jurisdiction. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:20-cv-00005-MR-WCM

APRIL LEDFORD,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**MEMORANDUM OF DECISION AND ORDER**
	)	
EASTERN BAND OF CHEROKEE INDIANS,	)	
	)	
Defendant.	)	
	)	

THIS MATTER is before the Court on the Defendant's Motion to Dismiss Plaintiff's Amended Complaint. [Doc. 16].

I. BACKGROUND

On January 6, 2020, April Ledford (the "Plaintiff"), proceeding *pro se*, filed a Complaint asserting a claim against the Eastern Band of Cherokee Indians (the "Defendant") under the Indian Civil Rights Act of 1968 ("ICRA"), 25 U.S.C. §§ 1301-04, for allegedly violating her due process rights by terminating a life estate she held in Cherokee, North Carolina. [Doc. 1 at 3].

On January 31, 2020, the Defendant filed a Motion to Dismiss for lack of subject-matter jurisdiction and failure to state a claim. [Doc. 7]. On March 2, 2020, the Plaintiff filed an Amended Complaint. [Doc. 13]. On March 3,

2020, the Court denied the Defendant's Motion to Dismiss as moot. [Doc. 14].

On March 16, 2020, the Defendant filed a second Motion to Dismiss on the same grounds. [Doc. 16]. On March 30, 2020, the Plaintiff responded to the Defendant's second Motion to Dismiss. [Doc. 19]. On April 6, 2020, the Defendant replied. [Doc. 21].

Having been fully briefed, this matter is ripe for disposition.

II. STANDARD OF REVIEW

A motion to dismiss based on Federal Rule of Civil Procedure 12(b)(1) addresses whether the Court has subject-matter jurisdiction to hear the dispute. See Fed. R. Civ. P. 12(b)(1). A challenge to the Court's subject-matter jurisdiction under 12(b)(1) may be raised as either a facial or factual attack. See Hutton v. Nat'l Bd. Of Exam'rs in Optometry, Inc., 892 F.3d 613, 621 n.7 (4th Cir. 2018). In a facial attack, where a defendant contends that a complaint fails to allege facts upon which the Court can base subject-matter jurisdiction, the Court must assume as true the factual allegations in the complaint. Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982). If, however, the defendant makes a factual attack by contending that the jurisdictional allegations contained in the complaint are false, the Court may go beyond the allegations of the complaint in order to determine if the facts

support the Court's exercise of jurisdiction over the dispute. Id. The burden of establishing subject-matter jurisdiction on a motion to dismiss rests with the party asserting jurisdiction, in this case the Plaintiff. Id.; Williams v. United States, 50 F.3d 299, 304 (4th Cir. 1995).

III. DISCUSSION

The Defendant's second Motion to Dismiss argues that the Court lacks subject-matter jurisdiction over the Plaintiff's claims against the Defendant under the ICRA. [Doc. 16 at 1].[1]

"[T]he Eastern Band of Cherokee Indians is an Indian tribe within the meaning of the Constitution and laws of the United States." Toineeta v. Andrus, 503 F. Supp. 605, 608 (W.D.N.C. 1980). The Court lacks subject-matter jurisdiction over suits against Indian tribes unless "Congress has authorized the suit or the tribe has waived its immunity." Kiowa Tribe of Oklahoma v. Manuf. Techs., Inc., 523 U.S. 751, 754 (1998). To relinquish its immunity, a tribe's waiver must be "clear[,]" Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla., 498 U.S. 505, 509 (1991), and "[a]lthough Congress has plenary authority over tribes, courts will not lightly assume that Congress in fact intends to undermine Indian self-government."

[1] The Defendant's Motion further argues that the Plaintiff's claims are barred by sovereign immunity and failure to exhaust her tribal remedies before bringing this action. [Id.].

Michigan v. Bay Mills Indian Cmty., 572 U.S. 782, 790 (2014) (citation omitted).

The Plaintiff first argues that the Defendant waived its tribal sovereign immunity when it "misused and broke its own laws" by discriminating against the Plaintiff, allowed the Tribal Council to go beyond the scope of its authority, and acted in bad faith. [Doc. 20 at 3]. Those actions simply do not constitute grounds for finding a waiver of tribal sovereign immunity. Indeed, the Defendant would have little tribal sovereign immunity if it could be sued for breaking laws, acting beyond the scope of its authority, or acting in bad faith. Because the Plaintiff presents no other basis for finding that the Defendant has waived its tribal sovereign immunity, the Plaintiff has not carried her burden to show that the Defendant waived its tribal sovereign immunity for the Plaintiff's claims. Adams, 697 F.2d at 1219 (stating that the burden of proving subject-matter jurisdiction is on the party asserting jurisdiction).

The Plaintiff next argues that Congress authorized claims against the Defendant when it passed the ICRA. [Doc. 20 at 11].[2] The ICRA, however "neither served as a waiver of tribal sovereign immunity nor impliedly

[2] Among other things, Title I of the ICRA provides that "[n]o Indian tribe in exercising powers of self-government shall . . . take any private property for a public use without just compensation[.]" 25 U.S.C. § 1302.

provided for a civil cause of action in federal courts . . . ." Poodry v. Tonawanda Band of Seneca Indians, 85 F.3d 874, 886 (2d Cir. 1996) (citing Santa Clara Pueblo v. Martinez, 436 U.S. 49. 59 (1978)); see also Oxendine-Taylor v. E. Band of Cherokee Indians, No. 1:20-cv-00214-MR, 2020 WL 5639307, at *1 (W.D.N.C. Sept. 14, 2020) (Reidinger, C.J.). As such, the ICRA does "not establish a federal civil cause of action against a tribe or its officers, . . . except in cases in which the relief sought could properly be cast as a writ of habeas corpus." Poodry, 85 F.3d at 884.[3]

While the Plaintiff concedes that her claim is barred by the majority opinion in Santa Clara Pueblo, she cites language from the dissenting opinion in that case to argue that the Court should nevertheless exercise subject-matter jurisdiction over her claim. [Doc. 20 at 11 (citing Santa Clara Pueblo, 436 U.S. at 76 (White, J., dissenting)]. The dissenting opinion cited by the Plaintiff expressly agrees with the majority opinion "that the [ICRA] does not constitute a waiver of the [tribe's] sovereign immunity." Santa Clara Pueblo, 436 U.S. at 73 (White, J. dissenting). More importantly, however, the majority opinion in Santa Clara Pueblo has never been overturned and has been consistently applied by the United States Supreme Court, the

[3] When seeking relief that cannot be cast as a writ of habeas corpus, "[t]ribal forums are available to vindicate rights created by the ICRA[.]" Santa Clara Pueblo, 436 U.S. at 65.

Fourth Circuit and this Court. See, e.g., Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians, 468 U.S. 1315, 1317 (1984); Crowe v. E. Band of Cherokee Indians, Inc., 584 F.2d 45, 45 (4th Cir. 1978); Oxendine-Taylor, 2020 WL 5639307, at *1. Accordingly, that opinion constitutes controlling precedent for this Court. Because Santa Clara Pueblo only permits civil actions under the ICRA that seek habeas corpus as a remedy, the Court lacks subject-matter jurisdiction over the Plaintiff's claims.

ORDER

IT IS, THEREFORE, ORDERED that the Defendant's second Motion to Dismiss [Doc. 16] **GRANTED** and the Plaintiff's Amended Complaint [Doc. 13] is **DISMISSED**.

The Clerk of Court is respectfully directed to close this civil case.

IT IS SO ORDERED.

Signed: November 11, 2020

Martin Reidinger
Chief United States District Judge

To: Cherokee Tribal Court, Cherokee NC

APPEAL June 23, 2017

I, April Ledford, am respectfully appealing the decision of Judge Thomas Cochran of the Eastern Band of Cherokee Indians' Tribal Court on June 5, 2017 in which he decided to sign eviction papers against me. He decided that EBCI council was correct in changing my husband's will (Bill J Ledford, former vice-chief of the EBCI who hired an attorney in 2007 to draft his will, deemed valid by Orange County NC and Cherokee Tribal Court). My husband was lucid until the day he died on October 29, 2013. I have medical records to prove this. Yet on June 5, 2017 I was not allowed to present my side of the story.

I have written numerous letters to Council. No response, except that Bill Taylor, a friend of William John Ledford (Bill's oldest son) wrote me and told me he would call the police for harassment if I wrote him again. I requested time to speak before council and I never received a "yay" or "nay".

Damin Ledford, Bill's grandson, was not mentioned in the will, yet he is the one fighting for the house.

William John Ledford, Bill's oldest son, was on my side last year and asked Council to respect his father's wishes. He sent his two sons, Damin and Jarin Ledford, to "help", but it was a sabotage. Jarin Ledford was charged with forgery in New Mexico and Damin was charged with attempted burglary (knife and flashlight on another's property). I asked them to follow some basic rules but they disregarded them: I asked them to leave their dog outside but they kept having him inside; I asked that they keep the door open to the room where my cats could use their litter box but they kept shutting it, forcing my cats to have nowhere else to go but on the living room carpet. Later they complained to William John Ledford about fleas and cat feces.

Moreover, I never received adequate notice about Council's meeting in January 2017. My mother passed on December 29, 2016 and I was out west to bury her and celebrate her life. I believe Jarin Ledford, on Facebook, saw the news and things quickly started to roll as far as a meeting with Council (with me having no idea it was happening).

I was told it was too late to protest the Council's decision but the Cherokee Code allows one to reopen the decision of Council if there is new and relevant evidence. When I was in Arkansas mourning my mother's death, William John and Jason Ledford told Council I had a home in Chapel Hill, NC. That was not true. That home was foreclosed upon in 2016. That is new and relevant evidence.

All of Bill's children were given at least 10 acres apiece while Bill was alive (William John sold his 10 acres years ago). All of them have homes. Bill wanted me to have a home too.

Thank you.

Respectfully,

April Ledford

PO Box 1394
Whittier NC 28789
(140 Greybeard Hill Drive, Cherokee NC 28719)
Phone: 828-788-2953

6-23-17 Kenniethea B Hyatt Notary Public

KENIETHEA B. HYATT
Notary Public
Swain County
My Commission Expires
8-26-17
NORTH CAROLINA

CHEROKEE TRIBAL COURT

EASTERN BAND OF CHEROKEE INDIANS 2013 DEC -9 PM 4:03 **EST 13-087**

Cherokee, North Carolina

FILED

The Cherokee Court
Before the Clerk

IN THE MATTER OF THE ESTATE OF	**Ancillary Letters**
Bill J. Ledford DoD: 10/29/2013	G.S. 28A-6-1

The Court in the exercise of its jurisdiction of the probate of wills and the administration of estates, and upon application of the fiduciary, has adjudged legally sufficient the qualification of the fiduciary named below and orders that Letters be issued in the above estate.

The fiduciary is fully authorized by the laws of the Eastern Band of Cherokee Indians to receive and administer all of the assets belonging to the estate, and these letters are issued to attest to that authority and to certify that it is now in full force and effect.

Witness my hand and the Seal of the Cherokee Court.

Name and Address of Fiduciary 1	Date of Qualification
April Christian Zotecan Ledford	December 9, 2013
PO Box 503	Signature of Person Authorized to Administer Oaths Clerk of Court
Carrboro, NC 27510	Jack Gloyne
Name and Address of Fiduciary 2	EX OFFICIO JUDGE OF PROBATE
	Date of Qualification
	Date of Issuance December 9, 2013
	Signature of Person Authorized to Administer Oaths Signature of Court Jack Gloyne

CHEROKEE TRIBAL COURT SEAL CHEROKEE N.C. COURT CLERK

403

Original - File Copy: BIA Realty Enrollment Bank

MARIN COUNTY BAR ASSOCIATION

Why Exhausting Tribal Remedies is Typically Required Prior to Challenging Jurisdiction in an Alternative Court

FEB 27, 2017

BY MARISA R. CHAVES

Your client has been sued in a tribal court. What now? The uncertainty of practicing in a foreign court can be daunting. As each tribe is a sovereign nation, the most important thing you can do is first learn the practices and procedures of that particular tribe's legal proceedings. It is also important to have a good handle on the tribe's particular decisions and statutes. Even the requirements for being admitted to practice in tribal court can vary from tribe to tribe, so it is not a given that you will be authorized to appear, even if the tribe is located in the state where you are licensed.

All of this means that many attorneys seek ways to remove their case from the tribal court. Depending on the parties, facts, and circumstances surrounding the issue at hand, the tribal court may or may not have jurisdiction to hear the case. If you believe the tribal court doesn't have jurisdiction to hear the matter, your best option to challenge that jurisdiction is still in the tribal court itself, before looking to a federal court. The reason is that any litigant has a "duty to exhaust tribal remedies prior to proceeding in federal court." *Allstate Indem. Co. v. Stump*, 191 F.3d 1071, 1073 (9th Cir.), amended, 197 F.3d 1031 (9th Cir. 1999). Tribes are permitted to defer jurisdiction to their courts prior to federal court intervention.

A federal court will not review the case on its merits and will focus solely on the issue of tribal court jurisdiction and whether all tribal remedies have been exhausted. Federal law has long recognized a respect for comity and deference to the tribal court as the appropriate court of first impression to determine jurisdiction. See *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856–57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15–16 (1987); *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244–47 (9th Cir. 1991). Courts have even held that exhaustion of tribal remedies is "mandatory." *Burlington N. R.R. Co.*, 940 F.2d at 1245. This exhaustion requirement will even include any appellate review by the tribal court (if an appellate tribal court exists).

As support for this premise, the Supreme Court cites: (1) Congress's commitment to "a policy of supporting tribal self-government and self-determination;" (2) a policy that allows "the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge;" and (3) judicial economy, which will best be served "by allowing a full record to be developed in the Tribal Court." *Nat'l Farmers*, 471 U.S. at 856. Courts have interpreted National Farmers as determining that tribal court exhaustion is not a jurisdictional bar, but rather a prerequisite to a federal court's exercise of its jurisdiction. Burlington N. R.R. Co., 940 F.2d at 1245 n.3. "Therefore, under National Farmers, the federal courts should not even make a ruling on tribal court jurisdiction . . . until tribal remedies are exhausted." *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989).

There are exceptions to the rule. The four recognized exceptions to the requirement for exhaustion of tribal court remedies are: (1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) the action is patently violative of express jurisdictional prohibitions; (3) exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction; or (4) it is plain that tribal court jurisdiction is lacking. *Burlington Northern R.R. v. Red Wolf*, 196 F.3d 1059, 1065 (9th Cir. Mont. 1999) (citations omitted).

However, even if you believe the specific claim against your client falls under one of these exceptions, it is still wise to challenge that jurisdiction in tribal court first. The main reason being that the tribal exhaustion doctrine only requires that a "colorable claim" of tribal court jurisdiction be asserted, and courts give broad deference to the tribal courts to decide their own jurisdiction. Even if the tribal court is new or inexperienced, alleged incompetence or bias is not included in the exceptions to the exhaustion requirement. *Iowa Mut. Ins. Co.* 480 U.S. at 18–19. Starting in tribal court allows you to avoid the risk and expense of challenging such jurisdiction in federal court–and the need to overcome a very difficult hurdle–only to have the court tell you to go back and challenge it in tribal court first.

Unfortunately, exhausting tribal court remedies is a difficult hurdle to overcome when dealing with the issue of jurisdiction. Therefore, if you and your client foresee a potential lawsuit, the best defense is a good offense. If there is any potential claim for a counter-suit or cross-complaint, the party filing the lawsuit can pick the most appropriate or more favorable venue. It is much more difficult to argue that a tribal court should have jurisdiction over another venue when it was brought properly in the other venue first.

Marisa R. Chaves is Senior Counsel with the law firm of Vasquez Estrada & Conway LLP in San Rafael, CA. Her litigation practice includes personal injury, premises and products liability, construction defect, medical malpractice, toxic tort, and general liability claims. Ms. Chaves also has experience working with Native American tribes and tribal councils, and has represented several tribes throughout California.

Filed
11-26-2013
13-E-318
Alana Cagle
Deputy CSC

LAST WILL AND TESTAMENT
OF
BILL J. LEDFORD

I, **BILL J. LEDFORD**, a member of the Eastern Band of Cherokee Indians, RR# 1441, domiciled in Swain County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils theretofore made by me.

ARTICLE I

I direct that all of my just debts, including unpaid charitable pledges whether or not the same are enforceable obligations of my estate, my funeral expenses, including the cost of a suitable marker at my grave, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death.

ARTICLE II

I direct that all estate and inheritance taxes and other taxes in the general nature thereof (together with any interest imposed or penalty thereon), but not including any taxes imposed on generation-skipping transfers under the Federal tax laws, nor any Qualified Terminable Interest Property Tax, which shall become payable upon or by reason of my death with respect to any property passing by or under the terms of this will or any codicil to it hereafter executed by me, or with respect to the proceeds of any policy or policies of insurance on my life, or with respect to any other property (including property over which I have a taxable power of appointment) including in my gross estate for the purpose of such taxes, shall be paid by my Executrix out of the principal of my residuary estate, and I direct that no part of any such taxes be charged against or collected from the person receiving or in possession of the property taxed, or receiving the benefit thereof, it being my intention that all such persons, legatees, devisees, surviving tenant by the entirety, appointees and beneficiaries receive full benefits without any diminution on account of such taxes.

ARTICLE III

All of the residue of the property which I may own at the time of my death, real or personal, tangible and intangible, of whatsoever nature and wheresoever situated, including all property which I may acquire or become entitled to after the execution of this will, including all lapsed legacies and devises, or other gifts made by this will, which fail for any reason but excluding any property over or concerning which I may have any power of appointment, I bequeath and devise in fee to my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**. In the event that my said wife shall predecease me, or in the event that we die as the result of a common disaster, or in such manner that it cannot be determined which of us survived the other, then said property to my son, **WILLIAM JOHN LEDFORD,** and to my grandsons, **JASON LEDFORD** and **JARIN LEDFORD** equally, share and share alike. Should one of my above named descendants

predecease me leaving issue then that grandchild(ren) shall take the share to which his/her or their parent would have been entitled had he or she survived me.

I convey specifically to my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**, a life estate in my property on 140 Greybeard Hill, Cherokee, North Carolina to include parcel number 372, parcel number 134 (part of parcel number 42) and parcel number 522 (part of parcel number 192)

During my lifetime I have conveyed real property to each of my sons and to my daughter. That this instrument leaves nothing further is not an indication of my love and affection for them but simply representative of the gifts I have given to them during my life time.

ARTICLE IV

I hereby grant to my Executrix including any substitute or successor, personal representative, the continuing, absolute, discretionary power to deal with any property, real or personal, held in my estate as freely as I might in the handling of my own affairs. Such power may be exercised independently and without prior or subsequent approval of any court or judicial authority, and no persona dealing with my Executrix shall be required to inquire into the propriety of any of her actions. Without in any way limiting the generality of the foregoing and subject to North Carolina General Statutes, Section 32-26, I hereby grant my Executrix all the powers set forth in North Carolina General Statutes, Section 32-27, and these powers are hereby incorporated by reference and made a part of this instrument and such powers are intended to be in addition to and not in substitution of the powers conferred by law.

ARTICLE V

I appoint my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**, to be the Executrix of this my last will. I direct that no surety be required on the bond of my Executrix hereunder. If my said wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**, shall predecease me or for any reason shall fail to qualify as Executrix hereunder or having qualified shall die or resign, then and in such event, I appoint my son, **WILLIAM JOHN LEDFORD**, to be the Executor of my estate; and in such capacity he shall possess and exercise all powers and authority herein conferred on my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**. I vest my Executrix/Executor with full power and authority to sell, transfer, and convey any property, real or personal, which I may own at the time of my death, at such time and place and upon such terms and conditions as she/he may determine and to do every other act and thing necessary or appropriate for the complete administration of my estate.

ARTICLE VI

In conclusion, I request that my funeral and/or memorial service be conducted by **STEVE PHILIPPI,** who, at the time of this writing, is the minister of the United

Methodist Church in Cherokee, North Carolina. I request that the Christian service he presents will be accompanied by an Indian drum group and/or by other Native American music, singing and ceremony that **STEVE PHILIPPI** and my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**, and my son **WILLIAM JOHN LEDFORD**, approve. I further direct that my remains be laid to rest in the cemetery located on 140 Greybeard Hill, Cherokee, Swain County, Cherokee, North Carolina. I direct that my wife, **APRIL CHRISTIAN ZOTECAN LEDFORD**, and my son, **WILLIAM JOHN LEDFORD**, be the caretakers of my grave and that no one be disallowed from visiting my gravesite.

IN WITNESS WHEREOF, I sign, seal, publish and declare this instrument to by my last will, this the 23rd day of February, 2007, at Maggie Valley, North Carolina.

_____(SEAL)
BILL J. LEDFORD

The foregoing instrument was signed, sealed, published and declared by **BILL J. LEDFORD,** the Testator, to be his last will, and in our presence, and we, at his request, and in his presence and in the presence of each other have hereunto subscribed our names as witnesses, this the 23rd day of February, 2007, at Maggie Valley, North Carolina.

Ed Hensley RESIDING AT Maggie Valley NC

Kristin Hamilton RESIDING AT Maggie Valley NC

NORTH CAROLINA - HAYWOOD COUNTY

I, **BILL J. LEDFORD,** the Testator, sign my name to this instrument this the 23rd day of February 2007, and being first duly sworn, do hereby declare to the undersigned authority that I signed it willingly (or willingly directed another to sign it for me), that I executed it as my free and voluntary act for the purpose therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

_____(SEAL)
BILL J. LEDFORD

We Ed Hensley and Kristin Hamilton, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signed and executed this instrument

as his last will and that he signed it willingly (or willingly directed another to sign for him), and that each of us, in the presence and hearing of the Testator, hereby sign this will as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Ed Hensley (SEAL)

Kristin Hamilton (SEAL)

NORTH CAROLINA - HAYWOOD COUNTY

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me **BILL J. LEDFORD**, the Testator and subscribed and sworn to before me by Ed Hensley and Kristin Hamilton, witnesses, this the 23rd day of February, 2007.

PHYLLIS COOK NOTARY PUBLIC HAYWOOD COUNTY, NC

My Commission Expires:
7-12-08

Phyllis Cook
Notary Public