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1a

Exhibit A

South Carolina Supreme Court - Order Denying
Petition for Certiorari

(September 9, 2025)

2a

The South Carolina Court of Appeals
JENNY ABBOTT KITCHINGS POST OFFICE BOX
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September 12, 2025

The Honorable Jay Gresham
305 E North St
Greenville SC 29601-2121

REMITTITUR

Re: In the Matter of James Marshall Shoemaker, Jr.
Lower Court Case No. 2021CP2302955,
2022CP2300933

Appellate Case No. 2022-001665

Dear Clerk of Court:

The above referenced matter is hereby remitted to
the lower court or tribunal. A
copy of the judgment of this Court is enclosed.

_ Very truly yours,

(signature)

CLERK

Enclosure

cc: William R. McKibbon, III, Esquire
Julia Virginia Hendricks McLeod, Esquire
Tyler Earl McLeod, Esquire

The Supreme Court of South Carolina
In the Matter of James Marshall Shoemaker, Jr.,
RECEIVED
Sep 09 2025

SC Court of Appeals
James Marshall Shoemaker, III, Petitioner,
Vv.
Lesley R. Moore, Esq., as Personal Representative
and Trustee, and Edward Sloan Shoemaker and
Jonathan Evans Shoemaker, as Beneficiaries and as
Individuals, Respondents.
' Appellate Case No. 2025-001122

ORDER

Based on the vote of the Court, the petition for a writ
of certiorari is denied.

FOR THE COURT

(

BY (signature)

CLERK

Kittredge, C.J., not participating.

Columbia, South Carolina

September , 2025

cc:

Julia Virginia Hendricks McLeod |

Tyler E, McLeod

William R. McKibbon

The Honorable Jenny Abbott Kitchings

The South Carolina Court of Appeals
In the Matter of James Marshall Shoemaker, Jr.,
James Marshall Shoemaker, III, Appellant,
v.
Lesley R. Moore, Esq., as Personal Representative
and Trustee, and Edward Sloan Shoemaker and
Jonathan Evans Shoemaker as Beneficiaries and as
Individuals, Respondents.
And
James Marshall Shoemaker, III, Petitioner/Plaintiff,
v.
Lesley R. Moore, Esq. as Personal Representative
and Trustee, Edward Sloan Shoemaker and
Jonathan Evans Shoemaker,
Respondents/Defendants.
Appellate Case No. 2022-001665

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

(signature)

J

Columbia, South Carolina

cc:

William R. McKibbon, III, Esquire
Julia Virginia Hendricks McLeod, Esquire
Tyler Earl McLeod, Esquire
Jay Gresham
The Honorable Debra R. McCaslin

FILED

May 08 2025

5a

Exhibit B

Opinion of the South Carolina Court of Appeals

(Apr. 2, 2025)

THIS OPINION HAS NO PRECEDENTIAL VALUE.
IT SHOULD NOT BE CITED OR RELIED ON AS
PRECEDENT IN ANY PROCEEDING EXCEPT AS
PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA in

The Court of Appeals

In the Matter of James Marshall Shoemaker, Jr.,
James Marshall Shoemaker, Ill, Appellant,

v.

Lesley R. Moore, Esq., as Personal Representative
and Trustee, and Edward Sloan Shoemaker and
Jonathan Evans Shoemaker as Beneficiaries and as
Individuals, Respondents.

And

James Marshall Shoemaker, Ill, Petitioner/Plaintiff,

v.

Lesley R. Moore, Esq. as Personal Representative
and Trustee, Edward Sloan Shoemaker and
Jonathan Evans Shoemaker,
Respondents/Defendants.

Appellate Case No. 2022-001665

Appeal From Greenville County

Debra R. McCaslin, Circuit Court Judge

Unpublished Opinion No. 2025-UP-121

Submitted September 1, 2024 — Filed April 2, 2025

Affirmed

William R. McKibbon, III, of McKibbon Law Firm, of Greenville, for Appellant.

Tyler Earl McLeod and Julia Virginia Hendricks McLeod, both of Brown Massey Evans McLeod & Haynsworth, LLC, of Greenville, for Respondents.

PER CURIAM: In this probate action, James Marshall Shoemaker, 111 (Marshall) appeals the circuit court's order dismissing his appeal from the probate court and affirming the probate court's orders granting summary judgment in favor of respondents Lesley R. Moore, as personal representative and trustee of the Estate of James Marshall Shoemaker, Jr.; Edward Sloan Shoemaker (Sloan); and Jonathan Evans Shoemaker (Jonathan) (collectively, Respondents) and refusing to vacate its order granting summary judgment. Marshall argues the circuit court erred by (1) granting Respondents' motion to dismiss Marshall's appeal from the probate court's orders as untimely; (2) failing to find the probate court erred by refusing to vacate its order granting summary judgment when the probate court was in a mutually beneficial pecuniary relationship with Respondents' law firm; and (3) affirming the probate court's grant of summary judgment when Marshall submitted an affidavit that created a dispute of material fact as to Shoemaker's competency to create a validly executed will and trust. We affirm pursuant to Rule 220(b), SCACR. ¹

We hold the circuit court did not err by dismissing Marshall's appeal from the probate court orders on the ground that Marshall's failure to comply with the

ten-day deadline provided in section 62-1-308(a) of the South Carolina Code (2022) divested the circuit court of jurisdiction to consider the appeal. See § 62-1-308(a) ("A person interested in a final order, sentence, or decree of a probate court may appeal to the circuit court in the same county, subject to the provisions of Section 62-1-303. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

court." (emphases added)); see also *Ziegler v. Dorchester County*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019) ("The appellate courts] review questions of law de novo."); *CFRE, LLC. Greenville County. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("Questions of statutory interpretation are questions of law . . .").

Allison v. W.L. Gore & Assocs., 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011) ("[T]he question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction . . ." *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) ("[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction . *In re Est. of Cretzmeyer*, 365 S.C. 12, 14, 615 S.E.2d 116, 117 (2005) (holding

section 62-1-308(a) "is clear that the notice of appeal 'must be filed' in the circuit court within the ten-day period"). Marshall does not dispute he received written notice of the probate court's orders on December 16, 2021, and he acknowledges the deadline to file the notice of appeal was December 26, 2021. He admits he filed the notice of appeal from the probate court's orders on January 10, 2022, fifteen days after the deadline passed. Because Marshall does not dispute he failed to file his appeal from the probate court's orders within the ten-day deadline provided in section 62-1-308(a), we hold the circuit court did not err in dismissing his appeal on this ground. See *Cretzmeyer*, 365 S.C. at 13-14, 615 S.E.2d at 116-17 (holding the circuit court properly dismissed the appellant's appeal from a probate court order when the appellant failed to file the notice of appeal in the circuit court within the ten-day period provided in section 62-1-308(a)).

Marshall nevertheless argues the circuit court erred by dismissing his appeal without considering whether, pursuant to Rule 260, SCACR, he showed good cause for his appeal to be reinstated. We reject this argument. First, although Marshall argued to the circuit court that it should excuse his failure to file the notice within the ten-day period, he never raised the applicability of Rule 260, SCACR, to the circuit court. see *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Second, even if it were preserved, we hold Rule 260

does not apply in appeals from the probate court to the circuit court. See Rule 260, SCACR ("Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded). "); see also Rule 101 (a), SCACR ("These Rules are divided into six parts. Part I governs the applicability of these Rules and contains general provisions. Part 11[, the Rules of Appellate Practice,] governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals."). Rule 260 is contained within Part II. Because the South Carolina Appellate Court Rules specifically state that they govern practice and procedure in appeals in the South Carolina Supreme Court and Court of Appeals, these rules do not apply to an appeal of a probate court action to the circuit court. Although section 62-1-308 of the South Carolina Code (2022), refers to Rules 208, 209, and 210 of the South Carolina Appellate Court Rules, it references these rules only to the extent that it directs the parties to comply with such rules regarding the formatting of the parties' briefs and the record on appeal and the forwarding of exhibits upon final disposition of the

appeal. See § 62-1-308(b) (providing an appellant's statement of issues on appeal must be filed in a format described in Rule 208(b)(1)(B), SCACR); 62-1-308(d) (providing the parties' designation of matter to be included in the record on appeal must comply with the format described in Rule 209, SCACR); 62-1-308(e) (providing the appellant's and respondent's briefs must be in the format described in subsections (b)(1) through (3) of Rule 208, SCACR); 62-1-308(f) (providing the record on appeal must be in the format described in subsections (c) and (e) through (g) of Rule 210, SCACR); 62-1-308(g) (providing exhibits filed separately as described in Rule 210(0, SCACR, must be forwarded to the probate court upon final disposition of the appeal). Section 62-1-308 additionally provides that the parties are not required to comply with any other requirements of the South Carolina Appellate Court Rules, unless the parties have consented to appeal directly to our supreme court. See 62-1-308(g) ("Except as provided in this section, no party is required to comply with any other requirements of the South Carolina Appellate Court Rules."); 62-1-308(1) ("If the parties not in default consent either in writing or on the record at a hearing in the probate court, a party to a final order, sentence, or decree of a probate court who considers himself injured by it may appeal directly to the Supreme Court, and the procedure for the appeal must be governed by the South Carolina Appellate Court Rules."). Because section 62-1-308 does not specifically refer to Rule 260 and states that only Rules 208, 209, and 210, of the South Carolina Appellate Court Rules apply in appeals to the circuit

court from the probate court, we hold Rule 260 does not apply.

Moreover, even if Rule 260, SCACR, applied, it would not excuse Marshall's failure to file the notice of appeal within the ten-day deadline set forth in section 62-1-3086). See *Hi11v. S.C. Dept. of Health & Env't Control*, 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) ("The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this [c]ourt. see also *Allison*, 394 S.C. at 188-89, 714 S.E.2d at 549-50 ("[W]e hold that the [Worker's Compensation] Commission lacks the authority to extend the fourteen days permitted [by the statute governing appeals to the Commission] for the filing of an appeal from the decision of a single commissioner. This holding is consistent with the general rule that an appellate body may not extend the time to appeal." (citation omitted)); *Brown*, 358 S.C. at 387, 596 S.E.2d at 41 ("[T]he failure to comply with procedural requirements for an appeal divests a court of appellate jurisdiction" *Witzig. Witzig*, 325 S.C. 363, 366-67, 479 S.E.2d 297, 299 (Ct. App. 1996) (holding the reviewing court erred in failing to dismiss a party's appeal from the probate court's order when the party failed to timely file the appeal); *id.* at 366, 479 S.E.2d at 299 (rejecting the argument that Rule 74 of the South Carolina Rules of Civil Procedure extended the time to file a notice of intent to appeal and reasoning that "the specific ten-day filing period provided by [section] 62-1-308(a) controlled] over the general provisions of Rule 74"); Rule 263(b), SCACR ("The time

prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof.").

For the foregoing reasons, we affirm the circuit court's order dismissing Marshall's appeal from the probate court's orders because his failure to comply with the ten-day deadline provided in section 62-1-308(a) divested the circuit court of jurisdiction to consider the appeal.¹

AFFIRMED.

THOMAS, HEWITT, and VINSON, JJ., concur.

¹ In light of our disposition, we decline to address Marshall's Issues II and III, in which he challenges the circuit court's order on the merits. See *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address any remaining issues when the disposition of a prior issue is dispositive).

14a

Exhibit C

Order of the Circuit Court

(Oct. 26, 2022)

STATE OF SOUTH CAROLINA IN THE COURT OF
COMMON PLEAS

COUNTY OF GREENVILLE
Case No. 2021CP2302955;

2022CP2300933 IN THE
MATTER OF:

James Marshall Shoemaker, Jr.,

Decedent

ORDER AFFIRMING SUMMARY JUDGMENT

James Marshall Shoemaker, III, IN FAVOR OF
RESPONDENTS AND
DISMISSING PETITIONER'S APPEAL

Petitioner,

vs.

Lesley R. Moore, Esq. as Personal

Representative and Trustee, Edward Sloan
Shoemaker and Jonathan Evans Shoemaker as
Beneficiaries,

Respondents.

James Marshall Shoemaker, III,

Petitioner/Plaintiff,

vs.

Lesley R. Moore, Esq. as Personal Representative and Trustee, Edward Sloan Shoemaker and Jonathan Evans Shoemaker,

Respondents/Defendants.

THIS MATTER IS BEFORE THE COURT for hearings in connection with two case numbers related to the same matter. In reviewing the file, it appears that Petitioner's prior attorney, John Blincow, Esquire, attempted to appeal the initial granting of summary judgment prior to a final order being issued by the probate court. That appeal resulted in the action found under Case Number 2021CP2302955. Thereafter, the probate court issued its final order granting summary judgment in favor of respondents. That final order was appealed by petitioner pro se resulting in the action found under Case Number 2022CP2300933. Subsequently, Petitioner retained the services of Will McKibbon, Esquire, who confirmed at the hearing that he was representing Petitioner in both matters.

FACTUAL BACKGROUND

This controversy arises out of a challenge to the validity of Decedent's will. Shortly before his passing, Decedent changed his will to disinherit his son, Petitioner. It appears that Decedent and Petitioner had an uncertain and unstable relationship which led to multiple changes in Decedent's will to alternately exclude and include Petitioner. However, the above-

referenced change which disinherited Petitioner was Decedent's Last Will & Testament at the time of his passing.

After Decedent's passing, Petitioner brought an action to declare the will invalid for lack of testamentary capacity. In support, Petitioner submitted the affidavit of Dr. Thomas Hughes, M.D., which purported to find Decedent incompetent at the time of the execution of his will. Dr. Hughes reached this conclusion exclusively through a review of records and had no occasion to personally evaluate Decedent before his passing. Respondents moved for summary judgment and submitted multiple affidavits in support. That motion was heard on April 7, 2021 before Judge Jennings. That same day, Judge Jennings filed a Notice of Appearance in two civil lawsuits as cocounsel with the firm of Brown, Massey, Evans, McLeod & Haynsworth, LLC (BMEMH), which was also representing Respondents in this matter. Judge Jennings did not disclose his relationship with BMEMH at the time.

On June 15, 2021, Judge Jennings granted Respondents' Motion for Summary Judgment, finding that Dr. Hughes' affidavit did not sufficiently identify the incapacity Decedent was under.

In other words, though Decedent may have been neurologically impaired, the affidavit does not show that he lacked testamentary capacity, specifically. On the other hand, Respondents submitted multiple affidavits all affirming that Decedent did have testamentary capacity when executing his will.

On September 15, 2021, Judge Jennings heard a motion from BMEMH seeking fees and costs which Judge Jennings took under advisement. The following day, Judge Jennings notified all counsel of his business relationship with BMEMH and when it began. In response, Petitioner filed a Motion to Recuse and Vacate on October 1, 2021. Specifically, Petitioner asked Judge Jennings to recuse himself from this matter and vacate the summary judgment order based on the conflict, or appearance thereof. On December 15, 2021, Judge Jennings recused himself from all future matters based on his business relationship with BMEMH, but he refused to vacate the summary judgment order. Judge Jennings stated that his business relationship only existed on paper when he granted summary judgment and that he had derived no benefit and performed no work in that relationship. Therefore, in Judge Jennings' view, there was no real conflict that could form the basis for vacating the order. Petitioner now appeals both the summary judgment order and the refusal to vacate.

STANDARD OF REVIEW

When considering probate appeals, “if there is neither a statute nor a rule of court expressly prescribing a different standard of review, the circuit court must apply the same standard that” the appellate courts of this state would. *Matter of Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). “If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court’s findings of fact unless a review of the record discloses there is no evidence to support them.” *Id.* “When reviewing a grant of summary judgment, appellate

courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRPC.” *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d 766, 769 (2011).

ANALYSIS

I. Timeliness of Appeal

South Carolina Code Annotated § 62-1-308 (“the statute”) governs an appeal from a probate court order to the circuit court. The statute provides, in pertinent part: “[A] person interested in a final order, sentence, or decree of a probate court and considering himself injured by it may appeal to the circuit court in the same county. The notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties within ten days after receipt of written notice of the appealed from order, sentence or decree of the probate court.” Based upon the record before this court, the probate court filed its order entitled “Amended Order Granting Respondents’ Summary Judgment” on December 15, 2021 and written notice was provided on December 16, 2021. Petitioner’s Notice of Appeal was filed January 10, 2022.

This specific issue has been addressed by the South Carolina Supreme Court. In the matter of *In Re: Estate of Charles H. Cretzmeyer, Jr.*, the Supreme Court addressed an appeal wherein the circuit court held that appellant failed to file her notice of appeal in the circuit court within ten days of receiving the probate court order, as required by the statute. The

sole issue was whether the notice of appeal was timely filed in the circuit court.

“We decline Appellant’s invitation to construe the statute in a manner inconsistent with its unambiguous terms. Our settled rules of statutory construction mandate the result we reach, for the statute is clear that the notice of appeal ‘must be filed’ in the circuit court within the ten-day period. See *Gary v. State*, 347 S.C. 627, 629 557 S.E. 2d 662, 663 (2001) (“When a statute requires the filing of a paper or document, it is filed when delivered to and received by the proper officer.”); see also *State v. Brown*, 358 S.C. 382, 387, 586 S.E. 2d 39, 41 (2004) (noting that failure to comply with the procedural requirements for an appeal divests the court of appellate jurisdiction).”

In *Re: Estate of Charles H. Cretzmeyer, Jr.*, 365 S.C. 12, 14, 615 S.E. 2d 116, 116–17 (2005). Based on the foregoing, Petitioner has failed to comply with the mandates of the statute thus divesting this court of jurisdiction to address his “appeal.”

At the hearing counsel for Petitioner argued that South Carolina law favors the resolution of disputes on the merits and Petitioner should be excused for his failure to comply with certain statutory deadlines. Even were the Court to overlook Petitioner’s failure to properly perfect his appeal, Petitioner’s appeal is also foreclosed on the merits. However, before the Court

addresses the lack of evidence sufficient to overturn the decision of the probate court, the Court must quickly address the recusal order from Judge Jennings. Based upon a review of the records submitted, this Court does not believe that Judge Jennings' recusal was required or that his decision to not retroactively reverse his prior orders is subject to reversal by this court. Judge Jennings' order of December 15, 2021, declining to retroactively recuse himself and vacate his prior orders analyzes in great detail the facts and law applicable to that issue and this Court adopts the reasoning asserted by Judge Jennings in that order.

II. Summary Judgment Merits

As noted previously, Petitioner submitted an affidavit of a Dr. Thomas Hughes who had never seen the Decedent and who never had occasion to treat Mr. Shoemaker; to speak with him; or to speak with his physician or any witnesses to changes to his estate plans or execution of the relevant documents. More importantly Dr. Hughes' affidavit simply failed to address what level of incapacity the decedent allegedly suffered on the date of the execution of his will and trust. It is also noted in the order that in contrast to the affidavit of Dr. Hughes, respondents submitted affidavits that clearly established Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by instructing his trusted estate planning attorney, in consultation with his long-time accountant, to modify his estate planning documents.

In support of summary judgment respondents submitted affidavits of witnesses to Mr. Shoemaker's Will and his Trust including: his personal physician; his pastor; his longtime estate planning attorney, and his longtime CPA. The record is replete with personal knowledge evidence as to the competency of the Decedent at the time he executed his testamentary documents. For example, based upon his sworn testimony, Petitioner confirmed that Ms. Lewis' affidavit is factually accurate. A review of that affidavit establishes a number of significant points. First, Ms. Lewis had known Mr. and Mrs. Shoemaker, and they had been clients of hers since approximately December of 2000. She had occasion to meet with Mr. Shoemaker or speak with him approximately 2 to 4 times each year. As noted in paragraph 5 of her affidavit of her own personal knowledge, Ms. Lewis is familiar that Mr. Shoemaker changed his estate plans at various times such that his eldest son, Marshall, would not share on an equal basis with his other two children. Ms. Lewis confirmed that as part of her general practice, she often times keeps contemporaneous notes regarding the substance of meetings and instructions she has been given by her clients. She reviewed those notes relative to Mr. Shoemaker's estate plan and his intentions with regard to his son Marshall. As noted in her affidavit, on June 24, 2018, the very day that the testamentary documents were executed, Mr. Shoemaker spoke with Ms. Lewis by telephone and told her he was going to change his estate plan relative to his son Marshall, and attorney Lesley Moore would be preparing the documents to reflect his changes. Her notes went on to indicate that Mr. Shoemaker's desire was to

remove his son Marshall from his estate plan because Marshall was “trouble.” At no time during her conversation on June 24, 2018, did she observe anything that would lead her to question Mr. Shoemaker’s mental competency or whether the actions stated regarding his intention to alter his estate plan was completely voluntary. Ms. Lewis’ affidavit confirms that more than three weeks later, on July 12, 2018, she met in person with Mr. Shoemaker at his residence at The Cascades to obtain his signatures on documents. Based on a review of her notes from the meeting on July 12, 2018, James Shoemaker was “totally lucid”, and her notes reflected a direct quote from the Decedent to her: “Marshall is out.”

Similarly, in contrast to the affidavit of Dr. Hughes which fails to speak to testamentary capacity, Dr. Grover, Mr. Shoemaker’s personal physician, avers that he has been advised that the criteria for determining testamentary capacity is that the person must have the mental capacity to (1) know the nature and extent of his property; (2) know the natural objects of his bounty; and (3) know to whom he wishes to leave his property. Dr. Grover specifically avers that based upon his personal observations, Mr. Shoemaker was in no sense delusional or suffering from any mental deficits.

By way of yet another example, the underlying record contains the affidavit of Lesley R. Moore. Ms. Moore’s affidavit confirms she was personally familiar with the fact that Mr. Shoemaker did not always treat his three sons equally in his estate planning as contended by petitioner and Ms. Moore cites specific instances of

her knowledge of prior unequal treatment in his estate planning among the three children. Ms. Moore confirms that she was intimately involved in preparation of the documents being challenged and she discusses at length the interaction with Mr. and Mrs. Shoemaker regarding the preparation and execution of the documents. Ms. Moore confirms Mr. Shoemaker possessed testamentary capacity at the time the documents were executed.

Likewise, the underlying record contains the affidavits of Amos A. Workman and Carl F. Mueller. Both affidavits confirm that they personally witnessed Mr. Shoemaker review his Last Will and Testament and Trust dated June 24, 2018, and sign the documents. They both confirmed by affidavits that they were aware of the criteria for determining testamentary capacity and that Mr. Shoemaker possessed testamentary capacity at the time they witnessed execute his documents. Based on the foregoing and other evidence, the probate court held there was no genuine issue of material fact in dispute regarding petitioner's claims and accordingly, respondents were granted summary judgment.

Though Dr. Hughes' affidavit implies some neurological deficiency, it does not adequately allege a lack of testamentary capacity. In contrast, the affidavits submitted by Respondents clearly establish that Decedent did have testamentary capacity at execution. Therefore, even if Petitioner had timely appealed both of the underlying orders of the Probate Court, based upon the evidence presented, the judgment of the probate court should be affirmed, and Petitioner's appeal is dismissed.

25a .

IT IS SO ORDERED.

Debra R. McCaslin

Presiding Judge



Greenville Common Pleas

Case Caption: James Marshall Shoemaker III ,
 plaintiff, et al VS Mary Hunter
 Sloan Shoemaker , defendant, et al
Case Number: 2022CP2300933
Type: Order/Dismissal

So, Ordered

Debra R. McCaslin

Electronically signed on 2022-10-26 15:45:30 page
9 of 9

27a

Exhibit D

Probate Court Records

(April 2021 – February 2022)

28a

Affidavit of Dr. Thomas Hughes

(Apr. 6, 2021)

29a

John D BLINCOW GRIFFIN

John Blincow, Jr. 126 Meeting Street

Charleston, SC 29401 JBlincow@BlincowGriffin.com

Office (843) 872-6449 Office (843) 872-6449

April 6, 2021

By email and regular mail

Kim Campos-Ivey Judicial Assistant-Estate
Litigation

Greenville County Probate Court 301 University
Ridge Suite 1200 Greenville County Probate Court
301 University Ridge Suite 1200

Greenville, S.C. 29601 Greenville, S.C. 29601

In the matter of James Marshall Shoemaker, Jr. Case
No. 18-ES-23-01729 In the matter of James Marshall
Shoemaker, Jr. Case No. 18-ES-23-01729

Dear Kim:

Enclosed for filing please find the Petitioner's
Response to the Motion for Summary Judgment along
with our supporting affidavit in this case. By copy of
this to Respondents' counsel, Knox Haynsworth, I am
serving him with a copy of our Response. Enclosed for
filing please find the Petitioner's Response to the
Motion for Summary Judgment along with our
supporting affidavit in this case. By copy of this to
Respondents' counsel, Knox Haynsworth, I am
serving him with a copy of our Response.

Thank you for your attention to this matter. I look forward to seeing everyone at the hearing tomorrow.

Kind regards,

John Blincow, Jr.

cc Knox Haynsworth (w/ encl)

App. 21

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

Case No. 18-ES-23-01729

IN THE MATTER OF: IN THE MATTER OF:

James Marshall Shoemaker, Jr (Decedent)

PETITIONER'S RESPONSE TO DECEDENTS'

MOTION FOR SUMMARY JUDGMENT

James Marshall Shoemaker, III

Petitioner

V

Lesley R. Moore, Esq. as Personal Representative and Trustee,

Edward Sloan Shoemaker, and Jonathan Evans Shoemaker as Beneficiaries, Respondents

To: Knox L Haynsworth, Ill, attorney for the Respondents

The Petitioner, James Marshall Shoemaker, Ill, responds to the Respondents' Motion for Summary Judgment as follows:

This case involves the last Will and Trust of James Marshall ("Shoe") Shoemaker, Jr., a prominent attorney in Greenville, S.C. Since 2012 Mr. Shoemaker had a history of idiopathic pulmonary fibrosis with chronic hypoxic respiratory failure. He had a slow progression of his disease and, in May 2018, in consultation with his pulmonologist and family, decided to become a hospice patient. A Do Not Resuscitate (DNR) order was placed and he began hospice services at home. At the time he was on supplemental oxygen (6 L/min), was often short of breath, and desaturated with any activity.

On June 24, 2018, he made a new Will and Trust. His wife, Polly, also revised her Will and Trust at that time. Both excluded their oldest son, Marshall, as a beneficiary. Prior to that they had left everything to the surviving spouse for rest of that spouse's lifetime and then everything to their three sons equally. On July 5, 2018, Mr. Shoemaker had a worsening of his shortness of breath and hypoxemia. The hospice status was rescinded, and he went by ambulance to the St. Francis Emergency Department. He was admitted and treated for pneumonia and discharged five days later. He began receiving hospice services from a new provider. At that point he was on 15 L/min of oxygen with mostly poor saturation rates. The notes indicate that he had some confusion and

agitation and was impulsive with poor insight and judgment. He died on July 14, 2018.

The Respondents' have moved for a Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP). The Respondents contend that there is no genuine issue of any material fact and that the Respondents are entitled to a Judgment as a matter of law. The Petitioner alleges that his father lacked the requisite mental capacity to make a new Will in June 2018, just three weeks before he died. In support, the Petitioner submits the affidavit of Dr. Thomas Hughes (attached as Ex. 1). Dr. Hughes reviewed voluminous medical records and concludes that the deceased had significant cognitive impairment at the time he executed his new Will. Dr. Hughes points to several objective findings in the medical records in support of this opinion. The Respondents' have moved for a Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP).

In determining whether Summary Judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party in determining whether Summary Judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party

Baughman v American Telephone and Telegraph 410 SE 2d 537 (Sup Ct. 1991). Further, in cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a Motion for

Summary Judgment. *Baughman v American Telephone and Telegraph* 410 SE 2d 537 (Sup Ct. 1991). Further, in cases applying the preponderance of evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a Motion for Summary Judgment.

Hancock v Mid-South Management Op. No. 26587 (Sup Ct. 2009). *Hancock v Mid-South Management Op. No. 26587* (Sup Ct. 2009).

In this case there is at least a scintilla of evidence to support a fact finder's determination that Mr. Shoemaker lacked testamentary capacity at the relevant time. The affidavit of Dr. Hughes points to several findings in the medical records that establish a finding of cognitive impairment and a lack of testamentary capacity. There is evidence from which a fact finder could infer a lack of testamentary capacity. The existence of this evidence creates a question of fact for a fact finder to weigh and decide during a full trial on the merits. For each and all of the forgoing reasons, the Petitioner respectfully requests that the Motion be denied.

Respectfully submitted, John Blincow, Jr.

126 Meeting St. Charleston, S.C. 29401 843-872-6449
jblincow@blincowgriffin.com

Attorneys for the Petitioner

Date:

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE MATTER OF:IN THE MATTER OF:

James Marshall Shoemaker, Jr.

Decedent

James Marshall Shoemaker, III

Petitioner

Lesley R. Moore, Esq. as Personal Representative
and Trustee, Edward Sloan Shoemaker, and
Jonathan Evans Shoemaker as Beneficiaries,
Representative and Trustee,

Respondents

IN THE PROBATE COURT

Case No. 18-ES-23-01729 Case No. 18-ES-23-01729

AFFIDAVIT OF THOMAS HUGHES, M.D.

Personally appeared before me, Thomas Hughes,
M.D., who, being duly sworn, avers as follows:

I am Thomas Hughes, M.D. I am over the age of
eighteen (18) and fully competent to make this
affidavit.

I am a physician licensed to practice medicine in the
State of South Carolina. I received my medical degree
from the Medical University of South Carolina in
Charleston, S.C. and completed my residency training
at Vanderbilt University in Nashville, Tenn. I am
Board Certified in the field of Neurology.

I am the founder and one of the owners of Tidewater Neurology, a general neurology practice in Mt Pleasant, S.C.

I have been retained by John Blincow, Jr., counsel for Marshall Shoemaker, Ill, to review certain medical records and opine about certain matters that are within my field of expertise in neurology.

In connection with my review, I have been provided the following records:

hospice records from Kindred Hospice in Greenville
hospice records from Regency Southern Care in Greenville

hospital records from a St. Francis Hospital admission beginning July 5, 2018

S.C. case law on testamentary capacity S.C. case law on testamentary capacity

letter from Dr. Dan Matthews dated June 29, 2020.

affidavit from Dr. Daniel Grover dated December 3, 2019.

Based on my review, Mr. Shoemaker had some level of cognitive impairment. Up to 70% of patients with idiopathic pulmonary fibrosis (IBF) have cognitive impairment. IBF is a progressive disease. Mr. Shoemaker was at the end stage of his disease so he, most probably, had significant cognitive impairment during the relevant time period.

I saw no documentation that Mr. Shoemaker saw any physicians prior to signing the new Will. A physician

would have been able to perform an assessment of his cognitive function and mental status at that time. In my opinion this should have been done especially considering the consequential nature of the decision to exclude a beneficiary from his Estate.

There are indications in the medical records that he had very poor saturation rates while on supplemental oxygen, was at times angry and irate, was at times agitated and confused, was at times impulsive, and had refused to see family members before he died (which he had never done before). These are all indications of cognitive impairment and evidence that he lacked the requisite mental capacity.

In my opinion, a fact finder will need to consider all of the evidence, including the objective evidence in the medical records that tends to support significant cognitive impairment, in order to decide whether Mr. Shoemaker had or didn't have the requisite mental capacity at the time.

My opinions are based on my education, training and experience. My opinions are given to a reasonable degree of medical certainty.

I reserve the right to modify or change my opinions if additional material becomes available.

Further, affiant saith not. Witness my hand and seal this day of April, 2021.

Sworn before me this day of April, 2021

Notary Public for South Carolina

My Commission expires

CERTIFICATE OF SERVICE CERTIFICATE OF SERVICE

I hereby certify that, on this 6th day of April 2021, a copy of Petitioner's Response to Motion for Summary Judgment and Affidavit has been emailed and mailed to counsel for the Respondents, postage pre-paid and properly addressed as follows: I hereby certify that, on this 6th day of April 2021, a copy of Petitioner's Response to Motion for Summary Judgment and Affidavit has been emailed and mailed to counsel for the Respondents, postage pre-paid and properly addressed as follows:

Knox L. Haynsworth, III

Brown, Massey, Evans, McLeod and Haynsworth,
LLC

PO Box 2464

Greenville, S.C. 29602

John Blincow, Jr.

38a

Summary Judgment Order

(June 15, 2021)

FILED
STATE OF SOUTH CAROLINA JUN 5 2021 IN
THE PROBATE COURT

COUNTY OF
GREENVILLE
PROBATE)
COURT In THE)
MATTER OF:)
James Marshall Shoemaker, Jr.,)
Deceased Case No.:)
2018-ES-23-01729)
James Marshall Shoemaker, III.)
Petitioner,)

vs.

Mary Hunter Sloan Shoemaker, Edward Sloan
Shoemaker, Jonathan Evans Shoemaker, Lesley
Moore and John and Jane Doe,

MOTION FOR ORDER GRANTING
SUMMARY JUDGEMENT

This matter came the court for a hearing on
Wednesday April 7, 2021 concerning Respondents'
Motion for Summary Judgment. After a careful
consideration of the pleadings, the Court's file, the
Respondents' Motion, the Memorandum in Support of
Summary Judgment with Exhibits, the Petitioner's

Memorandum in Opposition to Summary Judgment with Exhibit, the arguments of counsel, the applicable law, I find and rule as follows

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, Ill ("Petitioner") instituted a pro se action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court, certain claims of Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore. By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John Blincow, Jr. of the firm Blincow Griffen Law, P.C. appeared on behalf of Petitioner. Following a process of lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the Last Will and Testament of Trust of James M. Shoemaker, Ill dated June 24, 2018 (the "Will"), and the Restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the grounds of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers

to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation" Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan, 387 S.C 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010). 30

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he "knew his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross, 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less than that needed for the execution of a contract." In re Estate of Weeks 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent to transact ordinary, everyday affairs." Hairston 387 S.C. at 446, 692 S.E.2d at 552 (quoting Speegle v. Oswald, 774 so. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable

basis on which to find his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 S.E.2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Am. 5629-601)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

"Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A. , 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the was brought directly to bear upon the testamentary act.' " u. at 219, 578 S.E.2d at 335 (quoting Mock v. D Qwling , 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact undue influence." In re Estate of Cumbee , 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influenc [must bel additional evidence that such influence was actually utilized." Howard v. Nasser , 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock , 266 S.C. at 277, 222 S.E.2d at 774). "the influence necessary to void a will must amount to force and coercion.^{it} Wilson v Dallas .403

S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at 3333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394. "If the testator had the testamentary capacity to dispose property and was free and unrestrained in His volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." Howard, 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak 286 S.C. 419,424, 334 S.E.2d 806, 809 (1985)).

Ill. Analysis

Petitioner relies exclusively on the Affidavit of Thomas Hughes, M.D. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr. With regard to Affidavit of Thomas Hughes, M.D., the Court notes that the affidavit was not notarized at the time of filing with the Court. However, attorney John Blincow represented at the hearing that, as an officer of the court, he actually saw Dr. Hughes execute the affidavit. He then notarized the Affidavit of Thomas Hughes, MD. after the hearing. In addition, Rule 5(d) of the South Carolina Rules of Civil Procedure specifically provides that except as otherwise provided in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence or argument was provided to

explain why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Furthermore, pursuant to Rule 33(b) SCRPC, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davids QQ, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The Court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing, yet Dr. Hughes has never been listed as a witness. The affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter- Dr. Hughes did not examine Mr. Shoemaker, but instead reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr. Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross, *supra*. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that, based on a review of the records

Mr. Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Exhibits B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate, or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further, Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom the decedent shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed

that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the State of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding a lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the wills and trusts of his parents. The record establishes that, decades ago, Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity, in light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute regarding Petitioner's claims. Accordingly, Respondents are entitled to summary judgment,

Lastly, during the hearing on April 7, 2021 the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as

trustee, as personal representative, or as an attorney. Through counsel, Petitioner confirmed that he did not wish to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice.

Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any obligation or duty to anyone. In fact, all of the evidence before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. I The Motion for Summary Judgment of Respondents is granted; and
2. Lesley Moore is hereby dismissed from this action with prejudice.

AND IT IS SO ORDERED.

June 15, 2021 Clayton L. Jennings
Greenville, SC Associate Probate Judge

48a

Disclosure Email of Judge Clayton L. Jennings
(Sept. 16, 2021)

49a

Thursday, November 6, 2021 at 5:28:42 PM Eastern Standard Time Thursday, November 6, 2021 at 5:28:42 PM Eastern Standard Time

Marshall

Attached for our discussion is the email we received from Judge Jennings re his conflict. John

John Blincow Jr. Blincow Griffin Law PC 126 Meeting Street Charleston, SC 29401

Office: 843-872-6449

BlincowGriffin.com

Blincow Griffin Law PC Confidentiality Notice:

From: Clayton Jennings
clayton@jenningslawfirm.com

Subject: InRe: Estate of James Shoemaker, Jr. and Estate of Polly Shoemaker Date: September 16, 2021 at 5:08 PM

To: Knox Haynsworth
knoxhaynsworth@bmemhlaw.com, John Blincow
jblincow@blincowgriffin.com

Cc: Campos-Ivey, Kim
KCampos@greenvillecounty.org, Faulkner, Debora
DFaulkner@greenvillecounty.org

Mr. Haynsworth and Mr. Blincow:

While thinking about our hearing yesterday related to the Motion to Reconsider and Motion for Attorney's Fees and Costs in the Estate of James

Shoemaker, Jr., it occurred to me that I am presently representing a gentleman by the name of Jeff Gafary and his LLC, G & N Holdings, LLC, in pending actions in the Court of Common Pleas for

Greenville County. My co-counsel in the two cases is Attorney Stanley McLeod. Mr. McLeod is a partner in the firm Brown Massey Evans McLeod & Haynsworth, LLC, the same firm of Mr. Haynsworth. Attorney McLeod appeared in the actions around July 2020, and I only appeared in the actions in April 2021 by filing a Notice of Appearance following Mr. Gafary's request that I represent him.

The two cases are: Congaree Marketplace, LLC vs. Jeff Gafaary, 2020CP2302237; and Congaree Marketplace, LLC vs. G&N Holdings LLC, 2020CP2302242. These cases involve an attempt to foreclose on an alleged lien for past due charges for common area maintenance.

They have nothing in common with the Estates of James Shoemaker, Jr. or Polly Shoemaker. You are welcome to review all the filings in these cases if you are curious. There is also a possibility that I will appear in the action of Edwin Francisco vs. Jeff Gaafary, C.A. NO. 2020CP2300216. Attorney McLeod is the only attorney of record for the defendants in that case at present. The case involves a commercial tenant with claims against his former landlord, Namouz, LLC (an LLC in which Mr. Gafary is a member). Like the other two cases, this case does not have anything in common with the

Estates of James Shoemaker, Jr. or Polly Shoemaker.

I have never served as co-counsel with Mr. Haynsworth on any case, and until the two cases identified above, I had never served as co-counsel on any case with the firm of Brown Massey Evans McLeod & Haynsworth, LLC. I can assure you that I have been and will continue to be fair and impartial with regard to any rulings or proceedings involving the Estates of James Shoemaker, Jr. or Polly Shoemaker. However, I wanted to disclose these facts as soon as possible.

Please let us know at your earliest convenience whether; after considering the above information, you would like for me to issue a ruling on the motions heard yesterday. I realize that I orally ruled from the bench on the Motion to Amend the prior Order, but I have not made any decision on the Motion for Attorney's Fees and Costs. Again, I am confident that I have been and will remain unbiased. I am willing to continue to hear and issue decisions related to the Estates of James Shoemaker, Jr. or Polly Shoemaker, but I wanted to make sure that I disclosed these matters to you.

We look forward to your response.

Best regards,

Clayton L. Jennings Law Firm, LLC 1151 E. Washington St.

52a

Recusal Order

(Dec. 15, 2021)

FILED
DEC 15 2021
STATE OF SOUTH CAROLINA IN THE PROBATE
COURT

GREENVILL COUNTY PROBATE COURT

COUNTY OF GREENVILLE

Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III)	
)	
Petitioner,)	
)	
vs.)	
)	
Mary Hunter Sloan Shoemaker,)	Edward
Sloan Shoemaker, Jonathan Evans)	
Shoemaker, Lesley Moore and John and)	
Jan Doe)	

ORDER

This matter came before the Court for a hearing on Wednesday November 10, 2021 pursuant to Petitioner's motion that the undersigned recuse himself and to vacate prior Orders.

As explained below, the Court denies Petitioner's Motion to Vacate this Court's prior Order granting summary judgment and oral ruling granting Respondents' motion to alter or amend that summary judgment order. The Court grants Petitioner's Motion for Recusal as to any future matters heard in the present action as well as the related action involving

the Estate of Polly Shoemaker pending under C.A. No.: 2020-ES-23-00073.

Petitioner bases his Motion to Vacate this Court's prior Order Granting Summary Judgment and seeks recusal of the undersigned based on the relationship of the undersigned as co-counsel with Stanley McLeod, who is a partner in the firm in which Knox Haynsworth, III, practices. However, as is closed to counsel: I have never served as co-counsel with a member of the firm of which M Haynsworth is a member until serving with Stanley McLeod; I agreed to represent a friend, Jeff Gaafary, in litigation involving him and a limited liability company in which he is a member; filed a notice of appearance on April 7, 2021 in anticipation of needing to appear at a motion hearing on the following day, but co-counsel (Stanley McLeod) appeared at the hearing, and my service was not needed, and I did not appear in court; I have received no retainer or fee in connection with my representation; I have not appeared at any hearing or proceeding in the subject representation of Mr. Gaafary of his company; and I have not billed or recorded any time for my representation, and my representation is not subject to a contingency fee agreement. However, I anticipate that I will need to spend time on the cases involving Mr. Gaafary and his company at some point in the coming months.

I disclosed my representation in these matters only after it occurred to me that my cocounsel on these cases was in practice with Attorney Haynsworth, who represents the respondents in this matter. This disclosure was to demonstrate sensitivity to assuaging any concerns about my

impartiality. See Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E. 2d 535, 546 (S.C. 2014), at 546, citing Simpson v. Simpson, 377 S.C. at 525, 660 S.E. 2d at 277.

Petitioner argues that the case of Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009), requires recusal where an objective inquiry into the co-counsel relationship "would offer a possible temptation to the average judge to lead him not to hold the balance nice, clear and true." Petitioner also argues that the Judicial Merit Selection Commission's decision in In Re: Public Hearing on Judicial Qualification of Judge Segars-Andrew S.C. December 18, 2009 requires a judge to recuse himself if the judge's impartiality might reasonably be questioned. Petitioner argues that the refusal of the South Carolina Supreme Court to hear the matter of Judge Segars-Andrews signifies that there is no longer a requirement to present evidence of actual bias as required by prior South Carolina law such as in Simpson v. Simpson, 660 S.E. 2d 274 (S.C. App. 2008).

The facts relate to Caperton v. A. T. Massey Coal Co., 556 U.S. 868 (2009) are clearly distinguishable from the present case in that the judge in Caperton received \$3 million in campaign contributions from Massey Coal Co. prior to issuing decision in a case involving Massey Coal Co. as a party. In this case, I have received no payment and billed for no time or interest in the instant case or in the cases in which I have McLeod.

In addition, the case of Davis v. Parkview Apartments, 409 SC 266, 762 SE 2d 535 makes it clear that "Under South Carolina law, if there is no evidence of judicial prejudice, a judge's failure to disqualify himself will not be reversed on appeal." *Id.* at 545 "It is the movant's responsibility to provide some evidence of the existence of the judge's impartiality." *Id.* at 545, quoting *Lyvers v. Lyvers*, 280 S.C. 361, 367, 213 S.E. 2d 590, 594. "The party seeking disqualification must do more than merely allege bias on the judge's behalf; the party must present some evidence of judicial prejudice or bias." *Simpson*, at 277, quoting *Patel v. Patel*, 359 S.C. 515, 599 S.E. 2d 114 (2004). Considering that the opinion of the Judicial Merit Selection Commission related to Judge Segars-Andrews was issued in the year 2009, roughly 5 years prior to the decision in *Davis v. Parkview Apartments*, *supra*, in 2014, it appears quite clear that the law of South Carolina still requires both a reasonable basis for questioning a judge's impartiality and evidence of actual prejudice. Moreover, the opinion from *Davis v. Parkview Apartments*, *supra*, in 2014, was issued nearly years after the decision in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009). Thus, Petitioner's argument that evidence of actual prejudice was no longer required following the matter of Judge Segars-Andrews is invalid. Although the court requested Petitioner to provide South Carolina law holding that evidence of actual prejudice was no longer required after the opinion concerning Judge Segars-Andrews, Petitioner produced none.

I find that Petitioner has failed to show a reasonable basis for questioning my impartiality in

this matter. Petitioner admits that he has no evidence of actual prejudice, but contends that such is not necessary.

Therefore, for the reasons set forth above, the Motion to Vacate this court's prior Order Granting Summary Judgment is DENIED. The court also notes that parties have expended a great deal of time and expense on the proceedings to date, and it would be a colossal injustice for them to relitigate matters already heard and decided by this court, especially knowing that the matters were decided impartially.

Nevertheless, because I expect over the coming months to begin working on the subject cases involving Stanley McLeod as co-counsel, because there may be billing and payments associated with such work, and because Petitioner may renew his objection or file additional motions for recusal and to vacate prior Orders based on a financial interest in the cases involving Stanley McLeod as co-counsel, I recuse myself from future proceedings in the matters of James Marshall Shoemaker, Jr. (2018ES2301729) and Mary Sloan Shoemaker (2020ES2300073). decedents.

AND I T IS SO ORDERED.

Clayton L . Jennings

Associate Probate Judge

Greenville, South Carolina

December 15, 2021

58a

Second Summary Judgment Order

(Dec. 19, 2021)

STATE OF SOUTH CAROLINA DEC 19 2021
FILED IN THE PROBATE COURT

COUNTY OF GREENVILLE ~~GREENVILLE~~ COUNTY
PROBATE COURT Case No.: 2018-ES-23-01729

James Marshall Shoemaker, III,)
)
Petitioner,)
)
vs.)
)
Mary Hunter Sloan Shoemaker, Edward)
Sloan Shoemaker, Jonathan Evans)
Shoemaker, Lesley Moore and John and)
Jan Doe,)
)
Respondents.)

ANNEXED ORDER

GRANTING SUMMARY JUDGMENT
TO RESPONDENTS

This Court originally granted summary judgement in favor of Respondents and issued its Order reflecting the same dated June 15, 2021. Pursuant to a timely filed Motion under Rule 59 of the South Carolina Rules of Civil Procedure, Respondents requested the Court alter the language of its Order to change the phrase "Petitioner relies exclusively on the affidavit of Thomas Hughes, M.D. to establish a question of

material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." to "Petitioner relies primarily on the affidavit of Thomas Hughes, MD. to establish a question of material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr." In considering the record before it, the Court modifies its Order dated June 15, 2021 granting Respondent's Motion for Summary Judgment as noted below and the Court finds and rules as follows:

I. Procedural History

On June 27, 2019 Petitioner James Marshall Shoemaker, III instituted a pro se action against his father's estate, his mother, two brothers, attorney Lesley Moore and his parents' long-time housekeeper, Debbie Wine. Pursuant to a prior Order of this Court: certain claims of Petitioner were struck from the Petition and certain parties dismissed. Thereafter, Petitioner filed and served an Amended Petition against his mother, two brothers and attorney Lesley Moore.

By way of Reply, the Respondents denied the substance of the claims in the Amended Petition. On April 20, 2020, John Blincow, Jr. of the firm Blincow Griffen Law, P.C. appeared on behalf of Petitioner. Following lengthy discovery, on November 4, 2020, Respondents filed their Motion for Summary Judgment.

The Amended Petition sought to overturn the last Will and Testament and Trust of James M. Shoemaker, III dated June 24, 2018 (the "Will") and

the restatement of the James M. Shoemaker, Jr. Revocable Trust dated June 24, 2018 (the "Trust"), on the of lack of testamentary capacity and undue influence. According to the allegations of the Amended Petition, "as a result of his weakened, disturbed and distorted state of mind during his final months, and the collusion of my mother and brothers to vilify me to, and separate me from, my father, he was persuaded to sign revisions of his Will and Trusts, less than three weeks before his passing, which expressly excluded me from benefitting from his estate." (Amended Petition Page 2, Lines 13-18)

II. Applicable Law

Once the formal execution of a will is admitted—or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation." Byrd v. Byrd, 279 S.C. 425, 426-27, 308 S.E.2d 788, 789 (1983); The will contestants bear the burden of showing incapacity at the time the will was executed. Hairston v. McMillan 387 S.C. 439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010).

In order to survive summary judgment, the nonmoving party must provide evidence showing the testator lacks capacity. A testator has the capacity to execute a will when he knew⁽¹⁾his estate, (2) the objects of his affections, and (3) to whom he wished to give his property." Hellams v. Ross 268 S.C. 284, 288, 233 S.E.2d 98, 100 (1977). "The degree of capacity necessary for the execution of a will is less

than that needed for the execution of a contract." In re Estate of Weeks 329 S.C. 251, 264, 495 S.E.2d 454, 461 (Ct. App. 1997). "A person may execute a valid will even if he or she is not competent to transact ordinary, everyday affairs." Hairston, 387 S.C. at 446, 692 SE.2d at 552 (quoting Speegle v. Oswald, 774 so. 2d 595, 597 (Ala. Civ. App. 2000)).

The test for capacity does not include the requirement that the testator "have a reasonable basis on which to find his likes or dislikes or the natural objects of his bounty." In re Washington's Estate, 212 S.C. 379, 387, 46 SE,2d 287, 290 (1948).

The capacity required to create a trust is the same as that required to make a will. (S.C. Code Ann. 562-7-601.)

In addition to challenging his father's Will and Trust on the grounds of lack of capacity, Petitioner has also asserted that the challenged documents are the result of undue influence brought to bear upon the will of his father by the actions of his mother and two younger brothers.

Undue influence must be shown by unmistakable and convincing evidence, which is usually circumstantial." Russell v. Wachovia Bank, N.A. , 353 S.C. 208, 217, 578 S.E.2d 329, 333. "In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " u. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling , 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee , 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the jury, the contestant must show more than general influence—there [must be] additional evidence that such influence was actually utilized." Howard v. Nasser , 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock , 266 S.C. at 277, 222 S.E.2d at 774 .

"The influence necessary to void a will must amount to force and coercion." Wilson v. Dallæ 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell , 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the basis of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgement and free choice." In re Estate of Qurpbee , 333 S.C. at 671, 511 S.E.2d at 394. If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, some provision of it will not be undue influence" Howard , 364 S.C. at 289, 613 S.E.2d at 69 (quoting In re Last Will & Testament of Smoak , 286 S.C. 419, 424, 334 S.E.2d 806, 809 (1985)

III. Analysis

Petitioner relies primarily on the Affidavit of Thomas Hughes, MD. to establish a question of

material fact related to the alleged mental incapacity of the testator, James M. Shoemaker, Jr.. With regard to Dr. Hughes' affidavit, it is noted that the affidavit was not notarized. However, attorney John Blincow represented at the hearing that as an officer of the court, he actually saw Dr. Hughes execute the affidavit. More significantly, Rule 5(d) of the South Carolina Rules Of Civil Procedure specifically provides that except as otherwise provided in Rule 59(c), opposing affidavits may be served "not later than two days before the hearing" unless the Court permits them to be served at some other time. No evidence was adduced explaining why Dr. Hughes' affidavit was not submitted in accordance with Rule 5(d). Additionally, pursuant to Rule 33(b) SCRPC, there is a continuing duty on the part of the party from whom information is sought to answer a standard interrogatory, such as the one requesting the party to list any expert witness whom the party proposes to use as a witness at the trial of the case. Bensch v. Davidson, 354 S.C. 173, 182, 580 S.E. 2d 128, 132 (2003). The court was advised that standard interrogatories had been served upon Petitioner over a year prior to the hearing, yet Dr. Hughes has never been listed as a witness. In this matter it is undisputed that the affidavit of Dr. Hughes was not served on counsel for Respondents until the evening prior to the hearing.

Regardless, the affidavit of Dr. Hughes does not create a material issue of fact in this matter. Dr. Hughes did not examine Mr. Shoemaker but instead, reviewed medical records related to the period of time surrounding the execution of the testamentary documents. While Dr. Hughes opines that Mr.

Shoemaker may have had significant cognitive impairment, he fails to conclude that Mr. Shoemaker did not know his estate, know the objects of his affection and know to whom he wished to give his property, the test for mental capacity set forth under Hellams v. Ross supra. Despite Dr. Hughes' sworn statement that he had reviewed "S.C. case law on testamentary capacity" (Affidavit of Hughes at Paragraph 5(d)), nowhere in his affidavit does Dr. Hughes indicate what level of incapacity Mr. Shoemaker may have had on June 24, 2018, the date of execution of the Will and Trust at issue. While Dr. Hughes noted that based on a review of the records Shoemaker "was at times angry and irate" and "was at times agitated" during the weeks prior to his death, Petitioner himself confirmed in his deposition that his father had a severe temper and a volatile relationship with Petitioner (See Deposition of Marshall Shoemaker Pages 28, 29, 124, 167; Ex B and C of Respondents' Memorandum in Support of Summary Judgment). However, Dr. Hughes did not suggest in his affidavit that Mr. Shoemaker was angry, irate or agitated on June 24, 2018, the date of the disputed Will and Trust.

By contrast, the affidavits provided by Respondents establish that Mr. Shoemaker had testamentary capacity and requested the changes to his estate plan of his own volition by calling his trusted attorney for estate planning to have his attorney, in consultation with his long-time accountant, modify his estate planning documents. Mr. Shoemaker clearly understood the contents of the Will and Trust at the time of their execution. This is confirmed by the affidavits of one former

partner and one partner of the Wyche Firm who witnessed the execution of the Will and Trust at issue, Carl Muller and Amos Workman, as well as the affidavit of Respondent Lesley Moore. Further Respondents submitted the affidavit of another long-time law partner of the decedent, William Kehl, with whom he shared over the years his estrangement with his son Marshall. An affidavit was submitted by Mr. Shoemaker's long-time legal assistant, Rita Christopher, with whom he also shared the estrangement with Marshall that existed over the years. Finally, the affidavit of the personal physician of the decedent, Dr. Daniel Austin Grover, confirmed that he (Dr. Grover) had been made aware of the requirements for testamentary capacity in the state of South Carolina and could state unequivocally that Mr. Shoemaker possessed such testamentary capacity. Nevertheless, even without the affidavits submitted by Respondents, the Court finds that Petitioner failed to carry his burden of establishing any material issue of fact in dispute regarding lack of testamentary capacity on June 24, 2018.

As to undue influence, Petitioner has failed to provide any evidence or establish any material issue of fact whatsoever. In fact, in reviewing the record before the Court as a whole, it is clear that, contrary to the allegations of the Amended Petition, Marshall Shoemaker was at various times throughout his life excluded from the Wills and Trusts of his parents. The record establishes that decades ago Marshall was excluded completely as an object of his parents' bounty. Marshall was at times included and at other times excluded from the wills and trusts of the decedent as their relationship varied from hostility

and estrangement to reconciliation. Therefore, the exclusion of Marshall from the most recent testamentary documents does not suggest undue influence or lack of capacity. In light of the foregoing, the Court finds there exists no genuine issue of material fact in dispute Petitioner's claims. Accordingly, Respondents are entitled to summary judgment.

Lastly, during the hearing on April 7, 2021 the Court questioned Petitioner regarding the claims asserted against Lesley Moore and whether the claims were asserted against her individually, as trustee, as personal representative, or as an attorney. Through counsel, Petitioner affirmed that he did not to pursue the claims against Lesley Moore. Thus, she is dismissed from this action, with prejudice. Petitioner failed to submit any evidence to the Court suggesting that Ms. Moore had violated any obligation or duty to anyone. In fact, all of the ~~evidence~~ before the Court establishes that Ms. Moore maintained her long-established role as the estate planning attorney for Mr. and Mrs. Shoemaker.

Therefore, it is hereby ORDERED, ADJUDGED,
AND DECREED that:

1. The Motion for Summary Judgment of Respondents is _____ and _____
2. Lesley Moore is hereby dismissed from this action with prejudice.

AND IT IS SO ORDERED.

69a

Chief Justice Donald W. Beatty Transfer Order

(Feb. 1, 2022)

70a

Supreme Court of South Carolina

DONALD W. BEATTY POST OFFICE BOX 3543

CHIEF JUSTICE SPARTANBURG, SOUTH
CAROLINA 29304-3543

TELEPHONE (884) 596-3450

FAX. (864) 596-2202

EMAIL: dbeafty@scccurts.org

February 19 2022February 19 2022

The Honorable Joshua L, Queen

PO Box 22

Gaffney, SC 29342-0022

RE: In the Matter of James Marshall Shoemaker, Jr.
and Mary Sloan "Polly" Shoemaker (Case Nos. 2018-
ES-23-01729 and 2020-ES-23-00073)RE: In the
Matter of James Marshall Shoemaker, Jr. and Mary
Sloan "Polly" Shoemaker (Case Nos. 2018-ES-23-
01729 and 2020-ES-23-00073)

Dear Judge Queen:

Enclosed is a copy of the Supreme Court order
appointing you as a special probate court judge for
Greenville County in the matter of the above
referenced cases in their entirety. Enclosed is a copy
of the Supreme Court order appointing you as a
special probate court judge for Greenville County in
the matter of the above referenced cases in their
entirety.

Should you have any questions regarding this matter, please contact South Carolina Court Administration at (803) 734-1800. Should you have any questions regarding this matter, please contact South Carolina Court Administration at (803) 734-1800.

Sincerely,

Enclosure

cc: The Honorable Clayton L. Jennings The Honorable Debora A. Faulkner Knox L, Haynsworth, Esq. John Blincow, Esq. cc: The Honorable Clayton L. Jennings The Honorable Debora A. Faulkner Knox L, Haynsworth, Esq. John Blincow, Esq.

Supreme Court of South Carolina

ORDER

I find that the Honorable Debora A. Faulkner, Probate Judge for Greenville County, and the Associate Probate Judges for Greenville County are disqualified from any further hearings In the Matter of James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker (Case Nos. 2018-ES-23-01729 and 2020-ES-23-00073) and unable to sit as judge of probate in these matters in their entirety. I find that the Honorable Debora A. Faulkner, Probate Judge for Greenville County, and the Associate Probate Judges for Greenville County are disqualified from any further hearings In the Matter of James Marshall Shoemaker, Jr. and Mary Sloan "Polly" Shoemaker (Case Nos. 2018-ES-23-01729 and 2020-ES-23-00073)

and unable to sit as judge of probate in these matters in their entirety.

Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution and S.C. Code Ann. S 14-23-1080 (2017), Pursuant to the provisions of Article V, Section 4 of the South Carolina Constitution and S.C. Code Ann. S 14-23-1080 (2017),

IT IS ORDERED that the Honorable Joshua L. Queen, Probate Judge for Cherokee County, is appointed as special probate court judge to sit in the above matter in its entirety. The Honorable Joshua L Queen shall have all the powers and duties appertaining to a probate court judge for Greenville County in the handling of the above matter. IT IS ORDERED that the Honorable Joshua L. Queen, Probate Judge for Cherokee County, is appointed as special probate court judge to sit in the above matter in its entirety. The Honorable Joshua L Queen shall have all the powers and duties appertaining to a probate court judge for Greenville County in the handling of the above matter.

Columbia, South Carolina

February L, 2022

Exhibit E

Order Granting Respondents' Motion for Recovery of
Costs and Attorneys' Fees

(Mar. 10, 2023)

STATE OF SOUTH CAROLINA (JV FY OF
GREENVILLE)

James Marshall Shoemaker, III

Petitioner

vs.

Mary Hunter Sloan Shoemaker, Edward Sloan
Shoemaker, Jonathan Evans Shoemaker Lesley
Moore and John and Jan Doe

Date of Hearing: Trial Judge:

Attorney for Petitioner:

Attorney for Respondents 2

IN PROBATE COURT

Case No.: 729

ORDER GRANTING

RESPONDENTS' MOTION FOR RECOVERY OF
COSTS AND ATTORNEYS' FEES

January 4, 2023

Hon. Joshua L Queen

William R. McKibbon, III

Knox L. Haynsworth, III

This matter is before the court on Respondents'
Motion for the Recovery of Costs and

Attorneys' Fees pursuant to the provisions of S.C. Code Ann. \62-1-1 1 1 and \62-7-1

By way of a summary, Petitioner instituted litigation against his mother, his father's estate, his parents longtime housekeeper, his two brothers, and the Personal Representative of his fathers' estate. Petitioner made certain allegations regarding his mother and his brothers which were stricken in prior orders. Additionally, certain parties were dismissed, with the case proceeding against his two brothers, and the personal Representative of his father's estate. After discovery was conducted, Respondents moved for summary judgment arguing that Petitioner had against his two brothers, and the Personal Representative of his father's estate. After discovery was conducted, Respondents moved for summary judgment arguing that Petitioner had

Separate filings in this matter show different named respondents in the captions, however the case number has been consistent.

Attorney Haynsworth does not represent John and Jane [sic] Doe.

Petitioner's mother, Mary Hunter Sloan Shoemaker, passed away during the pendency of this action.

Petitioner came forth with no evidence to support his claims, and the claims were made in bad faith.

Summary judgment was granted.

Petitioner filed a motion to reconsider as to the grant of summary judgment; said motion was denied. Petitioner then appealed to the Circuit Court. The

Circuit Court affirmed the grant of summary judgment in favor of Respondents. The matter is now on appeal to the South Carolina Court of Appeals. Following the grant of summary judgment by the Probate Court, Respondents filed a Motion for the Recovery of Costs and Attorneys' Fees pursuant to the above referenced sections of the trust code and probate code.

It is well established by South Carolina case law that attorney's fees are not recoverable unless authorized by contract or statute. *Hegler v. Gill/ Ins. Co.*, 243 S.E.2d 443, 270 S.C 548 (S.C. 1978). The Respondents rely on §62-1-111 and of the South Carolina Code often is well established by South Carolina case law that attorney's fees are not recoverable unless authorized by contract or statute. *Hegler v. Gill/ Ins. Co.*, 243 S.E.2d 443, 270 S.C 548 (S.C. 1978). The Respondents rely on §62-1-111 and of the South Carolina Code of

Laws in their requests of the recovery of costs and fees. Respondents also rely on the South Carolina Court of Appeals opinion in *Debra Dereede Living Trust* dated December 18, v Karp, 427 S.C 336, 831 S.E.2d 435 (S.C. App. 201 9), which states the trial court may order attorney fees pursuant to §62-7-1004 "as justice may require," and that bad faith or ulterior motives are not required. Although not required pursuant to Respondents' argument, Respondents do allege the Petitioner's action was brought in bad Faith; made spurious and unsupported allegations; has cost Respondents significant sums of money in attorney fees, costs and storage expenses: and has "gummed up" the orderly distribution of the estate.

The Court agrees with Respondents regarding the question of an award of attorney's fees. Attorney's fees are recoverable in this matter based on the statutes referenced and the case law of South Carolina. Laws in their requests of the recovery of costs and fees. Respondents also rely on the South Carolina Court of Appeals opinion in Debra Dereede Living Trust dated December 18, v Karp, 427 S.C 336, 831 S.E.2d 435 (S.C. App. 201 9), which states the trial court may order attorney fees pursuant to }62-7-1004 "as justice may require,' and that bad faith or ulterior motives are not required. Although not required pursuant to Respondents' argument, Respondents do allege the Petitioner's action was brought in bad Faith; made spurious and unsupported allegations; has cost Respondents significant sums of money in attorney fees, costs and storage expenses: and has "gummed up" the orderly distribution of the estate. The Court agrees with Respondents regarding the question of an award of attorney's fees. Attorney's fees are recoverable in this matter based on the statutes referenced and the case law of South Carolina.

As the Court has determined that attorney's fees and costs are recoverable. the Court must determine what the attorney's award should be. South Carolina case law makes clear the trial court must consider six factors in determining a reasonable attorney's fee award. Consideration should be given to all six criteria in establishing reasonable attorney's fees, but none of these six factors is controlling. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989) and Darden v. Wiham, 263 S.C 183, 209 S.E.2d 42 (1974).As the Court has determined that attorney's fees and costs are recoverable. the Court

must determine what the attorney's award should be. South Carolina case law makes clear the trial court must consider six factors in determining a reasonable attorney's fee award. Consideration should be given to all six criteria in establishing reasonable attorney's fees, but none of these six factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989) and *Darden v. Wiiham*, 263 S.C 183, 209 S.E.2d 42 (1974).

The six factors are: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. See *Glasscock v. Glasscock*, 304 SC. 158, 403 S.E. 211 313 (Sec 1991) and *Donahue v. Donahue*, 299 S.C. 353, [he six factors are: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. See *Glasscock v. Glasscock*, 304 SC. 158, 403 S.E. 211 313 (Sec 1991) and *Donahue v. Donahue*, 299 S.C. 353, 384 S.E. 2d 741 (1989). Of the factors, Petitioner specifically questions factor (2) and factor (6).384 S.E. 2d 741 (1989). Of the factors, Petitioner specifically questions factor (2) and factor (6).With regard to the six factors the court notes the following: With regard to the six factors the court notes the following:

(1) The nature, extent, and difficulty of the case: As summarized above, Petitioner instituted his pro se action on June 27, 2019, against his father's estate,

his mother, two brothers, the Personal Representative of his father's estate, Lesley Moore, and his parents' long-time housekeeper, Debbie White. Pursuant to prior Court Orders, certain claims and parties were dismissed. Petitioner then filed an amended Petition against his mother, two brothers, and Ms. Moore. The Petitioner sought to overturn the last will and testament and trust of his Father on the grounds of lack of testamentary capacity and undue influence. Petitioner also claimed his father was dependent upon alcohol: his father was under the influence of drugs: his mother was chemically dependent; and his brothers and mother colluded in vilifying him and separating him from his inheritance. Petitioner also alleged a breach of fiduciary duty and other claims against Ms. Moore.(l) The nature, extent and difficulty of the case: As summarized above, Petitioner instituted his pro se action on June 27, 2019, against his father's estate, his mother, two brothers, the Personal Representative of his father's estate, Lesley Moore, and his parents' long-time housekeeper, Debbie White. Pursuant to prior Court Orders, certain claims and parties were dismissed. Petitioner then filed an amended Petition against his mother, two brothers, and Ms. Moore.

In approximately April 2020, attorney John Blincow appeared on behalf of Petitioner.

Following a lengthy discovery period, Respondents filed their Motion for Summary.

Judgment on November 4, 2020. After hearing, the Probate Judge issued an Order, dated June 15, 2021, granting summary judgment. The Probate Judge later entered another Order, dated December 15, 2021, modifying its Order for Summary Judgment. The Probate Judge also entered an Order on December 15, 2021, denying Petitioner's Judgment on November 4, 2020.

After hearing, the Probate Judge issued an Order, dated June 15, 2021, granting summary judgment. The Probate Judge later entered another Order, dated December 15, 2021, modifying its Order for Summary Judgment. The Probate Judge also entered an Order on December 15, 2021, denying Petitioner's Motion to Vacate the Court's Order granting summary judgment and granting Petitioner's Motion for Recusal. On December 31, 2021, the Probate Court was notified by the Office of Disciplinary Counsel that attorney John Blincow was placed on interim suspension. Attorney McKibbon is now representing Petitioner in this and related litigation.

Probate Court matters involving testamentary capacity and undue influence can be extensive and difficult in nature, due to the amount of medical records, depositions, documentation and other information necessary to prove or disprove allegations. A review of the file shows no credible evidence supporting the Petitioner's claims of his father's alcohol dependency, his father's influence by drugs, his mother's chemical dependency, the collusion of his brothers and mother to vilify him, or any of the claims against Ms. Moore. The Respondents still had to respond to the allegations,

however. Also, while not the fault of the Petitioner, and having no bearing in determining an attorney fee award; the suspension of Attorney Blincow certainly increased the difficulty of this case for all parties.

2) The time necessarily devoted to the case: Attached to the Respondents' Motion for the Recovery of Cost and Attorneys' Fees is an Attorney Fee Affidavit.

The Attorney Fee Reference is made to the Order of the South Carolina Supreme Court, dated February 1, 2022, appointing the undersigned as special probate court judge to sit in this matter and In the Matter of Mary Sloan "Polly" Shoemaker (Case No. 2020-es-2Y00073).

The Court finds Affidavit submitted by Respondent's show 303 hours of attorney time for a total of \$1 08, 167.50, and costs of \$4,343.75. According to the Affidavit, Attorney Haynsworth and Attorney David Massey have represented the Respondents in this matter. Attorney I-Haynsworth charges an hourly rate of \$350 an hour and Attorney Massey charges \$425 an hour. Petitioner questions this amount of time and states the affidavit not provide adequate documentation for the attorney work provided. The Court finds Petitioner's argument unpersuasive, The form of the Affidavit is of the same substance and type of Attorney Fee Affidavits' used in Probate Courts throughout this state. Although a large amount, the Attorney Fee Affidavit clearly and accurately shows the time, labor and costs spent in this entire matter. Petitioner's argument unpersuasive, The form of the Affidavit is of the same substance and type of Attorney Fee Affidavits' used in Probate Courts

throughout this state. Although a large amount, the Attorney Fee Affidavit clearly and accurately shows the time, labor and costs spent in this entire matter.

Professional standing. of counsel: The Court finds Respondents' attorneys to be experienced, skillful and of high standing in the Greenville and South Carolina Professional standing. of counsel: The Court finds Respondents' attorneys to be experienced, skillful and of high standing in the Greenville and South Carolina legal communities.

Contingency of compensation: While not specifically argued by Petitioner, 'contingency of compensation' is an appropriate factor considered in awarding attorney's fees, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorneys fee if an award is not made." Glasscock, 304 S.C. at 161, 403 S.E.2d at 3 15. A review of the file appears to show the Respondents would be able to pay their own attorneys' fees due to sizeable amount of the trust and estate of the deceased Mr. Shoemaker.

Beneficial results obtained: Petitioner argues that Respondents should not receive an attorney fees award because Respondents were not successful on some of the motions Respondents have filed in this matter. Petitioner relies on the case of Hardaway.

Concrete Hall Contracting corp., 647 S.E.2d 488, 374 S.C. 216 (S.C App. 2007). In that case, Hall appealed an attorney fees award won by Hardaway from a In motion for sanctions that Hardaway lost. The Court of Appeals agreed with Hall that beneficial results

were not realized, and therefore, the attorney fees awarded were reduced by the amount of the fees related the lost motion for sanctions. Respondents counter, that in this matter, the Respondents won the case on summary judgment; and the attorney fees accumulated toward the conclusive decision of summary judgment. Considering the case was won on summary judgment, Respondents received a beneficial result. *Concrete Hall Contracting corp.*, 647 S.E.2d 488, 374 S.C. 216 (S.C App. 2007). In that case, Hall appealed an attorney fees award won by Hardaway from a In motion for sanctions that Hardaway lost. The Court of Appeals agreed with Hall that beneficial results were not realized, and therefore, the attorney fees awarded were reduced by the amount of the fees related the lost motion for sanctions.

Customary Legal Services: Upon review of Respondents' Attorney Fees Affidavit, the Court finds the hourly rates charged by Respondents' attorneys to be comparable to those in the Greenville area for similar services provided. The costs reflected in the Attorney Fee Affidavit are also customary.

Based upon the above and considering each of the six relevant factors to determine a reasonable attorney fees award, Respondents' Motion for the Recovery of Costs and Attorneys Fees is granted, but limited, to the amounts of \$54,083.75 in Attorneys' fees and \$2,171.38 in costs. These amounts are fifty percent (50 0 0) of the amounts requested in the motion. Based upon the above and considering each of the six relevant factors to determine a reasonable attorney fees award, Respondents' Motion for the Recovery of

84a

Costs and Attorneys Fees is granted, but limited, to the amounts of \$54,083.75 in Attorneys' fees and \$2,171.38 in costs. These amounts are fifty percent (50 0 0) of the amounts requested in the motion.

IT IS SO ORDERED

Joshua L. Queen

Special Probate Judge

Greenville County, South Carolina

Dated this 10th day of March, 2023

Gaffney, South Carolina

85a

EXHIBIT F

Consent Order Relieving Counsel for Plaintiff

(November 19, 2025)

Consent Order Relieving Counsel for Plaintiff
(Probate Court – Estate of James Marshall
Shoemaker, Jr.)

(Case No. 2022-ES-11-00087 — Estate of James
Marshall Shoemaker, Jr.)

Letter from Counsel — November 12, 2025

(From page 1 of the uploaded PDF)

WILLIAM R. McKIBBON, III
Attorney at Law
601 E. McBee Ave., Suite 104
Greenville, SC 29601
864.235.0071(o) • 864.235.0072(f)
will@legalcarolina.com

November 12, 2025

The Honorable Joshua Queen
c/o Karen Barnhill
Cherokee County Probate Court
110 Railroad Avenue
Gaffney, SC 29340

Re: Shoemaker v. Shoemaker et al.
Case No. 2022-ES-11-00087

Dear Judge Queen:

Please find enclosed for your consideration and
execution a Consent Order relieving me as counsel in
the above-referenced case. To be clear, as you recall,
there are two cases involving the Shoemakers, and

87a

this case is related to my client's father's case, not his mother's case.

Thank you for your consideration.

Sincerely,
signature
William R. McKibbon III

cc: Jenna McLeod (via email), Attorney for
Defendants/Respondents

CONSENT ORDER RELIEVING COUNSEL FOR
PLAINTIFF

(From page 2 of the uploaded PDF)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
Transferred to COUNTY OF CHEROKEE

IN THE PROBATE COURT
Case No. 2022-ES-11-00087

James Marshall Shoemaker, III,
Plaintiff/Appellant,

v.

Mary Hunter Sloan Shoemaker, Edward Sloan
Shoemaker, Jonathan Evans Shoemaker, Lesley
Moore, John and Jane Doe,
Defendants/Respondents.

This matter came before me upon consent of
Plaintiff, James Marshall Shoemaker, III, and his
counsel, William R. McKibbon III. Petitioner and

counsel have mutually determined that representation in this matter has come to a conclusion, and that any further matters regarding this case, if any, shall be addressed pro se by Mr. Shoemaker or additional counsel, should any be retained for services.

IT IS THEREFORE ORDERED that William R. McKibbon, III, Attorney at Law, P.A., is relieved as counsel for James Marshall Shoemaker, III in the above-referenced case.

IT IS SO ORDERED.

Dated: November 19, 2025

signature
The Honorable Joshua Queen
Probate Judge

We Consent:

signature
James Marshall Shoemaker, III
Plaintiff

Date: 11/10/25

signature
William R. McKibbon III
Withdrawing Attorney for Plaintiff