

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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4 ROBERT SULLIVANT, SR. PLAINTIFF

5 VS. CAUSE NO. CV-2021-612

6 ROBERT SULLIVANT, JR. DEFENDANT

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9 TRANSCRIPT OF THE MOTION HAD AND DONE IN THE  
10 ABOVE-STYLED AND NUMBERED CAUSE, NOT FOR APPEAL  
11 PURPOSES, BEFORE THE HONORABLE ROBERT Q. WHITWELL,  
12 CHANCELLOR, ON THE 12TH DAY OF JANUARY, 2023, IN  
13 MARSHALL COUNTY, MISSISSIPPI, TAKEN BY CECILY BOONE  
14 FAULKNER, RPR, CSR, OFFICIAL COURT REPORTER FOR THE  
15 EIGHTEENTH CHANCERY COURT DISTRICT OF MISSISSIPPI.

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18 APPEARANCES:

19 Present and Representing the Plaintiff:

20

21 HONORABLE SWAYZE ALFORD  
22 Attorney at Law  
23 1300 Van Buren  
24 Oxford, Mississippi 38655

25

26 Present and Pro Se:

27

28 MR. ROBERT SULLIVANT, JR.  
29 1002 Crawford Circle  
Oxford, Mississippi 38655

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NO EXHIBITS

1 (WHEREUPON, THE CHANCERY COURT OF  
2 MARSHALL COUNTY WAS DULY AND LEGALLY  
3 CONVENED, AND THE FOLLOWING OCCURRED IN  
4 THIS MATTER.)

5 HONORABLE ROBERT Q. WHITWELL: You  
6 may be seated.

7 All right. We're getting started a  
8 little early this morning, but we only  
9 have one case. It appears to the Court  
10 that everybody is here that needs to be  
11 here.

12 Any objection to getting started  
13 early, Mr. Sullivant?

14 MR. ROBERT SULLIVANT, JR.: No, Your  
15 Honor.

16 HONORABLE ROBERT Q. WHITWELL: Mr.  
17 Swayze?

18 MR. SWAYZE ALFORD: No, sir, Your  
19 Honor.

20 HONORABLE ROBERT Q. WHITWELL: All  
21 right. Then the Court is going to call  
22 Chancery Court of Lafayette County,  
23 Mississippi, CV-2021-612, *Robert*  
24 *Sullivant, Sr. versus Robert Sullivant,*  
25 *Jr., Mr. Alford, Ms. Ware, and Mr.*  
26 *Sullivant, Jr., Pro Se.*

27 This is a plaintiff's motion by  
28 Robert Sullivant, Sr. through Mr. Alford  
29 to set aside the clerk's certificate of

1 default that was entered in December of  
2 2022.

3 Are both parties ready? Are you  
4 ready, Mr. Alford?

5 MR. SWAYZE ALFORD: Yes, Your Honor.

6 HONORABLE ROBERT Q. WHITWELL: Are  
7 you ready, Mr. Sullivant?

8 MR. ROBERT SULLIVANT, JR.: Yes, sir.

9 HONORABLE ROBERT Q. WHITWELL: All  
10 right. You're the movant.

11 MR. SWAYZE ALFORD: Your Honor, when  
12 I first received the motion by Mr.  
13 Sullivant, Jr. for default, my first  
14 reaction was -- in thinking about the  
15 conservatorship was that, well, you know,  
16 it's one of those matters that an answer  
17 is not required and is covered by Rule 81  
18 as such.

19 And in looking at Rule 81, you know,  
20 it talks about the actions triable not for  
21 seven days. And it says an estate matter  
22 and a ward's business, which notice is  
23 required, but time is not described by a  
24 statute.

25 I really thought the Rule 81 summons  
26 at one time actually talked about  
27 guardianship and conservatorship. It just  
28 refers to wards and the ward's business.

29 And then looking at the statute, Your

1 Honor, as Mr. Sullivant, Jr.'s response  
2 said yesterday that he had a conversation  
3 with Mr. Golman about the fact that an  
4 answer hadn't been filed. And Mr. Golman  
5 said, *Well, a judge is not going to make*  
6 *him file an answer. That's silly.*

7 And that's sort of the way I thought  
8 about it as well at the time, you know, we  
9 had -- I know Your Honor always reads what  
10 has been submitted, and I feel like you  
11 have read already my motion and what part  
12 of it -- I don't want to rehash all of  
13 that.

14 But we were moving pretty quickly  
15 towards a trial. We had set the matter  
16 for trial, you know, in November. We had  
17 set it for late January. They then filed  
18 their answer and countercomplaint.

19 That original order didn't mention  
20 the countercomplaint because it hadn't  
21 been filed at the time, so we filed a  
22 second order, you know, saying that, hey,  
23 not only is the complaint and the issues  
24 in the complaint set to be heard on  
25 January 31st, but the countercomplaint has  
26 been filed. And that the Court sets a  
27 hearing in to the merits of the  
28 countercomplaint and any other relief  
29 sought on January 31st.

1           So, I think, Mr. Golman and I, you  
2           know, we had both had filed our respective  
3           complaints setting them for a hearing as  
4           to all matters on January 31st with the  
5           idea that there would be a hearing.

6           And, Your Honor, that's what is  
7           required under the statute for  
8           conservatorships. I know Your Honor is  
9           familiar with them, but, you know, I have  
10          printed out statutes that I thought were  
11          applicable for conservatorships.

12          It seems to be the crux of Mr.  
13          Sullivant, Jr.'s response is that, well,  
14          the conservatorship -- basically, you  
15          ought to have a conservatorship by  
16          default.

17          But if you look, Your Honor -- and I  
18          will just go in order. So 93-24-01 talks  
19          about what must be done and what must be  
20          filed.

21          And in this -- under 401(3), *The*  
22          *Court shall grant a conservator only on*  
23          *those powers necessitated by demonstrated*  
24          *limitations and needs of the respondent*  
25          *and issue orders that will encourage the*  
26          *development of the respondent's maximum*  
27          *self-determination -- development of the*  
28          *respondent's maximum self-determination*  
29          *and independence. The Court may not*

1           *establish a full conservatorship if a*  
2           *limited conservatorship or other less*  
3           *restrictive alternative would meet the*  
4           *need of the respondent.*

5           So you've got to decide that, Your  
6           Honor, based on the evidence presented to  
7           you.

8           In 93-24-02, it speaks to the  
9           petition and what the petition must state  
10          in order to proceed on the appointment of  
11          a conservator.

12          *The petition must state the name and*  
13          *address of the attorney representing the*  
14          *petitioner, if any, and must set forth*  
15          *under the style of the case and before the*  
16          *body of the petition the following*  
17          *language in bold or highlighted title set*  
18          *forth in the statute.*

19          *The relief sought in this petition*  
20          *may affect your legal rights. You have a*  
21          *right to notice of any hearing on this*  
22          *petition, to attend any hearing, and to be*  
23          *represented by an attorney.*

24          Your Honor, again, I'm looking at  
25          these statutes, you know, in a new light  
26          when I'm getting ready for a hearing. I  
27          mean, that's not in the counterpetition,  
28          and the statute says it must be there.  
29          There is no provision if it's not there.

1           Now, I think that can be cured, but,  
2           nevertheless, the petition that they filed  
3           doesn't comply with the statute.

4           Under 93-24-03, under subsection 1,  
5           on receipt of a petition under 93-24-02  
6           for appointment of a conservator for a  
7           respondent, *The Court must set a date,*  
8           *time, and place for a hearing on the*  
9           *petition.*

10          Again, Your Honor, saying -- there is  
11          no other way to interpret that, other than  
12          the Court has a hearing on it and the  
13          Court must set the time, date -- which we  
14          did. We set a time, date, and a place for  
15          a hearing.

16          *Unless the Court finds that the*  
17          *respondent from whom the conservator can*  
18          *be appointed is competent can join in the*  
19          *petition, the petitioner must cause*  
20          *summons to be served not less than seven*  
21          *days before the hearing.*

22          Again, Your Honor, this is why I say  
23          that this is covered under Rule 81 because  
24          it contemplates potentially you could have  
25          a hearing within seven days. Well, seven  
26          days, you wouldn't have time to file an  
27          answer, if it was set that quickly.

28          So again -- and it requires that the  
29          respondent be personally served, which



1           again wasn't done in this case. It was  
2           served as a countercomplaint served upon  
3           me. Again, we set it for hearing, but in  
4           this case Mr. Sullivant, Sr. is not  
5           personally served.

6           Under 93-24-07 it talks about the  
7           professional evaluation. So we ended up  
8           agreeing on that, Your Honor. That was  
9           part of their countercomplaint was they  
10          wanted the Court to appoint a professional  
11          to perform an independent medical  
12          examination.

13          As we got up close to that  
14          January 31st hearing date, we were trying  
15          to resolve what we could resolve. And one  
16          of the things that Mr. Golman and I agreed  
17          upon was to do the IMEs.

18          So we entered an agreed order, which  
19          I know you have seen, where we appointed  
20          Dr. Hobbs and Mr. Thomas as the two  
21          doctors who would do the IME.

22          And I put it in that order, Your  
23          Honor, just at the time I wasn't thinking  
24          that I would be here today trying to  
25          defend it, but at the time I put in there  
26          that Mr. Sullivant, Sr. contests the  
27          allegations in the countercomplaint that  
28          he needed a conservator. So that's in  
29          that order, Your Honor.

1           So, certainly, in terms of whether we  
2           denied that, put a defense up to that,  
3           that is included in that order that we set  
4           or the order we entered on the independent  
5           medical examinations. And then we  
6           continued the matter so we could do that,  
7           Your Honor.

8           Of course, we did Dr. Hobbs. We did  
9           Mr. Thompson. Later on, some time that --  
10          they filed a motion to strike Dr. Hobbs's  
11          testimony. Not long after they filed the  
12          motion, Dr. Hobbs retired from the  
13          practice of medicine.

14          My understanding was that he was  
15          having some health issues, and my thought  
16          at the time was that it was probably not  
17          wise to make Dr. Hobbs come into court and  
18          testify about an examination due to his  
19          health reasons.

20          And I talked with Mr. Sullivant. I  
21          said, *Look, I said, this could be a*  
22          *problem with Dr. Hobbs. I said, I think*  
23          *we ought to agree to get somebody else.*  
24          And we did.

25          And we have that -- we entered an  
26          order earlier this week for Dr. Perkins to  
27          do the second IME. He's going to do that  
28          next week.

29          So we're following that court order

1 that we entered, Your Honor. It took  
2 longer than was ideal, but, nevertheless,  
3 we have entered an order for that.

4 And my other point about that, Your  
5 Honor, is the case still is not right to  
6 be set for a hearing because we don't have  
7 the second opinion and the second  
8 certificate from a doctor, which is  
9 required by the statute.

10 So the fact that, okay, an answer  
11 hasn't been filed, if required, has not  
12 delayed anything or prejudiced Mr.  
13 Sullivant, Jr., because we would be in the  
14 same situation we are today waiting on the  
15 second IME.

16 They'll issue the report, and then  
17 presumably we'll have a hearing. We can't  
18 -- we couldn't have had it before now  
19 anyway.

20 Under 93-24-07, it says, *That the*  
21 *chancery court must conduct a hearing to*  
22 *determine whether a conservator is needed*  
23 *for the respondent.* So, again, it's  
24 not -- it's just like these matters under  
25 Rule 81, they're not taken as confessed.  
26 In other words, you can't just file this  
27 asking for a conservator.

28 We have entered an order for the IME  
29 pursuant to the statute. You can't egress

1 and say, *Well, you haven't answered*, so a  
2 default is entered into and a conservator  
3 is appointed. This says you've got to  
4 have a hearing on it.

5 *The chancery judge shall be the judge*  
6 *of the number and the character of the*  
7 *witnesses and the proof to be presented,*  
8 *except that the proof must include*  
9 *certificates from the doctor, which we*  
10 have already talked about.

11 So again, the statute contemplates  
12 and says that the chancery judge must  
13 conduct a hearing as to the  
14 conservatorship.

15 And then in 93-24-08, Your Honor, it  
16 talks about the respondent's rights at a  
17 hearing. At a hearing under this article,  
18 *Respondent may present evidence and*  
19 *subpoena witnesses*, which we had done that  
20 in January. Both sides were subpoenaing  
21 witnesses to be there until we agreed to  
22 get the IMEs done first.

23 *Examine witnesses and otherwise*  
24 *participate in the hearing.* My client has  
25 a statutory right, Your Honor, to come to  
26 a hearing, call witnesses, put on  
27 evidence, participate however he deems  
28 necessary to be a part of it.

29 And again --

1 HONORABLE ROBERT Q. WHITWELL: Was  
2 that in '22 or '23, the subpoenas were  
3 issued?

4 MR. SWAYZE ALFORD: In '22. That was  
5 leading up to the hearing that was set  
6 January the 31st, I think, of '22.

7 HONORABLE ROBERT Q. WHITWELL: All  
8 right.

9 MR. SWAYZE ALFORD: Both parties  
10 subpoenaed witnesses to come testify.

11 And then finally, Your Honor,  
12 93-24-11, the order on appointment of a  
13 conservator, it sets forth what you must  
14 include in an order appointing a  
15 conservator for an adult.

16 *The Court must include a specific*  
17 *finding that clear and convincing evidence*  
18 *has established. Identified needs of the*  
19 *respondent cannot be met by a less*  
20 *restrictive alternative.*

21 So again, Your Honor, you've got to  
22 have a hearing. You've got to weigh the  
23 evidence, witnesses, whatever documents,  
24 and include a specific finding that clear  
25 and convincing evidence established that  
26 the respondent was given proper summons,  
27 notifying the respondent of the hearing.

28 It goes on to say, *If it's a full*  
29 *conservatorship, you've got to state the*

1           *basis for a full conservatorship. If it's*  
2           *a limited conservator, then you've got to*  
3           *state the specific property placed under*  
4           *the control of the conservator and the*  
5           *powers granted to the conservator.*

6           So again, Your Honor, all the  
7           statutes on establishing a conservatorship  
8           contemplate that a hearing must be had,  
9           evidence must be put on, witnesses must  
10          testify, and then you've got to make a  
11          decision based on all of those things.

12          HONORABLE ROBERT Q. WHITWELL: Let me  
13          ask you a question. I'm pretty sure from  
14          looking at the file that Mr. Sullivant, or  
15          whomever filed the crossclaim,  
16          counterclaim, served the crossclaim on  
17          you --

18          MR. SWAYZE ALFORD: Yes, sir.

19          HONORABLE ROBERT Q. WHITWELL: -- by  
20          mail?

21          MR. SWAYZE ALFORD: Yes, sir.

22          HONORABLE ROBERT Q. WHITWELL: And  
23          Mr. Sullivant, Sr. was not served by a  
24          Rule 81 summons as required by this  
25          statute?

26          MR. SWAYZE ALFORD: That's correct,  
27          Your Honor.

28          And that's one of my -- my points is,  
29          now, you know, looking in hindsight, you

1 know, at the time I wasn't thinking about  
2 that. Mr. Golman and I are trying to get  
3 things set. We're setting orders. But  
4 now looking at the statute, it wasn't even  
5 complied with.

6 HONORABLE ROBERT Q. WHITWELL: It's  
7 similar to citing somebody for contempt of  
8 court, even though you're in court and  
9 fighting over child support and all of  
10 these other things, when you file a  
11 contempt citation, the law requires that a  
12 summons be served upon the defendant,  
13 regardless of whether they have a lawyer  
14 or not.

15 MR. SWAYZE ALFORD: Yes, sir. The  
16 statute is clear on personal service for  
17 Mr. Sullivant, Sr., Your Honor.

18 So I feel like the conservatorship  
19 issue is well setout, Your Honor. It's  
20 not a situation where you can take a  
21 default. It requires proof to be put on.  
22 It requires a hearing for you to hear  
23 witnesses and take on proof.

24 And the conservatorship, Your Honor,  
25 runs throughout the countercomplaint. My  
26 argument would be that you can't separate  
27 the rest of his claims, you know, from the  
28 conservatorship, that the conservatorship  
29 runs throughout.

1           But as far as the rest of it goes,  
2           you know, he's asked -- he asked for an  
3           accounting. Basically, he says he wants  
4           Mr. Sullivant, Sr. to account for this  
5           personal property that is listed as to,  
6           you know, retrieving those items and where  
7           it is.

8           Again, there is no prejudice to that,  
9           not having been done at this point. Those  
10          things can be done. He mentions that  
11          certain -- Mr. Sullivant, Sr. has taken  
12          possession of certain funds, but -- in  
13          paragraph 34, but it doesn't ask for  
14          anything to be done about that.

15          So again, I say that there is nothing  
16          lost as far as the accounting of his  
17          personal property.

18          In paragraphs 35 and 36, Mr.  
19          Sullivant Jr. is asking for compensation  
20          for actions that he's done on behalf of  
21          his father. You know, as far as having a  
22          colorable defense, that is one of the  
23          issues.

24          But, again, I think the  
25          conservatorship has got to be addressed in  
26          order to address these things, number one;  
27          but, number two, he states no authority  
28          for which he would be able to collect  
29          retroactively money from Mr. Sullivant,



1 Sr. for things that he's done.

2 I don't know under what theory of law  
3 because it's not set forth. I don't know  
4 of any theory of law that would allow him  
5 to now come back and charge his father for  
6 services that he provided prior to the  
7 filing of the counterclaim. But,  
8 certainly, we have got --

9 HONORABLE ROBERT Q. WHITWELL: The  
10 law is just the opposite.

11 MR. SWAYZE ALFORD: Yes.

12 HONORABLE ROBERT Q. WHITWELL: The  
13 law is, is that family members ought to  
14 take care of their parents and not charge  
15 them for it, unless it's some contractual  
16 relationship entered into that agrees to  
17 that. I don't know that there's anything  
18 plead in the pleadings about that.

19 MR. SWAYZE ALFORD: No, sir.

20 And then the last thing he asked for,  
21 Your Honor, was by way of emergency  
22 relief, and at the time there was a  
23 contract pending for the sale of some  
24 property. It was supposed to close at the  
25 end of the year -- on or before the end of  
26 the year 2021.

27 Mr. Sullivant, Jr. we learned wasn't  
28 going to close. And he pled in his  
29 countercomplaint his concern was that,

1 well, he didn't want to close because he  
2 wanted there to be a 1031 exchange. And  
3 if Senior didn't comply, the consequences  
4 would be severe, so he didn't close on  
5 time.

6 So that carries over into January  
7 when the buyers hired a lawyer, Roy  
8 Liddell, to represent them to enforce the  
9 contract. And that was going to be an  
10 issue before that January 31st hearing as  
11 well, but we dealt with that.

12 Part of my motion to set aside had to  
13 do with, we settled a number of things,  
14 which we did. We agreed upon a number of  
15 things to try to get things resolved.  
16 It's not like I just ignored this  
17 countercomplaint that was filed.

18 We were trying to resolve issues that  
19 we could, litigate the issues that we  
20 needed to and get the IMEs done. But at  
21 any rate, we closed on that property.

22 So the emergency relief, you know,  
23 that's sought I would say is moot because  
24 we closed on the sale. The monies are  
25 being held, and the Court can decide what  
26 to do with that, again after the  
27 conservatorship is ruled upon at a  
28 hearing, Your Honor.

29 So for all of those reasons, Your

1 Honor, mostly because I say there is not  
2 an answer required under the statute or  
3 the rules. The Court has got to require a  
4 hearing, got to hear proof.

5 And as to the rest of it, Your Honor,  
6 you know, we did -- we did defend the  
7 complaint. We did take actions to protect  
8 Mr. Sullivant, Sr.'s interest in the  
9 matter. We agreed on certain things we  
10 could agree on and addressed those by  
11 order, and the things that we didn't are  
12 going to be before the Court.

13 But, again, we can't do that until  
14 Dr. Perkins finishes his evaluation next  
15 week, and then we can set a hearing.

16 And there is no prejudice, you know,  
17 on Mr. Sullivant, Jr. to having a hearing  
18 after that comes back, and that's what was  
19 contemplated when we entered the order.

20 HONORABLE ROBERT Q. WHITWELL: All  
21 right.

22 MR. SWAYZE ALFORD: Thank you.

23 HONORABLE ROBERT Q. WHITWELL: Mr.  
24 Sullivant. Keep in mind, I've read what  
25 you've filed. Make your argument as best  
26 you can --

27 MR. ROBERT SULLIVANT, JR.: Thank  
28 you. I'm not sure exactly where to start,  
29 but I would like to address some of the

1 things that Mr. Alford stated.

2 He stated in my -- that the language  
3 in my cross-complaint, pertaining to  
4 putting my father into a conservatorship,  
5 was not in compliance with the code, which  
6 I agree it is not.

7 And I did ask Mr. Golman about that  
8 explicitly and expressly the same time  
9 that I asked him about the answer -- why I  
10 haven't gotten an answer to my crossclaim.

11 And he said flatout that he didn't  
12 have to do that. I didn't quite  
13 understand that, but that is exactly what  
14 Mr. Golman has told me. And it has been  
15 on my mind ever since, and I assumed that  
16 that was not correct. And, additionally,  
17 I was going to have to correct that.

18 But in all candor, my application for  
19 default does not really pertain to the  
20 conservatorship because actually right  
21 after I filed my application for default,  
22 Mr. Alford filed a motion to put my father  
23 into a conservatorship.

24 And I thought that was out of order  
25 and too soon because we haven't done the  
26 things as he's pointed out in the code to  
27 do. So I thought we were beginning to  
28 rush into putting him into a  
29 conservatorship and making an appointment

1 of a conservator before some other issues  
2 had been cleared up. And --

3 HONORABLE ROBERT Q. WHITWELL: Like  
4 what? What other issues?

5 MR. ROBERT SULLIVANT, JR.: Well, as  
6 Mr. Alford referred to in my complaint,  
7 there's issues of personal equipment --  
8 personal property that I have not gotten  
9 back that my father has given away, which  
10 I have asked for it to be returned.

11 And quite frankly, I've brought that  
12 issue up many times. I've never heard  
13 anything about it from Mr. Alford about  
14 how we can get the farm equipment, for  
15 example, back. I need to have it.

16 I have missed -- I've missed being  
17 able to do jobs for other people because I  
18 did not have this farm equipment. And I  
19 have asked for it back many times, but my  
20 father has given it to my cousins.

21 And upon my former counsel, Mr.  
22 Driskell, calling my cousin asking for the  
23 return of it, my cousin said that he would  
24 call the sheriff's department if I came  
25 out there and tried to get it. So I kind  
26 of assumed at that point that my cousins  
27 had converted it to their own property.  
28 So -- that whole issue.

29 And meanwhile on the issue of

1 compensation that Mr. Alford brought up,  
2 and you said correctly there is no  
3 contract, but I did have a contract with  
4 my parents. It was verbal and it was  
5 expressed, and it was very clear -- and it  
6 was very clear.

7 Upon my parents purchasing the  
8 remaining shares of my grandparent's  
9 estate, they asked me if I wanted to do  
10 that. I said, *Yes*. And they said, *Well,*  
11 *you will have to take care of us when we*  
12 *get older*. And I said I would do that.

13 So my parents expended the funds to  
14 purchase the remaining shares from the  
15 other heirs of my grandparent's estate so  
16 I could have more land. And my mother  
17 said, *This land will be for you to make a*  
18 *start or to do what you want to with it*  
19 *after you take care of us*. And that was  
20 the expressly, verbal contract.

21 Being between parents, I didn't think  
22 we needed to really write that down. And  
23 I never thought anything would ever happen  
24 to -- would happen to where my parents  
25 would breach their side of the contract.  
26 But without a doubt, I have fulfilled my  
27 side of the contract.

28 When my father called me in  
29 approximately --

1 HONORABLE ROBERT Q. WHITWELL: We're  
2 getting a little far afield of what we're  
3 here today about.

4 MR. ROBERT SULLIVANT, JR.: Okay.

5 HONORABLE ROBERT Q. WHITWELL: If you  
6 would prevail on me denying the --

7 MR. ROBERT SULLIVANT, JR.: Motion?

8 HONORABLE ROBERT Q. WHITWELL: --  
9 motion, then under Rule 55 you would be  
10 allowed to proceed to notice --

11 MR. ROBERT SULLIVANT, JR.: Okay.

12 HONORABLE ROBERT Q. WHITWELL: --  
13 three-day's notice to present damages,  
14 whatever you might claim.

15 MR. ROBERT SULLIVANT, JR.: Okay.

16 HONORABLE ROBERT Q. WHITWELL: But  
17 until you get to that point, that's really  
18 irrelevant.

19 The issue is, and it seems to me,  
20 that we're dealing with -- regardless of  
21 whether -- there are other issues, I  
22 assume, that y'all are going to have to  
23 ferret out if we go to trial on this?

24 MR. ROBERT SULLIVANT, JR.: Yes.

25 HONORABLE ROBERT Q. WHITWELL: But  
26 there is still the issue that you were  
27 asking for a conservatorship, and he's  
28 asked for a conservatorship; and,  
29 therefore, we've got to comply with the

1 rules.

2 And the rules came into effect  
3 January 1st, 2020. Not last year. They  
4 were effective January 1st, 2020. And  
5 anything involving a conservatorship goes  
6 back to that date, and it applies to these  
7 rules that he's presented.

8 And if there is a conflict in the  
9 rules and the statutes that he's cited,  
10 the rules prevail. And the rule provides,  
11 Rule 81, that he can have minor business  
12 and so forth with seven days' notice, and  
13 you don't have to file an answer in those  
14 type of things.

15 So to do part of it, I mean, there  
16 is -- there are some issues here that are  
17 going to have to be resolved beyond that.  
18 But even in the statute of the GAP Act, it  
19 requires that we serve notice on Mr.  
20 Sullivant.

21 So in order to get to all of those  
22 things, you're asking -- what you're  
23 asking for is to accept the  
24 conservatorship over him, but then turn  
25 over assets to you that you think belong  
26 to you that somehow might be through some  
27 inheritance or something. This man is  
28 still alive. It didn't come to that  
29 point.



1           But at any rate, I'm hearing what you  
2           have to say, but if you're going to  
3           testify about all of these things, I think  
4           you need to be put under oath because you  
5           are not a lawyer. You are operating for  
6           yourself.

7           Do you want to continue with what  
8           you're doing on that?

9           MR. ROBERT SULLIVANT, JR.: No. The  
10          only thing I was doing was responding to  
11          Mr. Alford's -- what he said up here, and  
12          I didn't quite agree with what he said.

13          HONORABLE ROBERT Q. WHITWELL: All  
14          right. I guess what I'm saying is if what  
15          you're doing is testimony, then I have got  
16          to swear you in. So --

17          MR. ROBERT SULLIVANT, JR.: I will be  
18          more than happy to be sworn in.

19          HONORABLE ROBERT Q. WHITWELL: All  
20          right. Well, let's swear you in just for  
21          the record. Raise your right hand to be  
22          sworn.

23          (WHEREUPON, MR. SULLIVANT FACED THE  
24          CLERK AND RAISED HIS RIGHT HAND TO TAKE  
25          THE OATH.)

26          HONORABLE ROBERT Q. WHITWELL: And do  
27          you also swear or affirm -- raise your  
28          hand -- that the testimony you have given  
29          on the record to this point is the truth

1 and the whole truth and nothing but the  
2 truth?

3 MR. ROBERT SULLIVANT, JR.: I do.

4 HONORABLE ROBERT Q. WHITWELL: All  
5 right. Well, that covers all of that.

6 MR. ROBERT SULLIVANT, JR.: Okay.

7 HONORABLE ROBERT Q. WHITWELL: I  
8 apologize. But when we're dealing with a  
9 pro se, I have to follow the rules.  
10 You're not a lawyer --

11 MR. ROBERT SULLIVANT, JR.: I'm not  
12 surprised that I had to do that.

13 HONORABLE ROBERT Q. WHITWELL: All  
14 right. Go ahead. I'm listening to you.

15 MR. ROBERT SULLIVANT, JR.: All  
16 right. Well, so let me just jump into  
17 what I was going to respond to the actual  
18 motion to set aside the -- my application  
19 for entry of default.

20 First, I would like to say how we  
21 basically -- how we kind of got here, and  
22 this will, I guess, be me testifying. But  
23 what had happened was and how we got here  
24 in this position that I'm very shocked  
25 that we got into is back in April of 2021,  
26 we sold -- my father and I sold the  
27 farmhouse that we had both inherited from  
28 my mother.

29 And in the process, I also had hired

1 a sitter for my father, Evelyn Stevens,  
2 which I believe she's in the courtroom  
3 today, to take care of him or to sit with  
4 him and take care of him the days that I  
5 wasn't able to be there.

6 Well, that -- everything with her  
7 went very fine until the point where I had  
8 decided to finally move forward with  
9 putting my father into a conservatorship.  
10 I had been discussing this with my former  
11 counsel, Tom Suszek, since 2017, and I  
12 didn't feel like I could do it.

13 But then my father was writing checks  
14 for over \$1,000.00 a month to various scam  
15 -- what I would call scam organizations,  
16 and I believed it to be an obsession that  
17 he couldn't control.

18 So I had told Ms. Stevens that, you  
19 know, I just could not manage that  
20 anymore, and I was going to have to move  
21 forward with putting my father into a  
22 conservatorship. At that time or soon  
23 thereafter, she tells my father that I'm  
24 putting him into a conservatorship,  
25 basically, so I could steal his money.  
26 And that --

27 MR. SWAYZE ALFORD: Your Honor, I was  
28 intending on just not saying anything and  
29 let him go --

1 MR. ROBERT SULLIVANT, JR.: Okay.

2 MR. SWAYZE ALFORD: -- you know, but  
3 now we're getting into hearsay. And we've  
4 gone way beyond why we're here, but,  
5 again, I was going to let him go. But I  
6 can't just sit here and let him give  
7 comments and statements from somebody else  
8 to his dad where he wasn't there.

9 HONORABLE ROBERT Q. WHITWELL: You  
10 can't do hearsay, Mr. Sullivant.

11 MR. ROBERT SULLIVANT, JR.: I know.  
12 I understand.

13 So at that time, I told my father we  
14 would find a new house for him to live in,  
15 which he for some reason didn't like his  
16 current house. So I said, *As soon as we*  
17 *put this house on the market, we will buy*  
18 *a new house with the proceeds from the*  
19 *farm sale.*

20 Well, Ms. Stevens and him started to  
21 look for houses on Zillow. I know this  
22 for a fact because I went and tracked his  
23 browser activity. And a real estate agent  
24 did call the house the day they went to go  
25 see a house to see if they made it over  
26 there.

27 So at that time, I became very  
28 nervous that my father was going to take  
29 the money from the joint account and go

1 buy a house.

2 So once he moved the money, our joint  
3 funds, to his own account, I promptly, on  
4 advisement from my counsel at the time,  
5 moved the funds back through my power of  
6 attorney, which was still in effect,  
7 because I had not been told that my father  
8 had canceled it the day after he  
9 transferred the funds.

10 But things that Ms. Stevens did say  
11 in her deposition is that she did find the  
12 POA, and that she did take my father to  
13 Jay Westfaul's office to have --

14 MR. SWAYZE ALFORD: Your Honor, we're  
15 going into hearsay testimony. If he wants  
16 to talk about all this history, I --

17 MR. ROBERT SULLIVANT, JR.: Well,  
18 this is what she said in a sworn  
19 deposition.

20 MR. SWAYZE ALFORD: I don't think it  
21 is relevant to why we're here, Your Honor.  
22 It is still hearsay testimony, an out of  
23 court statement coming in for the truth of  
24 the matter, so I object to that.

25 HONORABLE ROBERT Q. WHITWELL: Well,  
26 I'm going to hear him out. I mean, she  
27 gave a deposition. It would sound --

28 MR. ROBERT SULLIVANT, JR.: Yeah.  
29 She stated clearly in the deposition that

1 she had found the power of attorney, and  
2 she stated that she took my father to Jay  
3 Westfaul's office in Batesville,  
4 Mississippi, to have it revoked. And that  
5 was the day after my father had  
6 transferred our money to his own personal  
7 account.

8 HONORABLE ROBERT Q. WHITWELL: All  
9 right. Let me ask you about that, Mr.  
10 Sullivant.

11 If I understand what you're telling  
12 me, you and your father put money that  
13 came out of the sale of the property into  
14 a joint account. Do you understand what a  
15 joint account is?

16 MR. ROBERT SULLIVANT, JR.: Yes, sir.

17 HONORABLE ROBERT Q. WHITWELL: Well,  
18 Mr. Sullivant had just as much right to  
19 write it all out as you did. Power of  
20 attorney or no power of attorney, he wrote  
21 it out.

22 Now, you went back and got it by use  
23 of a power of attorney that he had  
24 revoked.

25 MR. ROBERT SULLIVANT, JR.: Right.

26 HONORABLE ROBERT Q. WHITWELL: You  
27 claim you didn't have notice of that, I  
28 assume, is what your position is. But he  
29 still had -- I don't know if he gave it to

1 the bank or not, but the money should have  
2 stayed where it was. He had authority to  
3 draw it out in a joint account.

4 So go to the bank and you put it back  
5 where?

6 MR. ROBERT SULLIVANT, JR.:  
7 Originally, I had the bank move it back to  
8 the joint account.

9 HONORABLE ROBERT Q. WHITWELL: Okay.

10 MR. ROBERT SULLIVANT, JR.: And then  
11 from there, I moved it to my personal  
12 account. I moved some of the funds to my  
13 father's investment account, and then I  
14 moved some to my investment account  
15 because I was still planning on using that  
16 money to purchase a house.

17 And the part that I put in my  
18 investment account, which, you know, is  
19 part mine too, is what I was going to  
20 expend on -- put down on a new house for  
21 us.

22 HONORABLE ROBERT Q. WHITWELL: How  
23 much was that?

24 MR. ROBERT SULLIVANT, JR.: About  
25 180,000, I think. Yeah, something close  
26 to that.

27 HONORABLE ROBERT Q. WHITWELL: All  
28 right. Well, I guess Mr. Alford is right.  
29 We're getting off into matters that would

1 be presented to me at trial as to what  
2 these facts are.

3 I guess what I'm interested in from  
4 you is, is that you pretty well set out  
5 your position as to why this shouldn't be  
6 set aside, but we're dealing with an entry  
7 of default.

8 A lot of your cases and things that  
9 you cited in there are dealing with  
10 default judgments, and there is a  
11 difference in an entry of default and a  
12 default judgment. And no default judgment  
13 has been entered in this case, and one is  
14 not going to be entered without proof and  
15 evidence to even prove any damages or to  
16 prove the conservatorship or prove  
17 anything else. It would have to be a full  
18 blown hearing on that.

19 So the real issue is, is what is the  
20 prejudice of setting aside the entry of  
21 default? And in addition to that, Rule  
22 60(b) provides that -- the Court can look  
23 at 60, Rule 60, in these type of matters,  
24 and there are certain things -- there's  
25 inadvertence, mistake, other things.

26 Mr. Alford used the word *overlooked*.  
27 I don't know if that's the correct word,  
28 but a mistake. Others are mentioned in  
29 the rule.



1 MR. ROBERT SULLIVANT, JR.: Right.

2 HONORABLE ROBERT Q. WHITWELL: So for  
3 whatever reason, he didn't file an answer.  
4 And at this point, the Court can allow him  
5 to file an answer and can't allow this  
6 matter to go forward because it's going to  
7 go forward with or without an answer to  
8 the proof that you're getting into right  
9 now. We're going to have to resolve those  
10 issues.

11 And we're going to have to resolve  
12 the issue of the conservatorship, and that  
13 is an integral part of this proceeding,  
14 the conservatorship. And y'all both have  
15 agreed that your father needs to be  
16 reevaluated.

17 Dr. Hobbs, he's been my document for  
18 40 years. He's kind of gone off the map,  
19 and he's having to retire. And so he's  
20 not really -- shouldn't be giving an  
21 opinion, in my opinion, in this case.  
22 That's why y'all agreed for some other --  
23 Dr. Perkins or somebody else.

24 He's a great doctor, been a great  
25 doctor for all this time here in Oxford.  
26 He's had some issues. I don't think he  
27 would -- I would accept him as a qualified  
28 expert right now to testify about your  
29 father's condition. All he can do is read

1 from his notes pretty much.

2 But, anyway, I'm interested in what  
3 you have to say about that. I have read  
4 your memorandum. You have done an  
5 excellent job of writing down what you put  
6 here in your response.

7 You have given a long affidavit,  
8 which as I said is really not applicable  
9 to this part of the procedure.

10 MR. ROBERT SULLIVANT, JR.: I was  
11 afraid it wouldn't hurt to get the facts  
12 out there.

13 HONORABLE ROBERT Q. WHITWELL: Well,  
14 you are bringing me up to speed as to what  
15 your position is, but it is -- it's really  
16 more --

17 MR. ROBERT SULLIVANT, JR.: And I  
18 apologize for that, but, you know, I just  
19 felt like I needed to bring us up to speed  
20 since this is our first time in court, and  
21 I did get a little long winded on why we  
22 were actually here today.

23 HONORABLE ROBERT Q. WHITWELL: Well,  
24 that's okay. Hey, you're not a lawyer,  
25 but you're entitled to represent yourself  
26 to the best of your ability.

27 MR. ROBERT SULLIVANT, JR.: I'm  
28 trying to.

29 HONORABLE ROBERT Q. WHITWELL: And

1           when you come into court as a pro se  
2           lawyer, you're required to know the rules  
3           and abide by the rules, and you've done a  
4           pretty doggone good job of filing what  
5           you've filed.

6           MR. ROBERT SULLIVANT, JR.: Well,  
7           thank you.

8           HONORABLE ROBERT Q. WHITWELL: But I  
9           still think the issue is whether or not  
10          there is reason for me to set aside an  
11          entry of default that has not been  
12          adjudicated as to all of these issues that  
13          you are claiming now and going to have to  
14          prove at some point that is not going to  
15          be prejudicial --

16          MR. ROBERT SULLIVANT, JR.: Yes, sir.

17          HONORABLE ROBERT Q. WHITWELL: -- to  
18          remove the default. And I'm inclined to  
19          do that, unless you convince me otherwise.

20          MR. ROBERT SULLIVANT, JR.: Okay. As  
21          I stated when I got up here, I kind of  
22          didn't know where to start. I thought I  
23          should reply to some things Mr. Alford  
24          said, but I can hop into what I had  
25          prepared today to --

26          HONORABLE ROBERT Q. WHITWELL: Tell  
27          me whatever you want to tell me.

28          MR. ROBERT SULLIVANT, JR.: Okay.

29          HONORABLE ROBERT Q. WHITWELL: I'm

1 not cutting you off.

2 MR. ROBERT SULLIVANT, JR.: In Mr.  
3 Alford's motion, he states that there is a  
4 three-prong test. I think it is via -- or  
5 from the *Allstate* case, that good cause  
6 has to be shown, a colorable defense, and  
7 that prejudice has not occurred to the  
8 non-movant if this is -- if his motion  
9 prevails.

10 And I would like to go into those  
11 very quickly --

12 HONORABLE ROBERT Q. WHITWELL: But he  
13 actually cites that in *Tatum versus*  
14 *Barrentine*. But, go ahead.

15 MR. ROBERT SULLIVANT, JR.: Oh, okay.  
16 It's probably also referred to as --

17 HONORABLE ROBERT Q. WHITWELL: It's  
18 also referred to in *Allstate Insurance*  
19 *versus Green*.

20 MR. ROBERT SULLIVANT, JR.: Exactly.  
21 But to show a matter of good cause, if I  
22 can quote from *Tucker versus Williams*,  
23 which Mr. Alford cites in his motion, *Good*  
24 *cause shown requires the moving party to*  
25 *provide an explanation for the default or*  
26 *give reasons why vacation of the default*  
27 *entry would serve in the best interest of*  
28 *justice*.

29 And I just don't believe Mr. Alford

1 has done that by stating that -- I just  
2 don't think an oversight is a good cause  
3 to have a -- have the default entry set  
4 aside.

5 And I would like to go further into,  
6 Mr. Alford -- I don't think that his  
7 refusing or over sighting the filing of  
8 the answer is really a nominally or just  
9 an oversight because, I think, almost  
10 everything on the case on my claims he's  
11 pretty much ignored or tried to delay as  
12 much as possible.

13 I would like to state a few examples  
14 of that. I think it goes toward his bad  
15 faith toward trying to defend against my  
16 crossclaims, and that the -- his oversight  
17 of filing an answer is just not an  
18 oversight. It's just that he was trying  
19 to delay this case as much as possible.

20 HONORABLE ROBERT Q. WHITWELL: We  
21 have been through Tom Suszek to start with  
22 in 2017 --

23 MR. ROBERT SULLIVANT, JR.: Right.

24 HONORABLE ROBERT Q. WHITWELL: -- and  
25 then you've been with Mr. Golman when you  
26 filed this complaint --

27 MR. ROBERT SULLIVANT, JR.: Well, Tom  
28 was never on this case.

29 HONORABLE ROBERT Q. WHITWELL: Well,

1 he was advising you. You talked to him  
2 about matters and the estate and so forth  
3 and what to do with your estate, your  
4 mom's estate and your dad's estate and all  
5 of that.

6 Then you got Brad, and then they were  
7 negotiating. You admitted here that Brad  
8 told you that you weren't required to file  
9 an answer --

10 MR. ROBERT SULLIVANT, JR.: Right.

11 HONORABLE ROBERT Q. WHITWELL: --  
12 under the GAP Act when you have a  
13 seven-day notice on an 81 deed of business  
14 matters of the ward.

15 Then you -- I don't know how long  
16 Brad was in it, but it was a good while  
17 because I read most of the pleadings. And  
18 then Mitchell got in, Mitchell Driskell,  
19 and you terminated both of them.

20 There had been negotiations back and  
21 forth with Mr. Alford and them, and I  
22 don't know what was said between those two  
23 as to what they were trying to do.

24 I don't know, but it seems to me from  
25 reading some of this that there was some  
26 misunderstanding about when he was  
27 supposed to hold the trust funds in his  
28 account, but yet they got transferred to a  
29 bank account. Something happened there

1           that somebody had to agree to that to move  
2           those funds. I wouldn't think that Mr.  
3           Alford just moved those funds on a whim to  
4           some bank account.

5           So there were a lot of things that  
6           were going on, negotiations, and  
7           negotiations about doctors and depositions  
8           and taking Ms. Stevens's deposition.

9           There were plenty of things going on,  
10          and discovery had been filed. This case  
11          wasn't ready for trial.

12          MR. ROBERT SULLIVANT, JR.: I agree.  
13          It hasn't been, but it's been on the books  
14          for over a year. And I believe --

15          HONORABLE ROBERT Q. WHITWELL: Well,  
16          now you've gotten in it, and you're  
17          pushing it, Mr. Sullivant. And what we're  
18          trying to do here today is, we're going to  
19          get it on the books.

20          This is the first time I have seen  
21          you.

22          MR. ROBERT SULLIVANT, JR.: Right.

23          HONORABLE ROBERT Q. WHITWELL: You  
24          could have filed some things. You have  
25          been filing stuff and going down to the  
26          clerk's office.

27          By the way, I checked the records  
28          yesterday, and you had my clerks file  
29          something that is totally improper for you

1 to file. You had them file an order that  
2 you were trying to submit that had never  
3 been signed by me.

4 Why did you do that?

5 MR. ROBERT SULLIVANT, JR.: I'm not  
6 sure what you're speaking of.

7 HONORABLE ROBERT Q. WHITWELL: When  
8 you filed whatever you filed yesterday or  
9 day before, you filed an order that you  
10 had -- I guess you were requesting me to  
11 sign an order granting your motion, or  
12 whatever, today.

13 You filed that motion, and the clerk  
14 made a notation in the record --

15 MR. ROBERT SULLIVANT, JR.: Right.

16 HONORABLE ROBERT Q. WHITWELL: --  
17 that she filed it because you said you  
18 wanted it filed, and it wasn't signed by a  
19 judge.

20 MR. ROBERT SULLIVANT, JR.: Okay.  
21 Now I do remember that. That's the  
22 proposed order, and I was going towards  
23 the rules of procedure that said that I  
24 had to file a proposed order.

25 And it states that it's styled,  
26 *Proposed Order*, and it's not signed by  
27 anybody. And I was just following --

28 HONORABLE ROBERT Q. WHITWELL: I  
29 don't know where you got that out of a



1 rule --

2 MR. ROBERT SULLIVANT, JR.: Okay.

3 HONORABLE ROBERT Q. WHITWELL: -- but  
4 the proper process would have been for you  
5 to bring it to court today. And if I  
6 denied it, then you could ask the court  
7 reporter to make it a part of the record.

8 And if you take an appeal at some  
9 point -- this is not a final judgment in  
10 this case. Until a final judgment is  
11 rendered, you can't file an appeal anyway,  
12 but you can make a record by putting it in  
13 the official record.

14 Because the only official record of  
15 this proceeding is what this court  
16 reporter takes down. It's not what some  
17 clerk does in Oxford, Mississippi.

18 So it was an improper order, and I  
19 didn't appreciate it because you're not  
20 supposed to do things that a lawyer is not  
21 supposed to do.

22 MR. ROBERT SULLIVANT, JR.: My intent  
23 was not to file an order as it has been  
24 complete, but was to file a proposed  
25 order.

26 HONORABLE ROBERT Q. WHITWELL: No,  
27 you told her you were trying to make a  
28 record of it.

29 MR. ROBERT SULLIVANT, JR.: Well --

1 HONORABLE ROBERT Q. WHITWELL: That  
2 you wanted to file it -- I think that's  
3 what she wrote on the --

4 MR. ROBERT SULLIVANT, JR.: Okay.  
5 I'm confused.

6 HONORABLE ROBERT Q. WHITWELL: I  
7 wrote it down somewhere.

8 MR. ROBERT SULLIVANT, JR.: That was  
9 not my intention at all.

10 HONORABLE ROBERT Q. WHITWELL: Well,  
11 anyway. On 1/15/23 Robert Sullivant, Jr.  
12 had the clerk file a proposed order that  
13 was not signed by the judge. Not signed  
14 by me. That is what was done.

15 Anyway, so that's the date it was  
16 signed. But, anyway, you don't file  
17 orders that aren't signed by me. I mean,  
18 until I --

19 MR. ROBERT SULLIVANT, JR.: Well, I  
20 misunderstood the rules. I was merely  
21 trying to comply with the Mississippi  
22 Rules of Civil Procedure when it had to do  
23 with objecting to the motion to set  
24 aside --

25 HONORABLE ROBERT Q. WHITWELL: You  
26 see, you were telling a clerk what you --  
27 your interpretation of the rule was trying  
28 to tell a clerk what to file. And you  
29 should have been coming to me and asking

1 me if this is the proper way to do it.  
2 *I'm presenting an order for you, Judge,*  
3 *and would you sign it?*

4 And if I look at it and say, *I'm not*  
5 *signing this*, you would have presented it  
6 today, is what you should have done.

7 MR. ROBERT SULLIVANT, JR.: Okay.

8 HONORABLE ROBERT Q. WHITWELL: And at  
9 the end of this hearing, you would present  
10 your order.

11 But be that as it may, let's move on.

12 MR. ROBERT SULLIVANT, JR.: Okay.

13 HONORABLE ROBERT Q. WHITWELL: I'm  
14 trying -- go ahead with your argument.

15 MR. ROBERT SULLIVANT, JR.: As I was  
16 stating --

17 HONORABLE ROBERT Q. WHITWELL: --  
18 talking about good cause and *Allstate* and  
19 the *Simmons* case and so forth.

20 MR. ROBERT SULLIVANT, JR.: Yes, sir.  
21 Yes, Your Honor.

22 I believe Mr. Alford has shown bad  
23 faith in how he has conducted his defense  
24 of the complaint that I have filed. He  
25 has never addressed or conferenced with me  
26 on any of the other items or my other  
27 demands that I've made in my  
28 cross-complaint.

29 HONORABLE ROBERT Q. WHITWELL: When

1 did you take over as your own counsel?

2 When did you do that?

3 MR. ROBERT SULLIVANT, JR.: August,  
4 September.

5 HONORABLE ROBERT Q. WHITWELL: That's  
6 when you -- did you terminate Mr.  
7 Driskell --

8 MR. ROBERT SULLIVANT, JR.: Yes, sir.  
9 Yes, Your Honor.

10 HONORABLE ROBERT Q. WHITWELL: -- in  
11 August or September?

12 MR. ROBERT SULLIVANT, JR.: I would  
13 have to -- it seems like it was at the  
14 very end of the summer, beginning of the  
15 fall.

16 HONORABLE ROBERT Q. WHITWELL: All  
17 right. Just trying to find out when you  
18 got in it and when Mr. Alford would have  
19 started negotiating with you.

20 MR. ROBERT SULLIVANT, JR.: And so  
21 back to that order that Mr. Alford  
22 referred to, that order for the IMEs,  
23 basically, that order had two things it  
24 asked for. It asked for two independent  
25 medical examinations, and it asked for --  
26 to have the funds from the land proceeds  
27 put into Mr. Alford's trust account and  
28 that was per me requesting that.

29 And I had discussions with Mr. Golman

1 about it, and he assured me that that  
2 money would be put into Mr. Alford's trust  
3 account, and that was in the court order.  
4 Then I said, *Well, that will be fine.*  
5 *We'll go ahead and sign that order.*

6 But at the same time, it also asked  
7 for two IMEs, and there was a delay by Mr.  
8 Alford in getting that order signed. I  
9 recall asking Mr. Golman, *why is this --*  
10 *what's the delay?* He goes, *I don't know.*

11 But it turns out that in my -- what  
12 my understanding and belief is, is that  
13 Mr. Alford was waiting to get back the  
14 Hobbs opinion before he signed the -- that  
15 order because the Hobbs opinion is dated  
16 on the 7th, and he signed the order on the  
17 8th, which was, you know, many days after  
18 he had received the order and had agreed  
19 to it with Mr. Golman. So I believe there  
20 was some gamesmanship being played there  
21 to my detriment.

22 And then I think also trying to  
23 select Hobbs to do the IME, as you pointed  
24 out, he really wasn't qualified for this  
25 type of an exam, and that's basically why  
26 his opinion was struck from the record.

27 HONORABLE ROBERT Q. WHITWELL: I  
28 don't know about that, but --

29 MR. ROBERT SULLIVANT, JR.: And then

1           when I finally got Mr. Driskell to get a  
2           motion to strike Hobbs, Mr. Alford took as  
3           long as possible as he could to set that  
4           motion. And we never heard that motion,  
5           until August the 30th is when it was set,  
6           and we originally set out trying to strike  
7           Hobbs, you know, back in April. And it  
8           just seems like it was taking a long time  
9           because we weren't getting the proper  
10          cooperation in doing so.

11                   And then the day before we were  
12          supposed to have the hearing to strike  
13          Hobbs, Mr. Alford agrees with Mr. Driskell  
14          to strike Hobbs. But again, he won't sign  
15          the order that actually makes that happen.  
16          And so he delayed -- according to Mr.  
17          Driskell, he couldn't get through to him.  
18          He didn't respond. He didn't know why Mr.  
19          Alford was delaying.

20                   So, again, I think that is just bad  
21          faith in pretty much all of his actions  
22          toward my crossclaims complaint was, you  
23          know, trying to thwart or not defend or  
24          not respond to them.

25                   I'm getting a little dry throat here.  
26          And then, furthermore, in that order --  
27          no, later in March, I had asked Mr.  
28          Golman -- because I had learned that my  
29          father purchased a pickup truck. I go, *I*

1           *need to see that sales information for*  
2           *that pickup truck to see where he got the*  
3           *money and did he get a good deal on that*  
4           *truck.*

5           So Mr. Golman -- per Mr. Golman that  
6           told me is that he had asked Mr. Alford  
7           for that. He would not give it to him by  
8           verbal request, so Mr. Golman filed a  
9           request for discovery, I think, on  
10          April 22nd. That request was ignored by  
11          Mr. Alford.

12          Then Mr. Driskell sends Mr. Alford a  
13          letter on July the 6th, asking for that  
14          discovery to be produced in ten days.  
15          That did not happen. Then on that motion  
16          on August 30th, the truck sales  
17          information was agreed to be produced.

18          And, again, Mr. Alford did not agree  
19          with his verbal agreement to provide that,  
20          and I actually had to have a conference  
21          with Mr. Alford to get that information,  
22          at which time he tells me that  
23          Ms. Stevens's name is on the truck.

24          So I think that's why he was delaying  
25          in getting me that information is because  
26          he did not want me to know that  
27          Ms. Stevens's name was on the truck, which  
28          I think is very improper in my opinion.

29          Then I find out from reading through

1 the sales information that -- sorry, I'm  
2 getting a very dry throat.

3 HONORABLE ROBERT Q. WHITWELL: Get  
4 him a glass of water.

5 THE BAILIFF: (Complies.)

6 MR. ROBERT SULLIVANT, JR.: I saw a  
7 sign out there that said, *No Drinks*  
8 *Allowed*, so I didn't bring anything in.

9 So at that point, I saw that he had  
10 paid cash for the truck. And I was, like,  
11 how did he get that much money?

12 So during the deposition, Ms. Stevens  
13 said her name and my father's name was on  
14 two accounts at FNB Bank at Oxford, so I  
15 subpoenaed the bank statements.

16 And then that's when I learned that  
17 the farm proceeds actually went into the  
18 FNB account and not Mr. Alford's trust  
19 account, which is a direct overt violation  
20 of the court order.

21 I don't know what kind of deal  
22 Mr. Golman and Mr. Alford had, but I think  
23 the court order rises above whatever kind  
24 of agreement they had because that was put  
25 in there by me to make me happy that the  
26 money would be safe, and it wasn't. My  
27 father did spend the money.

28 So we found out that Mr. Alford  
29 violated that court order, and what I was



1           afraid was going to happen did happen.

2           So I guess my point is, all the  
3           actions that I have seen Mr. Alford do,  
4           responding to my complaint, is in bad  
5           faith. And so I don't think he has good  
6           cause. I think the -- his not filing an  
7           answer is not an isolated event -- I  
8           appreciate that. Thanks.

9           But just his behavior --

10          HONORABLE ROBERT Q. WHITWELL: Take  
11          your time. Get you a little water there.

12          MR. ROBERT SULLIVANT, JR.: His  
13          behavior toward my cross-complaint. So on  
14          that basis, I don't think Mr. Alford has  
15          good cause.

16          And then in the rules it says that  
17          you must show good cause, and I don't  
18          think he has shown good cause as to why he  
19          did not file an answer. It's just that  
20          simple.

21          And that, you know, you have to file  
22          an answer, and he didn't; and, so,  
23          therefore, I think that the default must  
24          be not set aside or his motion be denied.

25          That's all I have.

26          HONORABLE ROBERT Q. WHITWELL: Okay.  
27          Mr. Alford.

28          MR. SWAYZE ALFORD: I mean, I don't  
29          have anything further -- well, the last

1 thing he said was an answer is required.

2 HONORABLE ROBERT Q. WHITWELL: He  
3 made a statement that he didn't know what  
4 kind of agreement you and Mr. Golman had.  
5 I think you need to address it.

6 The money was not held in -- he  
7 hasn't cited you for contempt, but if  
8 there is some explanation for that and  
9 it's not some hooligan sandbag here --

10 MR. SWAYZE ALFORD: Yes, Your Honor.

11 HONORABLE ROBERT Q. WHITWELL: --  
12 there was --

13 MR. SWAYZE ALFORD: -- the money --  
14 it was, I'm going to say, \$400,000.00 -- I  
15 don't have the number in front of me --  
16 that Mr. Sullivant, Sr. was going to get  
17 from the proceeds of the property that we  
18 agreed to hold.

19 As I thought about that, I thought if  
20 I'm trying to do what is in his best  
21 interest, it doesn't make sense for that  
22 much money to be sitting in my trust  
23 account earning no interest. My thought  
24 was that I, at least, need to put it in a  
25 bank account earning a little bit of  
26 interest over time. It might not come up  
27 much, but it would be something. I felt  
28 an obligation to have him earn something.

29 So I talked about that with

1 Mr. Golman. Mr. Golman's attitude was  
2 like mine, the money shouldn't just be  
3 sitting there if it could earn some  
4 interest. I think the money ought to earn  
5 some interest.

6 Now, granted we agreed Mr. Sullivant,  
7 Sr. wouldn't touch it, and I would shop  
8 around for the best interest rates I could  
9 find. First National Bank of Oxford had  
10 the best interest rate, and we put it in  
11 there.

12 I failed to follow up with a second  
13 order saying, *Hey, we deposited it in*  
14 *First National Bank*, and the money won't  
15 be touched.

16 In the meantime, Mr. Sullivant bought  
17 the truck. He spent some money out of  
18 that account. That account has now been  
19 replenished. We sold the truck. I put  
20 that money in there to -- so the truck has  
21 been sold and the money put back in the  
22 account. The rest of the money has been  
23 returned to the account. The account has  
24 got as much money in it as it would have  
25 had at the time.

26 It's my fault that I didn't come up  
27 with a second --

28 HONORABLE ROBERT Q. WHITWELL: And  
29 then we have entered an order?

1 MR. SWAYZE ALFORD: Entered an order  
2 that it is frozen and can't be accessed,  
3 yes, sir.

4 HONORABLE ROBERT Q. WHITWELL: All  
5 right. Let's see if there is anything  
6 else.

7 Do you remember when Mr. Driskell got  
8 out of it?

9 MR. SWAYZE ALFORD: My recollection  
10 is the end of -- after August is what I  
11 remember, end of that or end of September,  
12 is when he got out.

13 I have been communicating with Mr.  
14 Sullivant, Jr. I have not -- I don't  
15 think he could say I have failed to  
16 respond to him or ignored him. We have  
17 met. We sat down and tried to talk about  
18 how we can resolve some of these issues.

19 I arranged for him to go out to see  
20 his father. Hadn't seen each other in a  
21 year and a half. I arranged for them to  
22 meet and went out there and joined in the  
23 meeting so the meeting could happen. So I  
24 have not ignored him.

25 Look, I get that he can be  
26 frustrated. But, you know, and I'm not  
27 using this as an excuse, but he's got one  
28 case that he's involved in, and I've got  
29 other cases. Mr. Driskell had other

1 cases. Mr. Golman had other cases.

2 So, you know, things don't happen as  
3 quick as you want to. The August setting,  
4 you know, that was the first date that the  
5 Court had, that I had, that Mr. Driskell  
6 had that we could set it. Mr. Driskell is  
7 a public defender. He couldn't do  
8 anything in July. The Court --

9 MR. ROBERT SULLIVANT, JR.: I -- in  
10 that e-mail, he listed several dates he  
11 had in July that he had sent to you in the  
12 e-mail because I was copied on it.

13 MR. SWAYZE ALFORD: We took the first  
14 dates that were available for everybody in  
15 August, Your Honor. It wasn't an attempt  
16 to delay anything.

17 HONORABLE ROBERT Q. WHITWELL: Well,  
18 he may have had it available and you may  
19 not --

20 MR. SWAYZE ALFORD: Yes, sir. I'm  
21 just saying we took the first date that  
22 everybody --

23 HONORABLE ROBERT Q. WHITWELL: I may  
24 not have been available.

25 MR. SWAYZE ALFORD: Right. We took  
26 the first date that all three had a date  
27 available.

28 HONORABLE ROBERT Q. WHITWELL: Well,  
29 all right. All of this equipment and all

1 of that stuff is something that will have  
2 to be hashed out at another date. I don't  
3 know what has been done on that or where  
4 all of that goes.

5 MR. SWAYZE ALFORD: My client  
6 maintains that the equipment is still his.  
7 It's just he didn't have any place else to  
8 store it after they sold the property, so  
9 it's sitting on his cousin's land, but we  
10 can hash that out.

11 HONORABLE ROBERT Q. WHITWELL: Well,  
12 according to him, that cousin told him he  
13 would have him arrested if he goes --

14 MR. SWAYZE ALFORD: Hey, I don't  
15 doubt that. I think that probably in the  
16 cousin's mind the equipment belongs to my  
17 client rather than him, so he may have  
18 said that. But I'm just saying the  
19 equipment is there, and it hasn't been  
20 given away or sold.

21 HONORABLE ROBERT Q. WHITWELL: Well,  
22 what date in December was it, Mr.  
23 Sullivant, that you entered the default?  
24 Do you remember?

25 MR. ROBERT SULLIVANT, JR.: I think I  
26 made the application for default on the  
27 first day after Thanksgiving holiday on  
28 that Monday. I think it's the 28th. And  
29 then Ms. Wall made the entry for default,

1 I think, on December -- it's filed stamped  
2 December the 1st.

3 HONORABLE ROBERT Q. WHITWELL: That's  
4 what I was thinking.

5 All right. The Court has heard the  
6 argument of the parties. This case is a  
7 complex case in that it is a dispute  
8 between father and son, Mr. Sullivant, Sr.  
9 and Mr. Sullivant, Jr.

10 Mr. Sullivant, Jr. has indicated that  
11 he was trying to provide some ways to see  
12 that his father was taken care of, even  
13 hired a lady, Ms. Stevens, to help him.

14 They had some property that they were  
15 going to sale in Panola County, and  
16 according to Mr. Swayze's argument that  
17 part of the delay in each of these  
18 situations involved in the whole case,  
19 everything from land to joint accounts to  
20 conservatorship to the tractors and  
21 equipment and all sorts of disputes that  
22 seem to be raised in these pleadings, the  
23 first time out of the box Mr. Sullivant,  
24 Jr. delays the sale of the property  
25 because he thinks it ought to be a 1031  
26 rather than the sale it was.

27 The buyer had to hire Roy Liddell,  
28 who is one of the finest real estate  
29 lawyers in the state, to come up and move

1 to enforce the -- get the thing moving to  
2 close it. The case was set in January and  
3 about the same time the closing ended up  
4 happening.

5 The parties put money in a joint  
6 account. At the time of all of this  
7 happening, Mr. Sullivant, Jr. had a power  
8 of attorney over Mr. Sullivant, Sr. But  
9 prior to him getting the money out of the  
10 joint account, Mr. Sullivant, Sr., who had  
11 an absolute right as a joint tenant to  
12 withdraw -- he hadn't withdrawn all the  
13 money, but he withdrew a good bit of money  
14 out, put it in a separate account, and he  
15 had someone do a revocation of his power  
16 of attorney.

17 Again, according to Mr. Sullivant,  
18 Jr., he wasn't aware of that. And he went  
19 back and removed some of the money back to  
20 another account, put it in his own name,  
21 which might have been somewhat --  
22 shouldn't have done.

23 If his intent was to use this money  
24 to buy a house for Mr. Sullivant, Sr. and  
25 take care of him and so forth, maybe it  
26 shouldn't have been put in his name, but  
27 that's what he did. And then he put some  
28 of it back, and some of it he kept. All  
29 of those are facts that are going to have



1 to be ferreted out at a trial.

2 The Court differentiates the  
3 difference between an entry of default by  
4 a clerk, which is an administrative-type  
5 decision that is provided for in Rule  
6 55(a). The clerk really doesn't have much  
7 choice if somebody comes in and says they  
8 want an entry of default, they're in it.  
9 They don't necessarily know the facts and  
10 what is going on and involved in all of  
11 that.

12 There is a difference in that and a  
13 party after that being done having to give  
14 notice for Rule 55(c) to move for a  
15 default judgment and put on proof of what  
16 they claim.

17 And based on what I've heard here  
18 today, it's not a simple matter of just  
19 slam -- slim, bam, thank you, ma'am, take  
20 a judgment for X number of dollars. It's  
21 going to be some ferreting out of all of  
22 these factual issues as to what should be  
23 done and what relief should be granted.  
24 It's going to be a good bit of proof  
25 involved in all of that.

26 The criteria for setting aside an  
27 entry of default in my opinion is not as  
28 stringent as it is for a motion for  
29 default. And the Court can look at a good

1           cause shown setting aside an entry of  
2           default, Rule 60(b), which takes into  
3           consideration such things as illness,  
4           clerical mistake, misunderstanding,  
5           failure to receive service. All of those  
6           things can be a good cause.

7           It also says in the *Allstate* case  
8           that Mr. Sullivant, Jr. has cited that  
9           this is not a result of gross negligence  
10          on Mr. Alford's part. I think it is more  
11          of an oversight and misunderstanding and  
12          clerical error.

13          I also think that the Court can  
14          recognize another reason to set aside one  
15          is excusable neglect. I think excusable  
16          neglect because it is good cause, because  
17          this thing has been going on since Lawyer  
18          Golman was in it. Lawyer Driskell was in  
19          it, and then in September of 2022, Mr.  
20          Sullivant gets in it himself.

21          And things are still rocking along,  
22          take depositions of Dr. Hobbs and these  
23          other doctors and Ms. Stevens. All of  
24          these things are going on.

25          A lot of negotiations going back and  
26          forth during this period of time since  
27          these lawyers and Mr. Sullivant have been  
28          in it that's caused the delay of why it  
29          hasn't moved on to trial.

1           And based on rules involving joint  
2           accounts and so forth, Mr. Sullivant, Sr.  
3           may have some colorable defenses that  
4           might be important in how the Court rules  
5           finally in this case. And so I think it  
6           would behoove the Court to show that  
7           defaults are not favored in a way to  
8           settle lawsuits.

9           It is a policy of our system of  
10          judicial administration that favor  
11          disposition of cases on its merits. It's  
12          citing *Bell versus City of St. Louis*, 467  
13          So.2d 657, (Miss. 1985).

14          And the comment under that is,  
15          *Whenever there is a doubt whether a*  
16          *default judgment should be entered, the*  
17          *Court ought to allow the case to be tried*  
18          *on its merits.*

19          So the Court is of the opinion that  
20          the entry of default will be set aside.  
21          The Court is going to allow Mr. Alford ten  
22          days in which to file an answer or a  
23          response to the crossclaim or  
24          counterclaim, whatever it is -- it's a  
25          counterclaim, I think, it is styled.

26          There will be -- is there reason for  
27          additional discovery? Other than the IME  
28          of Dr. Perkins and maybe his deposition or  
29          whatever?

1 MR. SWAYZE ALFORD: In my mind, Your  
2 Honor, I'll have to look back at that, but  
3 I don't think any additional discovery. I  
4 may -- I need to look back at my discovery  
5 to see if, in my opinion, was that fully  
6 responded to by Mr. Sullivant, Jr. as it  
7 relates to his claims to get paid by my  
8 client.

9 That claim was kind of in the  
10 background because we were talking about  
11 the conservatorship. I sent out discovery  
12 to address those issues, but I just  
13 haven't looked at it in a while.

14 It's not any really additional  
15 discovery. I may, after I look at it, ask  
16 Mr. Sullivant, Jr. to supplement it or  
17 respond if I think he hasn't responded to  
18 it.

19 HONORABLE ROBERT Q. WHITWELL: And on  
20 top of that, I'm looking at the other  
21 motions that I think you filed, Robert,  
22 and you have also -- y'all have asked me  
23 to sign an order of setting on the 25th of  
24 January, a motion for summary judgment.

25 MR. SWAYZE ALFORD: That is his  
26 motion for summary judgment, Your Honor.  
27 We had agreed on that date, and I did put  
28 that up there for you to sign for a  
29 hearing on that date on his motion.

1 HONORABLE ROBERT Q. WHITWELL: Well,  
2 we've got that to attend to.

3 Have you filed a response to his  
4 motion?

5 MR. SWAYZE ALFORD: I have, Your  
6 Honor.

7 HONORABLE ROBERT Q. WHITWELL: I have  
8 not gotten a copy of either one of those,  
9 but generally they send me copies --

10 MR. SWAYZE ALFORD: I will be sure  
11 you get it.

12 HONORABLE ROBERT Q. WHITWELL: -- of  
13 your motion.

14 MR. SWAYZE ALFORD: Yes, sir.

15 HONORABLE ROBERT Q. WHITWELL: I can  
16 look it up online, of course. I have a  
17 staff attorney that can find that, but  
18 sometimes the parties send them to me. If  
19 I get them in the mail, I'll look at them.

20 MR. SWAYZE ALFORD: I will be sure  
21 and get that to you, Your Honor.

22 HONORABLE ROBERT Q. WHITWELL: Is  
23 there any other proof that you want to put  
24 on today?

25 MR. SWAYZE ALFORD: No, sir, Your  
26 Honor.

27 HONORABLE ROBERT Q. WHITWELL: All  
28 right. I'm trying to -- all I can say is,  
29 Mr. Sullivant, we will -- if y'all can

1           agree on some type of schedule for -- if  
2           there is something else that needs to be  
3           done discovery-wise and a trial date, I  
4           don't know, I'm not opposed to a  
5           scheduling order to try to set that up so  
6           you can get it heard as quickly as  
7           possible.

8           MR. SWAYZE ALFORD: Yeah, I can  
9           discuss that with Mr. Sullivant, Your  
10          Honor. If he wants a scheduling order  
11          that has deadlines of those things,  
12          certainly we can do that, and we can look  
13          at the Court's calendar about when you  
14          have available for a trial.

15          HONORABLE ROBERT Q. WHITWELL: All  
16          right. Will you give me an order  
17          granting -- setting aside the entry of  
18          default, ten days to file an answer, and  
19          then we can -- y'all can file a separate  
20          order on any type of discovery or trial  
21          setting.

22          MR. SWAYZE ALFORD: And I brought an  
23          order, Your Honor. I put in it ten days.  
24          I know that is pretty normal. I put in  
25          there January 20th, which is probably  
26          eight days, but I intend to file it next  
27          week.

28          HONORABLE ROBERT Q. WHITWELL: That's  
29          fine, whatever.

1 (WHEREUPON, THERE WAS AN  
2 OFF-THE-RECORD DISCUSSION.)

3 HONORABLE ROBERT Q. WHITWELL: All  
4 right. That will conclude this hearing.  
5 Anything further, Mr. Sullivant?

6 MR. ROBERT SULLIVANT, JR.: No, Your  
7 Honor, and thank you.

8 (WHEREUPON, THE PROCEEDINGS WERE  
9 CONCLUDED.)

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## COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI

COUNTY OF UNION

I, Cecily Boone Faulkner, RPR, CSR, Official Court Reporter for the Eighteenth Chancery District, Mississippi, do hereby certify that to the best of my skill and ability I have reported the proceedings had and done in the above styled and numbered cause on the docket of the Lafayette County Chancery Court, and the above and foregoing sixty-three (63) pages contain a true, full and correct transcript of my stenographic notes and realtime taken in said proceedings.

I do further certify that my certificate attached hereto applies only to the original and certified transcript. The undersigned assumes no responsibility for the accuracy of any reproduced copies not made under my control or direction.

This the 19th day of January, 2023.

/s/ Cecily Boone Faulkner

CECILY BOONE FAULKNER, RPR, CSR  
Official Court Reporter  
512 Lakeview Cove  
New Albany, Mississippi 38652  
(662)316-1829  
National RPR No. 048426  
Mississippi CSR No. 1157

My Commission Expires: 1/12/2024



1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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3 ROBERT SULLIVANT, SR. PLAINIFF

4 VS. CAUSE NO. CV-2021-612

5 ROBERT SULLIVANT, JR. DEFENDANT

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8 Transcript of 1/12/23

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10 Original Transcript: \$288.00

11 Deposit Paid: 275.00

12 Amount Due: \$13.00

13

14 Thank you,

15 Cecily

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