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CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. PLAINIFF

VS. CAUSE NO. CV-2021-612

ROBERT SULLIVANT, JR. DEFENDANT

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TRANSCRIPT OF THE MOTION HAD AND DONE IN THE ABOVE-STYLED  
AND NUMBERED CAUSE, NOT FOR APPEAL PURPOSES, BEFORE THE  
HONORABLE ROBERT Q. WHITWELL, CHANCELLOR, ON THE 30TH DAY  
OF AUGUST, 2023, IN LAFAYETTE COUNTY, MISSISSIPPI, TAKEN  
BY CECILY BOONE FAULKNER, RPR, CSR, OFFICIAL COURT  
REPORTER FOR THE EIGHTEENTH CHANCERY COURT DISTRICT OF  
MISSISSIPPI.

\*\*\*\*\*

APPEARANCES:

Present and Representing the Plaintiff:

MS. KAYLA WARE  
Attorney at Law  
Swayze Alford Law Firm  
1221 Madison Avenue  
Oxford, Mississippi 38655

Present and Pro Se:

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

1 Present and Representing Dr. Perkins:

2 HONORABLE HALE FREELAND  
3 Attorney at Law  
4 Freeland Martz  
5 302 Enterprise Drive, Suite A  
6 Oxford, Mississippi 38655

7 Present and Representing Ms. Sherry Wall, Conservator:

8 HONORABLE WALTER DAVIS  
9 Attorney at Law  
10 Dunbar Davis, PLLC  
11 324 Jackson Avenue East, Suite A  
12 Oxford, Mississippi 38655

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(WHEREUPON, THE CHANCERY COURT OF  
LAFAYETTE COUNTY WAS DULY AND LEGALLY  
CONVENED, AND THE FOLLOWING OCCURRED IN  
THIS MATTER.)

HONORABLE ROBERT Q. WHITWELL: 21-CV-612,  
Lafayette County Chancery Court, *Robert  
Sullivant, Sr. versus Robert Sullivant, Jr.;  
Robert Sullivant, Jr. versus Robert Sullivant,  
Sr. and Evelyn Stevens.*

Mr. Alford, Mr. Robert Sullivant, Jr., Mr.  
Freeland, and Mr. Davis.

MR. HALE FREELAND: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: I believe  
we're here on your motion?

MR. HALE FREELAND: I had two motions, Your  
Honor, one, a motion to quash and a motion to  
strike.

HONORABLE ROBERT Q. WHITWELL: Mr.  
Sullivant, Jr., are you ready?

MR. ROBERT SULLIVANT, JR.: I'm ready to --  
for the motion to quash. I wasn't aware that we  
had set the -- the motion to strike set.

HONORABLE ROBERT Q. WHITWELL: I don't  
know. Did you have an order setting them both?

MR. HALE FREELAND: I don't know off the

1 top of my head, Your Honor. I would hate to  
2 come back over this thing again.

3 HONORABLE ROBERT Q. WHITWELL: Well, he's  
4 got to have notice of the motion.

5 When did you get it, Mr. Sullivant?

6 MR. ROBERT SULLIVANT, JR.: Excuse me?

7 HONORABLE ROBERT Q. WHITWELL: When did you  
8 get the motion to strike?

9 MR. ROBERT SULLIVANT, JR.: I think I filed  
10 a motion to strike. I have filed one that  
11 hasn't been set yet, but I'm not sure about one  
12 if anybody else filed or not. I don't recall.

13 MR. HALE FREELAND: I filed the motion to  
14 strike the language that Mr. Sullivant used  
15 against my client, Mr. Perkins, calling him  
16 things that were scandalous that should not be  
17 in the record, Your Honor, calling him a liar  
18 and things of that nature.

19 HONORABLE ROBERT Q. WHITWELL: Mr. Davis?

20 MR. WALTER DAVIS: I don't have anything  
21 set or pending, Your Honor.

22 My understanding is the motion to strike  
23 and the motion to quash are interrelated and  
24 probably should be heard together.

25 MR. ROBERT SULLIVANT, JR.: Be that as it

1           may, the motion to strike has not been set, so I  
2           just came prepared to argue the motion that has  
3           been set. I thought that was how it works.

4           MR. HALE FREELAND: Well, they are  
5           interrelated, Your Honor, and the problem is we  
6           keep being brought into court over a case that  
7           has been decided.

8           HONORABLE ROBERT Q. WHITWELL: Well,  
9           Ms. Ware, I didn't ask you, are you ready?

10          MS. KAYLA WARE: Yes, Your Honor.

11          HONORABLE ROBERT Q. WHITWELL: I was  
12          looking for Swayze and didn't see you over  
13          there.

14          MS. KAYLA WARE: It's got to be better,  
15          though.

16          MR. HALE FREELAND: We're primarily  
17          concerned about the motion to quash, Your Honor.

18          HONORABLE ROBERT Q. WHITWELL: Well, I know  
19          they are interrelated, but I think Mr. Sullivant  
20          has got a point if he wasn't prepared to argue.

21                 He's already come to court one time saying  
22                 that he was surprised, so I'm not going to allow  
23                 him to be surprised today.

24                 If he hasn't been ready to go forward, we  
25                 will pass that one and hear the motion to quash.

1 MR. HALE FREELAND: Yes, sir.

2 MR. ROBERT SULLIVANT, JR.: Thank you.

3 HONORABLE ROBERT Q. WHITWELL: All right.

4 We will pass it for now.

5 (WHEREUPON, THE FOLLOWING OCCURRED

6 AFTER THE DOCKET WAS CALLED.)

7 HONORABLE ROBERT Q. WHITWELL: Come around,  
8 Mr. Sullivant.

9 MR. ROBERT SULLIVANT, JR.: This side?

10 HONORABLE ROBERT Q. WHITWELL: That will be  
11 fine.

12 MR. HALE FREELAND: Your Honor, may I  
13 proceed?

14 HONORABLE ROBERT Q. WHITWELL: Is everybody  
15 ready? Okay.

16 MR. HALE FREELAND: Your Honor, this is a  
17 pretty straightforward motion. It's governed by  
18 a rule.

19 Mr. Sullivant was advised by -- was advised  
20 on March the 2nd by Swayze Alford about the cost  
21 of taking Mr. Perkins' deposition. This was  
22 before your hearing, Your Honor.

23 And then he set, unilaterally without  
24 notice to the other parties, set up and  
25 subpoenaed Mr. Perkins to show up in Oxford

1 without regard to Mr. -- Dr. Perkins' schedule  
2 or without regard to the rules.

3 The rule clearly states that under Rule  
4 706, the Rules of Evidence, that an expert is  
5 entitled to compensation to be before his  
6 deposition is taken.

7 And that also Rule 26 and 30 require that  
8 deposition to be taken at the location where  
9 that expert is located. In this case, it's  
10 Lakeland where Dr. Perkins resides.

11 The rules are clear, we have to abide as  
12 attorneys of that rule and communicate with Dr.  
13 Perkins and Mr. Swayze Alford to see who can be  
14 there. And Mr. Sullivant was required to pay  
15 for Dr. Perkins' preparation for the deposition  
16 at his rate of 600 an hour, as well as the  
17 taking of his deposition.

18 There is no -- on a practical basis, it's  
19 argued that Dr. Perkins was an expert appointed  
20 by this Court. This Court has no funds with  
21 which to pay Dr. Perkins for his time, and the  
22 Court can't compel somebody to show up, an  
23 expert, without him being compensated for it.

24 So Mr. Sullivant didn't comply with the  
25 prerequisites required by the Rules of Evidence



1 or the rules of this court to take Dr. Perkins'  
2 deposition.

3 Finally, this Court has already ruled in a  
4 final determination about issues that are  
5 pending that would have Dr. Perkins' deposition  
6 taken, establish a conservatorship for Mr.  
7 Sullivant, Sr. and establish who is going to be  
8 the conservator.

9 That determination has not been appealed  
10 under Rule 54, and that would have to be  
11 certified in an appeal, and that hasn't been  
12 done.

13 So this is kind of like arguing how --  
14 arguing about the cows getting loose when the  
15 gate has been opened and they're already out.

16 So it's kind of a -- I don't know why we're  
17 taking depositions of Dr. Perkins or anybody  
18 when the Court has already ruled and your  
19 decision hasn't been appealed.

20 So it's costing my client, Dr. Perkins,  
21 funds for me to appear here, but if Mr. -- if  
22 the Court insists, then the rules require the  
23 prerequisite of Dr. Perkins' fee to be paid and  
24 the deposition to be taken in Lakeland -- on  
25 Lakeland Drive in Jackson at which time I'm sure

1 Mr. Swayze or Ms. Kayla will be there, and I  
2 will have to be there as well. So it is just  
3 going to cost people unnecessarily to proceed.

4 So I think the rule is clear, and I think  
5 the motion to strike -- to quash the subpoena is  
6 in order because it didn't comply with the  
7 rules, Your Honor.

8 Thank you.

9 HONORABLE ROBERT Q. WHITWELL: Ms. Ware, do  
10 you want to comment on that or not?

11 MS. KAYLA WARE: No, Your Honor, not at  
12 this time.

13 HONORABLE ROBERT Q. WHITWELL: All right.  
14 Mr. Davis?

15 MR. WALTER DAVIS: I have nothing to add,  
16 Your Honor.

17 HONORABLE ROBERT Q. WHITWELL: All right.  
18 Mr. Sullivant?

19 MR. ROBERT SULLIVANT, JR.: Okay. Let me  
20 get my notes up here. First of all -- first  
21 off, I have an objection or a point of order.

22 Mississippi Code of 11-49-9 states, *The*  
23 *Court shall not permit more than two attorneys*  
24 *to argue one side unless good cause be shown*  
25 *thereof -- or therefore.*

1 I have one, two, three attorneys here, and  
2 that's greater than two. I find that in  
3 conflict with the laws of Mississippi.

4 MR. HALE FREELAND: Your Honor, the rule  
5 relates to two attorneys per party. I'm  
6 representing Dr. Perkins, so I don't think that  
7 applies.

8 MR. ROBERT SULLIVANT, JR.: I don't think  
9 the rule says that. I'm pretty sure the rule  
10 says just what I -- I just read it verbatim, and  
11 it does not say that.

12 It just says, *Per side*. It doesn't say per  
13 client or party. It says, *Per side*. It's very  
14 clear.

15 And Mr. Freeland --

16 MR. HALE FREELAND: I'm the only one who  
17 taught, Your Honor, so there we are.

18 MR. ROBERT SULLIVANT, JR.: Well, taught --  
19 I mean, we have three attorneys up here in the  
20 bar area, so I think they are here to argue.

21 If they are not, then why would their  
22 presence be here?

23 HONORABLE ROBERT Q. WHITWELL: They're  
24 here because Mr. Davis represents Ms. Wall, the  
25 conservator. Ms. Ware and Mr. Alford

1 represent -- you represent --

2 MS. KAYLA WARE: We represent Mr.  
3 Sullivant, Sr.

4 HONORABLE ROBERT Q. WHITWELL: -- Mr.  
5 Sullivant, Sr.

6 MS. KAYLA WARE: Your Honor, I would point  
7 out that Mr. Perkins is a defendant and so is Mr  
8 Sullivant, Jr., so they are actually -- we are  
9 the only plaintiff in the case, if you want to  
10 talk about sides. He added Mr. Perkins as a  
11 defendant.

12 MR. WALTER DAVIS: Your Honor, I would just  
13 add, you know, every party is entitled to their  
14 own representation. It's a matter of  
15 constitutional law.

16 The interpretation where it's cited  
17 consistent with that would be exactly what Hale  
18 said. Every party is entitled to their own  
19 counsel and their right to be heard.

20 MR. ROBERT SULLIVANT, JR.: So this code is  
21 unconstitutional per the U.S. Constitution and  
22 the Mississippi Code?

23 I mean, it is clear. I mean, it is very  
24 simple, no more than two per side.

25 And I don't know who's the defendants or

1 plaintiffs, but I have three attorneys arguing  
2 against my position.

3 MR. HALE FREELAND: Your Honor, Dr. Perkins  
4 is entitled to an attorney in a court  
5 proceeding. I don't know where he gets that. I  
6 mean --

7 HONORABLE ROBERT Q. WHITWELL: None of  
8 these other lawyers are representing Dr. Perkins  
9 in this matter.

10 Your motion is not well taken. I have been  
11 practicing law for a long time, Mr. Sullivant.

12 And I agree with you that if we were -- two  
13 lawyers were sitting there, and one is objecting  
14 and the another is objecting, the way it was  
15 always ruled by the judges when I was practicing  
16 say you can only have one horse in one race.  
17 You can't have two horses.

18 So one of them has got to be the one that  
19 objects and handles the motion and not two at a  
20 time.

21 So that's the way I interpret that, and I'm  
22 overruling your motion --

23 MR. ROBERT SULLIVANT, JR.: Good enough.  
24 Thank you.

25 HONORABLE ROBERT Q. WHITWELL: -- your

1 objection.

2 MR. ROBERT SULLIVANT, JR.: So just to  
3 respond to Mr. Freeland and what he put forth  
4 today just now, he said I gave no notice and  
5 that I wanted to have the -- to depose Frank  
6 Perkins in Lafayette County, which is not true.

7 I reached out to Frank Perkins many times  
8 and said that I would like to go to you and do  
9 it when you're -- when you can do it, and he  
10 never responded to me. He did not cooperate.

11 And I have e-mails stating -- and I've sent  
12 him back an e-mail saying that if I don't hear  
13 back from you, then I'm going to have to  
14 subpoena you. And I didn't hear back from him.  
15 So, hence, that's why we had a subpoena.

16 I'm more than happy to go down near him or  
17 at his office, but I can't really presume that I  
18 can go to his office unless he invites me.

19 So, therefore, my only alternative or place  
20 was to depose him was Courtroom Number 1 here in  
21 this courthouse.

22 Otherwise, I'm more than happy to go down  
23 there and do it on his schedule. It's just that  
24 he has not cooperated with me on that matter.

25 I guess to get into this matter, I would

1           like to review a few e-mails since -- that have  
2           gone back and forth between Mr. Freeland, Mr.  
3           Alford and myself, that I think could add some  
4           clarification to what really is going on in this  
5           matter.

6                     Back on June 1st, I did give -- or I did  
7           send to Perkins an e-mail asking him, being very  
8           cooperative -- and I will give Mr. Freeland the  
9           e-mail and you a copy of the e-mail just like I  
10          specified back in March --

11                    HONORABLE ROBERT Q. WHITWELL: Are these  
12          attached to your motion?

13                    MR. ROBERT SULLIVANT, JR.: I don't -- some  
14          may and some may not be.

15                    HONORABLE ROBERT Q. WHITWELL: Okay.

16                    MR. HALE FREELAND: Your Honor, they are  
17          not.

18                    MR. ROBERT SULLIVANT, JR.: But, again,  
19          this proves that I was trying to be very  
20          cooperative and cordial with Frank Perkins on  
21          this matter.

22                    And then I get an e-mail back from Mr.  
23          Alford stating that Mr. Perkins -- I mean, Dr.  
24          Perkins had contacted him instead of contacting  
25          me.

1           And, quite frankly -- and here is your  
2           e-mail -- I don't really understand why I have  
3           to go through Mr. Alford to get a -- to depose  
4           an independent medical examiner that was  
5           court-appointed.

6           I know we're probably going to discuss more  
7           if he is court-appointed or not, which I'm happy  
8           to discuss.

9           And then on March the 3rd, I sent back an  
10          e-mail after I spoke to Mr. Alford, or got the  
11          e-mail back from Mr. Alford, saying that, you  
12          know, I really regret that you haven't called me  
13          back. I wish you would cooperate with me, and I  
14          believe we could make this very easy.

15          So to Mr. Freeland's point is that I was  
16          not regarding his schedule or where he is at is  
17          simply not true. I was left -- was not left a  
18          choice in the matter.

19          So on June the 8th, I got an e-mail from  
20          Mr. Alford again. And right before there, I did  
21          subpoena Frank Perkins, and I also asked for his  
22          notes to his conclusions that he had put into  
23          his report.

24          And Mr. Alford was -- here's the e-mail  
25          right here, which I think I might only have one



1 of these, but -- Mr. Freeland, do you have this  
2 e-mail?

3 MR. HALE FREELAND: I have not seen this  
4 one or that one, sir. I've seen --

5 MR. ROBERT SULLIVANT, JR.: The one on June  
6 the 8th?

7 MR. HALE FREELAND: No, I have not.

8 MR. ROBERT SULLIVANT, JR.: Okay. Well,  
9 then I'll just read it. *I had court --*

10 MR. HALE FREELAND: Your Honor, it's  
11 hearsay.

12 MR. ROBERT SULLIVANT, JR.: I'm reading it  
13 right from here.

14 MR. HALE FREELAND: It is still hearsay.

15 HONORABLE ROBERT Q. WHITWELL: Well, who is  
16 saying it? Is it you --

17 MR. ROBERT SULLIVANT, JR.: Mr. Alford.

18 MR. HALE FREELAND: It's hearsay. He is  
19 not here.

20 MR. ROBERT SULLIVANT, JR.: Well, I mean,  
21 he should be here.

22 I have the e-mail from him, and I don't  
23 know -- I don't understand why that would be  
24 hearsay.

25 HONORABLE ROBERT Q. WHITWELL: I'm going to

1                   overrule the objection.

2                   MR. ROBERT SULLIVANT, JR.: Thank you.

3                   *I had court today and was at the courthouse*

4                   --

5                   MR. HALE FREELAND: Could I see this before  
6                   it's read into the record, Your Honor? I'm at  
7                   least entitled to that.

8                   HONORABLE ROBERT Q. WHITWELL: Yes, he's  
9                   entitled to see it.

10                  MR. ROBERT SULLIVANT, JR.: To see it?

11                  HONORABLE ROBERT Q. WHITWELL: Yes.

12                  MR. HALE FREELAND: Yes.

13                  MR. ROBERT SULLIVANT, JR.: All right.

14                  That's fine.

15                  MR. HALE FREELAND: I don't object to this  
16                  being admitted, Your Honor.

17                  MR. ROBERT SULLIVANT, JR.: Thank you.

18                  *I did not recall receiving a notice from*  
19                  *you, so I looked in my e-mail and junk mail to*  
20                  *be sure that I have not overlooked the notice*  
21                  *that is required by the Rules of Civil*  
22                  *Procedure. I know that the U.S. Mail moves*  
23                  *slowly, but I have not received anything in the*  
24                  *mail either. If you have sent a notice to me,*  
25                  *please let me know.*

1           It says, *It does not appear that a notice*  
2 *was filed with the Court. I did review the -- I*  
3 *did review the deposition subpoena, which states*  
4 *that the deposition will be taken in Oxford.*  
5 *Dr. Perkins may not object to coming to Oxford,*  
6 *but the Rules of Civil Procedure state that the*  
7 *deposition shall be taken in the county where*  
8 *the deponent is present.*

9           *Also, I would like to discuss with you the*  
10 *relevance of Dr. Perkins' testimony at this*  
11 *point. It seems that the issues to which he*  
12 *would -- to which he would testify have been*  
13 *addressed by the Court. Maybe this is something*  
14 *that we can discuss tomorrow. Thanks.*

15           That was the e-mail from Mr. Alford.

16           MR. HALE FREELAND: Your Honor --

17           HONORABLE ROBERT Q. WHITWELL: What date is  
18 that, Mr. Sullivant?

19           MR. ROBERT SULLIVANT, JR.: June the 8th at  
20 10:39.

21           MR. HALE FREELAND: I don't object to it  
22 being admitted, if it's being offered. I would  
23 suggest to put it in the record --

24           MR. ROBERT SULLIVANT, JR.: To make it or  
25 not to make it?

1 MR. HALE FREELAND: To make it.

2 MR. ROBERT SULLIVANT, JR.: All right.

3 HONORABLE ROBERT Q. WHITWELL: Well, why  
4 don't we make all of these an exhibit?

5 MR. ROBERT SULLIVANT, JR.: Sure.

6 MR. HALE FREELAND: Yes, sir.

7 HONORABLE ROBERT Q. WHITWELL: Make all of  
8 these collective, Exhibit Number 1.

9 (WHEREUPON, THE SAME, COLLECTIVE  
10 E-MAILS, WAS MARKED AND ADMITTED AS EXHIBIT  
11 NUMBER 1.)

12 MR. ROBERT SULLIVANT, JR.: All right.

13 Then --

14 HONORABLE ROBERT Q. WHITWELL: By the way,  
15 that June 8th, 2023 --

16 MR. ROBERT SULLIVANT, JR.: Yes, Your  
17 Honor.

18 HONORABLE ROBERT Q. WHITWELL: -- is  
19 attached to your motion as Bates Number 001.

20 MR. ROBERT SULLIVANT, JR.: Okay. Good  
21 enough. I wasn't sure if it was in there or  
22 not. I was just told that it wasn't before.

23 And this one is going to be Bates Number 2,  
24 that same -- that same motion that you referred  
25 to.

1           Then I received an e-mail from Mr. Freeland  
2           citing Mississippi Rule of Civil Procedure  
3           16(b)(1), something that does not exist.

4           Quite frankly, in this e-mail that's there,  
5           it's Bates number 2 in that same motion, I  
6           didn't quite -- it was very incoherent. I  
7           didn't understand what he was -- the point he  
8           was making, and I tried to clarify that. I've  
9           never gotten anything clarified back.

10           But this rule that he cites doesn't exist,  
11           and -- which I just was dumbfounded, and I  
12           thought this was some kind of hoax. You know,  
13           when somebody -- you get an e-mail saying you  
14           cannot do this based on a make-believe rule, I  
15           just can't give it much credence.

16           HONORABLE ROBERT Q. WHITWELL: Well, I  
17           assume you couldn't. But it appears to me that  
18           he was referring to Rule 26(b)(1) --

19           MR. ROBERT SULLIVANT, JR.: Okay.

20           HONORABLE ROBERT Q. WHITWELL: -- which is  
21           the discovery rule --

22           MR. ROBERT SULLIVANT, JR.: Right.

23           HONORABLE ROBERT Q. WHITWELL: -- and it  
24           obviously was a mistake on his part, and it  
25           doesn't make sense as it is written.

1           But I think I figured it out after I read  
2           it that he was intending to make it Rule 26, but  
3           I may be wrong.

4           MR. ROBERT SULLIVANT, JR.: Well, I'm not  
5           experienced enough to know. I know now that it  
6           is Rule 26. I know that at the time I didn't  
7           know what this was. It just appeared out of the  
8           blue.

9           I don't really know for sure if he is the  
10          attorney for Perkins or not. I don't really see  
11          any evidence of that, and I don't know if I  
12          should give this any credence.

13          Just because you get an e-mail from  
14          somebody, that doesn't mean that they're  
15          actually their attorney.

16          And then if you read down below, which I  
17          think this was sent to me by accident, Mr.  
18          Freeland sends Swayze, Mr. Alford, an e-mail  
19          saying if you send me the subpoena I will quash  
20          it or we're going to quash it.

21          Let me read it exactly. *Please find the*  
22          *subpoena to depose Perkins on June 22nd, '23.*  
23          *We are going to quash it.* Now, I don't think  
24          that was intended for me to get, but I did.

25          And, so, I'm thinking that Mr. Alford has

1 engaged Mr. Freeland, who I just got an e-mail  
2 two hours before from Mr. Alford saying that he  
3 was not pleased with me giving him a subpoena.

4 Now, I doubt if Frank Perkins got on the  
5 phone and hired Mr. Freeland in a matter of just  
6 a few hours.

7 And, also, we have evidence that there is a  
8 conversation going back between Mr. Alford and  
9 Mr. Freeland, and that Mr. Freeland just states  
10 outright he wants to quash it. He hasn't even  
11 seen the subpoena yet, and I doubt at this time  
12 he has even spoken to his supposed client.

13 So as you can see, I'm a little confused by  
14 this e-mail and if it is real or not.

15 So -- and then at -- that's June the 8th,  
16 and I think I replied back to him stating --  
17 and, Mr. Freeland, do you have this e-mail?

18 MR. HALE FREELAND: I'm not answering your  
19 questions, sir.

20 MR. ROBERT SULLIVANT, JR.: Okay.

21 MR. HALE FREELAND: Well, let me see it.

22 MR. ROBERT SULLIVANT, JR.: (Complies.)  
23 Let me see, this is an e-mail that I sent to  
24 you.

25 MR. HALE FREELAND: I do have that.

1 MR. ROBERT SULLIVANT, JR.: So I replied  
2 back to him asking what is his authority in this  
3 matter.

4 And I don't understand the rule, and I  
5 think everything I have done is per Mississippi  
6 Rules of Evidence 706, I believe.

7 And I just don't quite understand the  
8 purposes of quashing -- he doesn't disuses that  
9 with me anymore. He just goes ahead and files  
10 the motion to quash, which I didn't get.

11 He says he sent it to me, but I didn't get  
12 it because he put an erroneous e-mail on it.  
13 Then he gets -- I get it the next day, and --  
14 that was Friday.

15 And I happened to go over to the clerk's  
16 office downstairs, and I see Mr. Alford in the  
17 clerk's office.

18 Mr. Alford -- and by the way, if I'm going  
19 to be sworn in to what I'm saying, I'm more than  
20 happy to be sworn in, because I am going to have  
21 some more things to add.

22 HONORABLE ROBERT Q. WHITWELL: Well, I  
23 swore you in last time.

24 MS. KAYLA WARE: Your Honor, I would object  
25 to anything -- him saying anything that him and



1 Mr. Alford discussed. That would be hearsay,  
2 and I -- unless he is here to testify that that  
3 is what was said. He's not a party to this, so  
4 it doesn't need to be brought in.

5 HONORABLE ROBERT Q. WHITWELL: If you  
6 wanted Mr. Alford here, you could get him here  
7 to testify. You can't testify to what he said.

8 But raise your right hand and swear him in.

9 MR. ROBERT SULLIVANT, JR.: Okay.

10 (WHEREUPON, MR. ROBERT SULLIVANT, JR.  
11 STOOD, FACED THE CLERK, AND RAISED HIS  
12 RIGHT HAND TO TAKE THE OATH.)

13 MR. ROBERT SULLIVANT, JR.: Yes, I do.

14 HONORABLE ROBERT Q. WHITWELL: And I think  
15 I have explained to you the last several times  
16 we have been here when I did swear you in, that  
17 you are pro se, and you're not an officer of the  
18 court as these lawyers are.

19 MR. ROBERT SULLIVANT, JR.: Right.

20 HONORABLE ROBERT Q. WHITWELL: You've asked  
21 me a question about that, why aren't they being  
22 sworn in? I didn't swear them in because they  
23 are officers of the court.

24 Do you understand that, that I've told you  
25 that before?

1 MR. ROBERT SULLIVANT, JR.: I understand  
2 that. I'm well aware of that fact and have no  
3 objection to them not being sworn in.

4 So if we get into the motion to quash -- I  
5 mean, I -- let me get right here real quick.

6 Since I did think this was kind of hoaxy, I  
7 actually went down to the clerk's office to see  
8 if it had been filed because it had been given  
9 to me as being filed and dated on Thursday.

10 And I checked Friday at about one o'clock,  
11 June the 9th, and it's not on the docket. And  
12 I just found that very bewildering that this  
13 weird, hoaxy incident has not even -- hasn't  
14 even been filed. So, again, I'm more confused  
15 about what is going on here.

16 But later I do discover that it was filed  
17 at about 3:30, which just by chance -- I won't  
18 say what Mr. Alford said, but I did see him in  
19 the clerk's office, and we did have a  
20 conversation.

21 But he says in paragraph one of his motion  
22 to quash, *The movant did not inquire regarding*  
23 *Perkins' availability at this time and insofar*  
24 *as his staff and treatment schedule.* I did  
25 inquire of that, so that is just not true.

1           As you can see by the e-mails, I tried to  
2           get with Perkins to depose him. He just would  
3           not cooperate.

4           And then, I guess, this kind of gets into  
5           another question of what kind of witness Frank  
6           Perkins is.

7           In paragraph eight of his motion, he  
8           states, *Junior is also requesting that Perkins*  
9           *bring his notes and documentation that could --*  
10          *consider work product between attorney and*  
11          *client.*

12          I'm a little mystified by that statement  
13          and to what kind of witness is Frank Perkins.  
14          Is he Mr. Alford's witness? Is he a Rule 26  
15          witness, or is he a Rule 35 witness?

16          That is really what I want to clarify  
17          today, is what kind of witness is he and which  
18          rules apply to him.

19          So here Mr. Freeland in his motion appears  
20          to me that he is qualifying Frank Perkins as a  
21          Rule 26 witness, and that I have to go through  
22          Mr. Alford to depose him.

23          And I contend that he is a Rule 35 witness,  
24          and that Rule -- Mississippi Rules of Evidence  
25          706 apply in this matter.

1           And if I could read from that, which I have  
2 a handout --

3           MR. HALE FREELAND: I have the rule here,  
4 sir.

5           MR. ROBERT SULLIVANT, JR.: Okay. It says,  
6 *The Court may appoint any expert that the*  
7 *parties agree on and any of its choosing, but*  
8 *the Court may not appoint someone who consents*  
9 *-- who does not consent, but the Court may only*  
10 *appoint someone who consents to act.*

11           Then in part (b) (2) of this -- of Rule 706,  
12 it says, *May be deposed by any party.*

13           And then we get into part six entitled,  
14 *Compensation. The expert is entitled to a*  
15 *reasonable compensation as set by the Court.*  
16 *The compensation is payable as follows: Number*  
17 *two, in any other civil case by the parties and*  
18 *the proportion at the time and that the Court*  
19 *directs, and the compensation is then charged*  
20 *like other costs.*

21           I see nowhere in here that Perkins can set  
22 his own rate. And, basically, I was told I had  
23 to pay \$4,000.00 before I could depose him, and  
24 I just objected to that and thought I had a  
25 right to depose him.

1           I don't mind paying him, but I'm not going  
2           to pay him \$4,000.00. I just thought that was a  
3           little bit unreasonable, and I thought I was  
4           going along with the rules.

5           So, in short, to Mr. Freeland's other point  
6           is, there is no reason why I should depose Frank  
7           Perkins, and I think I have several.

8           He has claimed to be an independent -- an  
9           independent medical examiner. I think that's  
10          been brought into question for numerous reasons.

11          He seems to be communicating with Mr.  
12          Alford quite often and sharing with him  
13          information that I was not privy to,  
14          specifically, the matter of testamentary  
15          capacity, which was not mentioned in his report  
16          at all.

17          But he was given that information and I was  
18          not given that information, so I think that  
19          violates the basic rule of him being  
20          independent.

21          And according to the rules I've read, I'm  
22          entitled to all the information that Mr. Alford  
23          gets, and I was denied that.

24          So I think I have the -- I need the  
25          opportunity to depose Frank Perkins.

1 MS. KAYLA WARE: Your Honor, we did not  
2 receive anything from Dr. Perkins in our office.  
3 I'm Kayla Ware with Mr. Alford.

4 Except for the medical, you know,  
5 determination affidavit, the same thing that Mr.  
6 Sullivant, Jr. received, is all that we've  
7 received from Dr. Perkins.

8 MR. ROBERT SULLIVANT, JR.: Then I would  
9 ask the Court, how did Mr. Alford know that  
10 Frank Perkins examined my father for  
11 testamentary capacity on the day that he was  
12 examined?

13 HONORABLE ROBERT Q. WHITWELL: You're  
14 asking me?

15 MR. ROBERT SULLIVANT, JR.: I'm asking the  
16 Court.

17 I mean, what Ms. Ware objects to, it  
18 doesn't make sense, that how does he know this  
19 and I don't know it.

20 MR. HALE FREELAND: Your Honor, I have the  
21 answer, if you may. He might -- the  
22 certification says specifically there are  
23 intervals -- there are lucid intervals in his  
24 illness that enable him to inform those  
25 assisting with his affairs of his wishes.

1                   That lucid interval, according to the  
2                   Mississippi Supreme Court, has said, one who has  
3                   lucid intervals has testamentary capacity --

4                   MR. ROBERT SULLIVANT, JR.: That --

5                   MR. HALE FREELAND: Let me finish. Has  
6                   testamentary capacity to make a will. That has  
7                   been consistent for decades with the Supreme  
8                   Court. You're well aware of it, and that was in  
9                   this circuit.

10                  The fact that he doesn't know that, that's  
11                  not the problem of the Court or Mr. Swayze  
12                  Alford.

13                  MR. ROBERT SULLIVANT, JR.: I object to  
14                  that in the fact that Mr. Alford asked him  
15                  specifically about testamentary capacity. That  
16                  reference does not mention testamentary  
17                  capacity.

18                  I think that's quite a leap to say that you  
19                  examined him -- knowing that you examined him  
20                  specifically for -- before testamentary capacity  
21                  and just by chance he had.

22                  So how is that information relayed to Mr.  
23                  Alford? That's what I need to know.

24                  MR. HALE FREELAND: Well, should have  
25                  needed to know it. He accepted him as an expert

1 and then had the opportunity to cross-examine  
2 him and didn't do that. He didn't object to him  
3 being an expert.

4 So now the Court is -- he is going into  
5 whether or not he is a qualified expert or not.  
6 He has waived that right.

7 MR. ROBERT SULLIVANT, JR.: I object. I  
8 did not object to him being a qualified expert.  
9 I object to him being there that day.

10 In the motion to execute -- request to  
11 execute a will, Mr. Alford never mentions that  
12 Frank Perkins will be there that day. That  
13 motion was filed on April 22nd. We had the  
14 hearing on May the 9th.

15 But Mr. Alford in his motion does state  
16 that he thinks he has -- that my father has  
17 testamentary capacity, and that is why he is  
18 making that motion.

19 There is no reference to any work or any  
20 evaluation or any opinions by Frank Perkins in  
21 that, so I had no idea that he was going to be  
22 there. And so he is an expert witness, I don't  
23 object to that.

24 But I have to prepare to question an expert  
25 witness. I just can't -- we had nine -- eight



1 or nine motions that day. And I just can't  
2 randomly go, well, they might bring him in, and  
3 I really should probably maybe prepare for it.

4 And I think the rules are you should  
5 disclose that, and I think in the discovery I  
6 asked for any experts that you will use to be  
7 disclosed and -- in the hearings, and he did  
8 not.

9 He did not disclose the fact that he was  
10 going to have Frank Perkins there that day.

11 HONORABLE ROBERT Q. WHITWELL: Have you got  
12 evidence of that, Mr. Sullivant?

13 MR. ROBERT SULLIVANT, JR.: I have evidence  
14 of -- I don't understand your question?

15 HONORABLE ROBERT Q. WHITWELL: Evidence of  
16 just what you said --

17 MR. ROBERT SULLIVANT, JR.: I have --

18 HONORABLE ROBERT Q. WHITWELL: -- do you  
19 have discovery that he didn't answer that you  
20 have said anybody you're going to have at that  
21 hearing --

22 MR. ROBERT SULLIVANT, JR.: In our first  
23 set of discovery, which I didn't bring in today,  
24 but it is in the docket, we ask that he  
25 discloses any expert witnesses that he plans to

1 have testify.

2 MS. KAYLA WARE: Your Honor, we entered an  
3 agreed order appointing him as the medical  
4 expert.

5 Also, set on the same day, regarding  
6 whether Mr. Sullivant, Sr. had testamentary  
7 capacity, was a motion to appoint a conservator,  
8 which was the sole reason that Dr. Perkins was  
9 even appointed by this Court, was to decide if  
10 he needed a conservator. That motion was before  
11 you as well.

12 I don't understand why Mr. Sullivant, Jr.  
13 would think that the doctor, who is going --  
14 we're asking to determine if Mr. Sullivant, Sr.  
15 needed a conservator, would be here or not.

16 Like he said, there was more motions set  
17 that day, and he was here for more than that one  
18 motion.

19 We are also --

20 MR. ROBERT SULLIVANT, JR.: I --

21 MS. KAYLA WARE: -- the discovery asked for  
22 any experts that would be at the trial in this  
23 matter. That was a motion hearing.

24 And, like I said, he signed the agreed  
25 order appointing Mr. Perkins as an expert. The

1 Court has already designated him as an expert.  
2 We don't have to when you've already done it and  
3 everyone is well aware of it.

4 MR. ROBERT SULLIVANT, JR.: I object. He  
5 did not -- Perkins did not appear in the motion  
6 for a conservatorship. That conservatorship was  
7 decided upon without a hearing.

8 He specifically testified regarding the  
9 motion to request to execute a will, and he  
10 specifically testified to that. He didn't  
11 really testify that much to being a conservator.

12 He was testifying that he examined my  
13 father for testamentary capacity. I did not  
14 find that in any of his reports. I find it  
15 irregular and all of a sudden this pops up.

16 And -- that he was there that day -- which  
17 if on April 22nd -- I think Mr. Alford is  
18 reasonable to assume or should have known that  
19 he was going to have him testify and should have  
20 stated in the motion that that was his opinion.

21 But his motion is void of any opinion by  
22 Frank Perkins, and that was on April 22nd.

23 And I think at that point, if he would have  
24 had that knowledge, he should have disclosed it,  
25 or would have disclosed it.

1           So, again, he appeared in the motion to  
2           execute a will, not a conservatorship.

3           MS. KAYLA WARE: Your Honor, I feel like we  
4           are really far from the motion to quash. We  
5           have argued this, this issue before you, whether  
6           he was to serve notice of Dr. Perkins being  
7           there.

8           It's been argued in front of you a couple  
9           of times now. It's been appealed to the Supreme  
10          Court and been done.

11          I think we have already decided those  
12          matters. You entered an order on it. We are  
13          here on a motion to quash, not whether he should  
14          have testified at the -- as to Mr. Sullivant,  
15          Sr.'s testamentary capacity.

16          MR. ROBERT SULLIVANT, JR.: And I'm stating  
17          per Rule 706, I'm entitled to depose him. I was  
18          not -- it should have been disclosed to me.  
19          There's no way I could have prepared to examine  
20          an expert witness without notice.

21          I deserve to that have in order for me --  
22          because there were things I wanted to ask him  
23          about, but I have to prepare for that. I just  
24          can't do it on the fly.

25          He's an expert witness. He's an M.D. It's

1 -- you just can't examine those people on the  
2 fly.

3 Mr. Alford had that knowledge, I did not.  
4 And he was an independent witness, and I think  
5 that negates his independence.

6 MR. HALE FREELAND: Your Honor --

7 HONORABLE ROBERT Q. WHITWELL: Mr.  
8 Freeland?

9 MR. HALE FREELAND: -- I want -- well,  
10 there is no -- I have never heard anything that  
11 a Court can set aside something because the  
12 party is not prepared.

13 But in any event, his e-mail on March 3rd,  
14 Mr. -- acknowledges after Mr. Alford says,  
15 *You've got to pay Mr. -- Dr. Perkins for his*  
16 *deposition.* And Mr. Sullivant acknowledges, *The*  
17 *Court will have to determine who pays.*

18 I can't make anyone show up, like Mr.  
19 Sullivant tried to do, without paying them and  
20 following the rules. That's kind of what he  
21 tried to do.

22 And, Your Honor, the rule is clear, under  
23 Rule 706, Dr. Perkins is entitled to  
24 compensation for his time. He just doesn't want  
25 to pay it, and if I --

1 MR. ROBERT SULLIVANT, JR.: I object --

2 MR. HALE FREELAND: Let me finish.

3 MR. ROBERT SULLIVANT, JR.: -- that is not  
4 true. I never said -- I said I would pay it,  
5 but it says it has to be set by the Court, not  
6 by the opposing counsel.

7 MR. HALE FREELAND: All he had to do, if he  
8 disagreed with the amount, is what I would have  
9 to do, is to ask the Judge, *Judge, this is too*  
10 *much money.*

11 But you have to prove this is inconsistent  
12 with what a professional, like Dr. Perkins,  
13 would charge. Then he has to pay it in advance.  
14 He has to go through the hoops to do that.

15 He has to say, okay, I don't think this is  
16 right. Court, what should the compensation pay?  
17 And present proof of what psychiatrists get  
18 paid, and then do it in Jackson without prior --

19 MR. ROBERT SULLIVANT, JR.: Your Honor, I'm  
20 going to --

21 MR. HALE FREELAND: The 13th Amendment to  
22 the Constitution disqualifies people for  
23 involuntary services, slavery. It says you  
24 cannot make someone work for not being paid.

25 That's what he's trying to do.

1 MR. ROBERT SULLIVANT, JR.: That is not  
2 true. That is false. I have never stated that.

3 MR. HALE FREELAND: He is --

4 MR. ROBERT SULLIVANT, JR.: Point out where  
5 I have ever stated that --

6 MR. HALE FREELAND: He has not paid --

7 MR. ROBERT SULLIVANT, JR.: -- please.

8 That is not true --

9 HONORABLE ROBERT Q. WHITWELL: Mr.  
10 Sullivant, don't talk when he's talking.

11 MR. HALE FREELAND: He hasn't paid him. He  
12 hasn't offered to pay him. He hasn't asked the  
13 Court, *This is too high. What should he be*  
14 *paid?*

15 All he's asked is subpoenaed my client to  
16 be here and asked him to be held in contempt.  
17 If he wants to be a pro se party, he's got to  
18 follow the rules just like we do, and he didn't  
19 do it.

20 MR. ROBERT SULLIVANT, JR.: The rules that  
21 I have in my hand that I've written to -- that  
22 he actually left part of it out when he quoted  
23 it says, *To be set by the Court, not by opposing*  
24 *counsel.*

25 Opposing counsel was trying to set the

1 rate. I did not want to cooperate with that.  
2 Perkins could have called me anytime obtaining  
3 -- I've never stated -- it's not stated anywhere  
4 that I expected him to work for free.

5 This rule says his compensation will be set  
6 by the Court, and he will be paid like any other  
7 court costs.

8 HONORABLE ROBERT Q. WHITWELL: Mr.  
9 Sullivant, we can cut to the chase on this. You  
10 have basically said that this guy is a  
11 court-appointed expert, and that's why you're  
12 using Rule 706.

13 MR. ROBERT SULLIVANT, JR.: Right.

14 HONORABLE ROBERT Q. WHITWELL: And the  
15 Court is of the opinion that that was an agreed  
16 order, like Ms. Ware said, to allow Mr. Perkins  
17 to examine your father and make an opinion.

18 Either party could have done what they  
19 wanted to with him, as far as that, but he  
20 became in my opinion a Rule 26 doctor.

21 And before you take his deposition, I agree  
22 with you, you tried to contact him. You didn't  
23 get a response and so forth. You said, *I'm*  
24 *going to subpoena you.*

25 What you should have done is file a



1 subpoena on him in Madison and told him that I'm  
2 going to take your deposition at a reasonable  
3 time, in two weeks or whatever, on a certain day  
4 at a certain time. I'm going to tender to you a  
5 reasonable fee for your services, and if you  
6 don't accept it, let me know.

7 But you should have followed those rules  
8 that are in Rule 26, because he's entitled to  
9 two hours of preparation. He's entitled to what  
10 it would take for a deposition, estimated on --  
11 based what you might depose him, and you would  
12 have followed those rules.

13 And if he hadn't done it, like Mr. Freeland  
14 said, you would come to the Court and say, *This*  
15 *guy is not cooperating*. And then I would cite  
16 him for contempt of court if he was -- and then  
17 you would have gotten to take his deposition.

18 But you didn't do that. You're doing this  
19 after the fact, after we've already had him  
20 testify.

21 So to me, this is not a 706 situation.  
22 It's a Rule 26. And if it is -- even if it is  
23 partially a Rule 706, every expert is entitled  
24 to some reasonable compensation.

25 MR. ROBERT SULLIVANT, JR.: Well, I'm not

1 going to -- I agree with you, but I will  
2 state -- and I'm confused. It really doesn't  
3 matter which way. I just want some  
4 clarification on how to go forward, and that's  
5 what I'm missing.

6 I'm just being told what it is, and it  
7 doesn't make sense to me. And I don't think  
8 it's right.

9 MR. HALE FREELAND: Well, Your Honor,  
10 what's right and what's not, Mr. Sullivant has  
11 sued my law firm for representing Mr. Perkins in  
12 circuit court, so I --

13 MR. ROBERT SULLIVANT, JR.: I object.  
14 That's irrelevant to this matter.

15 MR. HALE FREELAND: And it is relevant to  
16 this matter and --

17 MR. ROBERT SULLIVANT, JR.: It is not  
18 relevant --

19 MR. HALE FREELAND: Let me --

20 MR. ROBERT SULLIVANT, JR.: -- to our  
21 motion today.

22 MR. HALE FREELAND: Well, he's run to the  
23 circuit court to try to get another judge to  
24 decide differently than these rules solely on  
25 our representation of Dr. Perkins.

1 MR. ROBERT SULLIVANT, JR.: And that is not  
2 a correct statement.

3 MR. HALE FREELAND: And, Your Honor --

4 MR. ROBERT SULLIVANT, JR.: I object to  
5 that.

6 MR. HALE FREELAND: -- we have asked the  
7 circuit judge to dismiss it because this court  
8 has jurisdiction over these matters --

9 HONORABLE ROBERT Q. WHITWELL: Mr.  
10 Sullivant --

11 MR. HALE FREELAND: -- and he's drug us  
12 into circuit court --

13 HONORABLE ROBERT Q. WHITWELL: Hold on. In  
14 your first paragraph, you bring this up, that  
15 Mr. Freeland should be stricken from the case.

16 You haven't raised that today. You haven't  
17 brought it up in your motion, but it's in your  
18 response --

19 MR. ROBERT SULLIVANT, JR.: It is.

20 HONORABLE ROBERT Q. WHITWELL: -- that you  
21 said he should not be allowed to argue this  
22 motion. You didn't bring that before me.

23 And you've got that pending in --  
24 evidently, you filed something in circuit court  
25 against Mr. Freeland here, but that -- that

1 Court will rule on that. If you want me to rule  
2 on it, I will rule on it.

3 But I think the issue here is, is can you  
4 take Mr. Perkins' deposition?

5 Do y'all oppose him taking his deposition,  
6 if he does follow the rule and pays to get  
7 additional information in post-hearing  
8 discovery?

9 MR. HALE FREELAND: No, I don't oppose --  
10 Dr. Perkins doesn't oppose it but doesn't want  
11 things set unilaterally without him being paid  
12 in advance --

13 HONORABLE ROBERT Q. WHITWELL: That's what  
14 I'm saying, if he follows the rule.

15 If you want to take his deposition because  
16 you think you didn't get information that you  
17 think you're entitled to, he's telling you today  
18 that you can take his deposition.

19 But you're going to have to do what I said.  
20 And you can talk to Mr. Freeland and find out  
21 what his costs are.

22 Now, you say you don't agree with it,  
23 that's too bad because I've had to -- I have  
24 been practicing 40 years, Mr. Sullivant, Jr.

25 And doctors have said \$1,500.00, 2,000,

1 4,000, whatever they want to say, and you've got  
2 to pay it if you want their deposition.

3 So you're here trying to get a deposition,  
4 and they're willing to let you take it. But you  
5 are going to have to follow the rules of what he  
6 wants for two hours' prep and, say, a four-hour  
7 deposition.

8 MR. ROBERT SULLIVANT, JR.: Okay.

9 HONORABLE ROBERT Q. WHITWELL: And you'll  
10 have to pay it in advance.

11 MR. HALE FREELAND: And it will be in  
12 Lakeland.

13 HONORABLE ROBERT Q. WHITWELL: And it will  
14 be under the rule in the county -- huh?

15 MR. ROBERT SULLIVANT, JR.: I have never  
16 objected to doing it in Lakeland or Flowood,  
17 wherever.

18 HONORABLE ROBERT Q. WHITWELL: Okay. Well,  
19 that's where it's going to be done, if you want  
20 to do it.

21 But as far as the way you have filed this  
22 subpoena, in my view, I'm going to quash it  
23 because I don't think it is filed properly.

24 I'm going to allow you -- I'm not cutting  
25 you off. I'm going to allow you to depose him,

1 if you want to, if you'll follow the rule.

2 MR. ROBERT SULLIVANT, JR.: Then may I ask  
3 to clarify the rules or propose a rule?

4 HONORABLE ROBERT Q. WHITWELL: Well, I'm --

5 MR. ROBERT SULLIVANT, JR.: Although you  
6 say it's not -- it might not be a Rule 706 and  
7 that the compensation is not set by the Court,  
8 if he is truly independent then I would think  
9 that he charges me the same rate that he charges  
10 Mr. Alford.

11 And I would be agreeable to pay the terms  
12 that he came here and testified on May the 9th  
13 to.

14 MR. HALE FREELAND: Well, today is not a  
15 day to negotiate. It's \$600.00 an hour. If he  
16 wants to depose him, he's got to pay the  
17 freight, Your Honor.

18 It's two hours beforehand and for the time  
19 of his deposition in advance before Dr. Perkins  
20 shows up at a calendar date that he is  
21 available -- he has patients -- and I'm  
22 available, not unilaterally set by Mr. Sullivant  
23 whenever he feels like setting it.

24 MR. ROBERT SULLIVANT, JR.: And I object to  
25 the \$600.00 an hour. That's just an arbitrary

1 amount meant to prevent me from deposing him.

2 I will say if he is independent what would  
3 be fair and what would be agreeable is the  
4 same -- if he's independent and we're -- I'm the  
5 same as Mr. Alford is, then I say whatever rate  
6 that he charged Mr. Alford on my father to come  
7 here to testify on May the 9th would be a  
8 reasonable amount.

9 He just can't come up with an arbitrary  
10 amount because that sounds a little high.

11 MR. HALE FREELAND: Your Honor, he's not a  
12 psychiatrist. He doesn't have any proof of what  
13 a reasonable rate is. He's an accountant.

14 So unless he can show the Court today that  
15 that's -- of any professional proof, that is a  
16 reasonable rate. You don't have anything but  
17 his request to pay.

18 He's a psychiatrist. I'm not a  
19 psychiatrist. You're not a psychiatrist.  
20 There's got to be some proof to the contrary,  
21 other than his saying what is reasonable or not.

22 That's just what he wants, and he doesn't  
23 want to pay it.

24 MR. ROBERT SULLIVANT, JR.: And I have  
25 evidence that Mr. Alford has tried to end this

1 of me deposing Frank Perkins, and I think this  
2 rate is just arbitrarily set to prevent me from  
3 deposing him.

4 And like I said, he's an independent  
5 medical examiner. I believe I have the right to  
6 examine him on some questionable things that  
7 have happened, and I just ask for a reasonable  
8 rate.

9 We might not be able to determine that.  
10 There is nothing said that we have to determine  
11 that today.

12 But I will state that what would be  
13 reasonable is whatever he charged Mr. Alford to  
14 come up here and testify, that seems like his  
15 rate. That would be his rate. Let's go with  
16 that.

17 MR. HALE FREELAND: What he thinks is  
18 reasonable is not relevant, Your Honor.

19 HONORABLE ROBERT Q. WHITWELL: Mr. Davis?

20 MR. WALTER DAVIS: Your Honor, on behalf of  
21 the conservator, I have still not heard anything  
22 that informs the Court why this deposition would  
23 be within the permissible scope of discovery  
24 because the Court has already ruled on the  
25 testimony given by Dr. Perkins.



1           It's ruled on whether or not a  
2 conservatorship should be established. It has  
3 ruled on whether or not Mr. Sullivant has  
4 testamentary capacity.

5           There is no current pending claim before  
6 this Court to which Dr. Perkins' testimony is  
7 relevant.

8           And before the conservatorship has to  
9 expend a lot more money defending a deposition,  
10 traveling to Jackson, there needs to be  
11 something that puts it within the scope of  
12 discovery, and I have not heard it yet.

13           MR. ROBERT SULLIVANT, JR.: Well, I will be  
14 more than happy to entertain that.

15           MR. HALE FREELAND: Your Honor, he is  
16 costing my client fees to go down there, the  
17 conservator fees, and his father fees because he  
18 wants to argue something that has already been  
19 decided.

20           MS. KAYLA WARE: Sullivant, Jr. was the  
21 first one to file saying his daddy needed a  
22 conservator. He just don't like who you  
23 appointed.

24           We all agreed he needed a conservator. He  
25 just doesn't like that you didn't appoint him

1 and instead you appointed Sherry Wall.

2 MR. ROBERT SULLIVANT, JR.: I object. That  
3 is not the reason I'm here for this motion.

4 The reason I am here for this motion has to  
5 be his opinion that he expressed about  
6 testamentary capacity, and I was not able to  
7 cross-examine him because I did not know he was  
8 going to appear. I would have liked to ask him  
9 some more questions about that.

10 I found it very suspicious that on April  
11 22nd there is no mention that he -- that he has  
12 this opinion in a motion which he did and it  
13 should be.

14 It's not an opinion that he wrote, and I  
15 was -- I was surprised by this. I'm entitled --

16 MR. WALTER DAVIS: Again, Judge, you have  
17 ruled on that. You've already ruled on that --

18 MS. KAYLA WARE: And, Your Honor, before I  
19 --

20 MR. WALTER DAVIS: -- if he doesn't like  
21 it, he can appeal it.

22 MR. HALE FREELAND: Here is his opinion --

23 MS. KAYLA WARE: Before Mr. Sullivant, Jr.  
24 interrupted me, I was going to finish saying  
25 that there was two experts appointed. He also

1 chose one or his attorney at the time.

2 For some reason, he's keeps -- he's not  
3 even brought up in this. He essentially had  
4 pretty much the same opinion about Mr.  
5 Sullivant, Sr.

6 We were all on the same page. There needs  
7 to be a conservator. One was appointed. We had  
8 a hearing in front of you on the testamentary  
9 capacity. You granted the motion. It's done.

10 He did not -- he has not appealed or asked  
11 you to reconsider anything since that time, Your  
12 Honor.

13 All he's done is continue to file more  
14 motions and interlocutory appeals. There's  
15 nothing that Dr. Perkins can say that has  
16 anything to do with anything anymore.

17 Your Honor, there's a conservator in place.  
18 We were all in agreement there needed to be a  
19 conservator in place.

20 MR. ROBERT SULLIVANT, JR.: And again, this  
21 is not about conservatorship. It's about the  
22 fact of testamentary capacity --

23 HONORABLE ROBERT Q. WHITWELL: Yeah, it's  
24 about -- you don't like the fact that your dad  
25 said he was going to change his will, and you

1 don't think he has got the testamentary capacity  
2 to do that.

3 MR. ROBERT SULLIVANT, JR.: That's correct.

4 HONORABLE ROBERT Q. WHITWELL: And the  
5 doctor has said he does.

6 MR. ROBERT SULLIVANT, JR.: And I found  
7 that testimony very suspicious, and I would like  
8 to depose --

9 HONORABLE ROBERT Q. WHITWELL: Your feeling  
10 of suspicion is not sufficient.

11 So I tend to agree with Mr. Davis, that the  
12 matter has been ruled on. And I think that  
13 going forward to the trial, there's been, I  
14 think, allegations of undue influence or  
15 something by you.

16 It might be that there might be some  
17 relevance to -- in that to depose Perkins or  
18 your expert or someone else about that.

19 But at this point, I don't think it is  
20 relevant to the issue at hand. So I'm going to  
21 grant the motion to quash.

22 MR. ROBERT SULLIVANT, JR.: Well, can I ask  
23 to have clarification on if he's a Rule 35  
24 witness or a Rule -- is it 26?

25 I'm just confused about which rules I'm

1 supposed to follow --

2 HONORABLE ROBERT Q. WHITWELL: I will put  
3 it this way, I'm not going to cite you another  
4 rule. I've already cited you a rule.

5 The point is, he is not a court-appointed  
6 expert, as you have put in every document you  
7 have filed in this court. And you keep filing  
8 that he's court-appointed, court-appointed in  
9 every paragraph of this motion --

10 MR. ROBERT SULLIVANT, JR.: Right.

11 HONORABLE ROBERT Q. WHITWELL: -- and it's  
12 not --

13 MR. ROBERT SULLIVANT, JR.: And I cite --

14 HONORABLE ROBERT Q. WHITWELL: -- so it's  
15 denied.

16 MR. ROBERT SULLIVANT, JR.: And the  
17 testimony that day between Mr. Alford and Frank  
18 Perkins that they agree that he is a  
19 court-appointed witness, Mr. Alford asked him  
20 that, and he agreed.

21 And then also in your opinion to deny  
22 recusal, you state that he is a court-appointed  
23 witness, and I have that.

24 HONORABLE ROBERT Q. WHITWELL: Court-appoin  
25 ted by agreement is what I said, that y'all

1                   agreed to an agreed order.

2                   That issue is over with. I'm not hearing  
3 any more argument over it. I've already ruled.

4                   MR. ROBERT SULLIVANT, JR.: Thank you.

5                   MR. HALE FREELAND: I will submit an order,  
6 Your Honor.

7                   HONORABLE ROBERT Q. WHITWELL: And your  
8 motion to strike?

9                   MR. HALE FREELAND: I'm just praying this  
10 goes away. I'm not going to bring it up.

11                   MR. WALTER DAVIS: May we be excused?

12                   HONORABLE ROBERT Q. WHITWELL: You may be  
13 excused.

14                   (WHEREUPON, THE PROCEEDINGS WERE  
15 CONCLUDED.)

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## 1 COURT REPORTER'S CERTIFICATE

2  
3 STATE OF MISSISSIPPI

4 COUNTY OF UNION

5  
6 I, Cecily Boone Faulkner, RPR, CSR, Official  
7 Court Reporter for the Eighteenth Chancery District,  
8 Mississippi, do hereby certify that to the best of my  
9 skill and ability I have reported the proceedings had and  
10 done in the above styled and numbered cause, being Cause  
11 No. CV-2021-612, on the docket of the Lafayette County  
12 Chancery Court, and the above and foregoing fifty-five  
13 (55) pages contain a true, full and correct transcript of  
14 my stenographic notes and realtime taken in said  
15 proceedings.16  
17 I do further certify that my certificate  
18 attached hereto applies only to the original and certified  
19 transcript. The undersigned assumes no responsibility for  
20 the accuracy of any reproduced copies not made under my  
21 control or direction.22  
23 This the 4th day of September, 2023.24  
25 */s/ Cecily Boone Faulkner*26  
27 CECILY BOONE FAULKNER, RPR, CSR  
28 Official Court Reporter  
29 512 Lakeview Cove  
30 New Albany, Mississippi 38652  
31 (662) 316-1829  
32 National RPR No. 048426  
33 Mississippi CSR No. 115734 My Commission Expires: 1/12/2024  
35