

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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3

4 ROBERT SULLIVANT, SR. PLAINTIFF

5 VS. CAUSE NO. CV-2021-612

6 ROBERT SULLIVANT, JR. DEFENDANT

7

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9 TRANSCRIPT OF THE MOTIONS 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 9TH DAY OF MAY, 2023, IN
13 LAFAYETTE COUNTY, MISSISSIPPI, TAKEN BY CECILY BOONE
14 FAULKNER, RPR, CSR, OFFICIAL COURT REPORTER FOR THE
15 EIGHTEENTH CHANCERY COURT DISTRICT OF MISSISSIPPI.

16 *****

17

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

5 HONORABLE ROBERT Q. WHITWELL: All
6 right. This is Chancery Court of
7 Lafayette County, Mississippi, *Robert*
8 *Sullivant, Sr., Plaintiff, versus Cause*
9 *Number 202-1612-W, Robert Sullivant, Jr.,*
10 *Defendant.*

11 I have two agreed orders. The first
12 agreed order dated April 25th, 2023, sets
13 a hearing on the plaintiff's motion for
14 trial setting, a motion for partial
15 disbursement, plaintiff's motion to
16 appoint a conservator and request for
17 permission for Robert Sullivant, Sr. to
18 execute a will. That's Mr. Alford's
19 motions.

20 Then I have an order signed by both
21 parties setting a hearing on the
22 defendant's objection to the plaintiff's
23 request for a setting, and a cross-motion
24 to continue trial and motion to disqualify
25 Mr. Alford as counsel for the plaintiff,
26 and that is set for today.

27 So the Court has reviewed the file,
28 and with reference to the motion for a
29 partial disbursement to pay federal and

1 state taxes, Mr. Sullivant, Jr., do you
2 have any objection to that?

3 MR. ROBERT SULLIVANT, JR.: I do not.
4 And I have read the order by Mr. Alford,
5 and I've asked him to change a few things
6 on it, and I believe he was agreeable to
7 that.

8 And I think we can proceed forward
9 upon the changes in that order, and we can
10 proceed with paying the taxes.

11 HONORABLE ROBERT Q. WHITWELL: I
12 don't know what that says.

13 As far as I'm concerned, that motion
14 will be granted. I don't know what
15 stipulations y'all have come to regarding
16 that.

17 MR. SWAYZE ALFORD: Mr. Sullivant,
18 Jr., Your Honor, just wanted to be kept in
19 the loop as to preparation of the tax
20 return and the work papers Mr. Devoe is
21 using to arrive at the numbers, and I
22 think that's fine.

23 HONORABLE ROBERT Q. WHITWELL: Well,
24 Mr. Sullivant, Jr. has an accounting
25 background --

26 MR. SWAYZE ALFORD: Yes, sir.

27 HONORABLE ROBERT Q. WHITWELL: -- and
28 he's certainly capable of reviewing that,
29 and I will agree to that.

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

3 HONORABLE ROBERT Q. WHITWELL: Get an
4 order on that. That takes care of number
5 one.

6 The next motion, the way I see it, is
7 to appoint a conservator, and then a
8 separate action filed by Mr. Sullivan, an
9 emergency petition to appoint a
10 conservator -- to appoint him as
11 conservator.

12 The Court is of the opinion that
13 because there is a complaint filed against
14 Mr. Sullivan and has pending matters
15 related to Mr. Alford representing the
16 conservator that might be appointed, so
17 forth, the Court is going to appoint
18 Sherry Wall, the Chancery Clerk, as
19 conservator of Mr. Sullivan, Sr. She
20 will be allowed to hire her own counsel to
21 represent her.

22 And so all of the allegations of who
23 is handling the money and all of that, who
24 is going to be paying the bills, is going
25 to be handled by Ms. Wall, or her
26 successor in case we go way beyond January
27 the 1st.

28 In addition to that, I don't see any
29 need for proceeding on an emergency

1 petition filed by Mr. Sullivant, Jr., who
2 is requesting that he be appointed the
3 conservator.

4 I have read your petition, Mr.
5 Sullivant. One of the things that showed
6 of interest was that you had such a great
7 relationship with your father.

8 The Court didn't come in on a
9 watermelon truck. I was present in Holly
10 Springs when you were there last time.

11 And after the hearing was over, you
12 sat there while Mr. Sullivant got up and
13 left the room. You never even spoke to
14 him. You never even went over and hugged
15 him. You did nothing.

16 As far as I'm concerned, there is no
17 closeness of a relationship that would
18 allow me to appoint you as conservator to
19 handle this matter.

20 So for that reason and other reasons,
21 Sherry Wall will be appointed the
22 conservator. The defendant's emergency
23 petition will be denied.

24 Any other matters involved in that
25 petition that you want to bring forth to
26 the Court can be brought at a later
27 time -- can be brought up at a later time.
28 The next -- that takes care of number two.

29 Number three is a motion for trial

1 setting. I understand your position. I'm
2 not going to get into in front of all of
3 this crowd your allegations against Mr.
4 Alford, but the trial setting can be put
5 off far enough.

6 I noticed that the letter you have
7 attached from the Bar Association required
8 him to file a response pretty quickly
9 related to that, so I'm sure that will be
10 dealt with there.

11 I'm not going to try the issues of
12 your motion to disqualify him because of
13 all of those reasons that you claim. It
14 would be like me telling somebody they're
15 guilty until proven -- they're innocent
16 until proven guilty.

17 In my opinion, until something
18 happens from the Bar, there is no need of
19 that. We can set this matter off far
20 enough that y'all can come to an agreement
21 on a trial setting.

22 If you can't come to an agreement, I
23 will set it myself some time over in the
24 summer.

25 So the motion for trial setting will
26 be granted.

27 Your motion to continue the trial is
28 denied. Your cross-motion is denied
29 because the trial hasn't been set yet, and

1 so there is no need to have a motion to
2 continue the trial because I haven't set a
3 trial yet.

4 I guess you may have wanted to
5 continue the matter related to the
6 conservator, but I'm making a ruling on
7 that. We're going to get that out of the
8 way now, so y'all can agree on a date as
9 soon as possible.

10 Do you think you can do that with Mr.
11 Alford?

12 MR. ROBERT SULLIVANT, JR.: I can do
13 that, but I also have a motion that I
14 haven't set yet to amend the -- my
15 complaint, and I was waiting to --

16 HONORABLE ROBERT Q. WHITWELL: I'm
17 getting to that.

18 MR. ROBERT SULLIVANT, JR.: -- I was
19 just going to wait to see how that went to
20 decide when the trial could be.

21 HONORABLE ROBERT Q. WHITWELL: All
22 right. Let's see. I had it here
23 somewhere.

24 So I assume you're asking to amend
25 your counterclaim, right?

26 MR. ROBERT SULLIVANT, JR.: Yes, Your
27 Honor.

28 HONORABLE ROBERT Q. WHITWELL: Not
29 your emergency petition. You're talking

1 about the counterclaim?

2 MR. ROBERT SULLIVANT, JR.: Yes, Your
3 Honor, amend the cross-complaint.

4 HONORABLE ROBERT Q. WHITWELL: All
5 right. I think it is counterclaim --
6 whatever.

7 You will have -- how long do you need
8 to do that?

9 MR. ROBERT SULLIVANT, JR.: I have
10 submitted a proposed amendment. I have
11 already prepared that, and I just need
12 your approval to amend the
13 cross-complaint. And then --

14 HONORABLE ROBERT Q. WHITWELL: All
15 you've got to do is give me an order
16 saying that I approve your amendment, and
17 you can file your -- whatever your
18 proposed complaint is.

19 I don't have to approve your proposed
20 complaint.

21 MR. ROBERT SULLIVANT, JR.: Okay. I
22 just misread the rules and thought that
23 you had to approve the amendment of the
24 complaint.

25 HONORABLE ROBERT Q. WHITWELL: You
26 are filing -- if it's got objections to
27 it, he will file objections to it, and
28 we'll rule on that.

29 MR. ROBERT SULLIVANT, JR.: Okay. So

1 I should just go ahead and file the --

2 HONORABLE ROBERT Q. WHITWELL: Get me
3 an order granting the authorization to
4 amend, I'll say, within ten days. How
5 about that?

6 You have ten days to amend.

7 MR. ROBERT SULLIVANT, JR.: Okay.
8 Your Honor, so, therefore, I just will
9 bring you an order, and I have already
10 amended it. I've already prepared it,
11 and --

12 HONORABLE ROBERT Q. WHITWELL: Don't
13 file it until I sign the order.

14 MR. ROBERT SULLIVANT, JR.: Okay.

15 HONORABLE ROBERT Q. WHITWELL: But
16 don't call it a proposed amendment. You
17 call it an amendment to your --

18 MR. ROBERT SULLIVANT, JR.: Okay, I'm
19 sorry. Good enough.

20 HONORABLE ROBERT Q. WHITWELL: All
21 right.

22 MR. ROBERT SULLIVANT, JR.: Thank
23 you.

24 HONORABLE ROBERT Q. WHITWELL: You
25 also filed with that cross-motion to
26 continue a motion to disqualify Mr. Alford
27 as counsel for Mr. Robert, Sr.

28 The Court considers that motion to be
29 premature, and I'm going to dismiss it

1 without prejudice.

2 If the Bar rules some way that would
3 make it important for me to hear that,
4 then you can bring it back to my
5 attention. You can refile that motion.

6 But for now, the motion to disqualify
7 Mr. Alford will be dismissed without
8 prejudice as premature.

9 Seems like the last thing that I have
10 on the motions is Mr. Alford's motion
11 to -- for permission for Mr. Sullivant,
12 Sr. to execute a will.

13 MR. SWAYZE ALFORD: Yes, Your Honor.

14 HONORABLE ROBERT Q. WHITWELL: All
15 right. What do you have to say about
16 that?

17 MR. SWAYZE ALFORD: Your Honor,
18 first, I would call Mr. Frank Perkins,
19 Dr. Perkins, who performed an IME, one the
20 doctors -- the doctor that performed the
21 IME on Mr. Sullivant, Sr. I would like to
22 call him first.

23 HONORABLE ROBERT Q. WHITWELL: Is he
24 here?

25 MR. SWAYZE ALFORD: He is here.

26 HONORABLE ROBERT Q. WHITWELL: All
27 right.

28 Dr. Perkins, come around. Stand
29 right there and raise your right hand.

1 (WHEREUPON, THE WITNESS STOOD, FACED
2 THE CLERK AND RAISED HIS RIGHT HAND TO
3 TAKE THE OATH.)

4 HONORABLE ROBERT Q. WHITWELL: All
5 right. Come around over here.

6 MR. ROBERT SULLIVANT, JR.: Your
7 Honor, could I have just a moment to get
8 that stuff out? I had the other motions
9 out.

10 If I could get a chance to pull out
11 my information on the motion that we're
12 about to hear now, please?

13 HONORABLE ROBERT Q. WHITWELL: All
14 right.

15 MR. SWAYZE ALFORD: Is that good,
16 Your Honor, where Dr. --

17 THE WITNESS: Where do you want me?

18 HONORABLE ROBERT Q. WHITWELL: That's
19 fine, right there.

20 (WHEREUPON, THE WITNESS ENTERED THE
21 WITNESS STAND.)

22 DR. FRANK PERKINS,
23 having been called as a witness, was first duly
24 sworn and testified as follows:

25 HONORABLE ROBERT Q. WHITWELL: Tell
26 me when you're ready.

27 MR. ROBERT SULLIVANT, JR.: Oh, I'm
28 ready.

29 HONORABLE ROBERT Q. WHITWELL: All

1 right. You may proceed.

2 DR. FRANK PERKINS,

3 having been first duly sworn, was examined and
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SWAYZE ALFORD:

7 Q. Will you state your name for the record,
8 please?

9 A. Frank Perkins.

10 Q. And your occupation or employment?

11 A. I'm a board certified forensic
12 psychiatrist. My day jobs are, I'm the chief of
13 psychiatry at Merit Health Central in Jackson,
14 Mississippi, and then I'm the medical director for
15 two geriatric psychiatric inpatient units at Merit
16 Health Wesley in Hattiesburg and Merit Health Biloxi
17 in Biloxi, Mississippi.

18 Q. And so you already told us you are board
19 certified, but just tell Judge Whitwell where you
20 got your education.

21 A. Yes, sir. I did my medical school
22 training at the University of Alabama School of
23 Medicine, and then I did my residency in psychiatry
24 at the University of Mississippi Medical Center and
25 then a forensic psychiatry fellowship in the State
26 University of New York in Syracuse, New York.

27 Q. And how long have you been practicing in
28 private practice?

29 A. I have been in private practice now for

1 going on five years.

2 Q. All right. Have you been qualified as an
3 expert before in the state courts of Mississippi?

4 A. Yes, sir.

5 MR. SWAYZE ALFORD: All right. Your
6 Honor, we would offer Dr. Perkins as an
7 expert in his stated specialty of
8 psychiatry.

9 HONORABLE ROBERT Q. WHITWELL: Any
10 objection to that, Mr. Sullivant, Jr.?

11 MR. ROBERT SULLIVANT, JR.: I'm
12 sorry, I was reading the report.

13 HONORABLE ROBERT Q. WHITWELL: All
14 right. He's asked to offer him as a
15 forensic psychiatrist and --

16 MR. ROBERT SULLIVANT, JR.: No, I
17 have no objection to that.

18 HONORABLE ROBERT Q. WHITWELL: You
19 have no objection to the stipulation of
20 his qualifications?

21 MR. ROBERT SULLIVANT, JR.: No, I do
22 not.

23 HONORABLE ROBERT Q. WHITWELL: All
24 right. He will be -- Dr. Perkins will be
25 stipulated as a board certified
26 psychiatrist, a forensic psychiatrist.

27 Is that correct?

28 THE WITNESS: Yes, sir.

29 HONORABLE ROBERT Q. WHITWELL: All

1 right.

2 BY MR. SWAYZE ALFORD:

3 Q. Dr. Perkins, were you appointed by court
4 order in this matter to do an Independent Medical
5 Examination on Mr. Robert Sullivant, Sr.?

6 A. I was.

7 Q. And did you do that?

8 A. I did.

9 Q. Do you remember when that occurred?

10 A. I evaluated him on the 17th of January of
11 this year, and then I finalized a report on I
12 believe it was the 27th.

13 Q. All right. Let me hand you a medical
14 affidavit and ask you if you recognize that.

15 A. Yes, this is my report that I formulated
16 in this matter.

17 Q. And so when you are court ordered to do
18 the Independent Medical Examination for an
19 individual under the GAP Act, can you tell the Court
20 how you go about doing that?

21 A. So I begin off with having just a verbal
22 conversation with the individual and doing what is
23 considered a psychiatric evaluation, which is a
24 standardized process for which that we do.

25 And then I follow that with any
26 appropriate testing that would be necessary to help
27 clarify diagnosis and level of impairment that
28 someone might have.

29 If that individual -- if either the court

1 order or the individual raises other issues during
2 my interview, such as testamentary capacity, I may
3 ask those questions at that time as well.

4 Q. So in that evaluation of Mr. Sullivant in
5 January, did you make those determinations or
6 evaluations on testamentary capacity then?

7 A. I did.

8 Q. And what was your opinion about his
9 testamentary capacity?

10 A. That at that time he did -- he did retain
11 the capacity to form testament.

12 Q. And what were the reasons that you went
13 into that with Mr. Sullivant, Sr.?

14 A. So from a forensic psychiatric standpoint,
15 which is where mental health and the law interact,
16 where we have been trained and where I have been
17 taught is the things that we pay attention to is due
18 to mental illness or dementia or any cognitive
19 impairment is there an impairment in the ability to
20 know who ones natural heirs are, what the assets
21 that they hold are, what would happen without a will
22 in place, and who they want to formulate the will.

23 It is less important about the why that
24 they want to formulate the will, as long as they
25 don't have a psychotic disorder that would make
26 their reasonings outside of reality.

27 So it is most important that they have the
28 capacity to know the facts of what a testament or a
29 will would be, and then have -- do they have the

1 ability to manipulate that information to formulate
2 however they want their will to be made.

3 Q. Did Mr. Sullivant, Sr. express that to
4 you?

5 A. He did.

6 Q. In what context? How did that come up, as
7 far as devising his estate or will?

8 A. So during our interview, during the --
9 before I did any of the testing when we were just
10 having a conversation, we were talking about his
11 family, he spontaneously raised that he wanted to
12 change his will.

13 And so that then sparked the conversation
14 with me to asking him, well, you know, do you
15 currently have a will? Which, at that time, he did.

16 Who is in your will? Without a will, who
17 would that flow to? Which would be his son, and in
18 the will it did flow to his son. And what assets he
19 had.

20 He's not able to provide the exact numbers
21 to the assets, but he is able to say, *These are*
22 *where the assets are held.* So with cognitive aids,
23 he is able to identify what his assets are.

24 When it's concerning to me is when someone
25 would identify assets as I either have \$5,000.00
26 when they have more than that, or they identify that
27 they have large wealth and they do not have it.

28 So he's able to appropriately gauge his
29 assets, and then he's able to gauge who he wanted

1 his assets to flow to. And then -- so at that time,
2 he had it intact.

3 Q. He informed you that he had a will in
4 place at the time that had his son as the heir?

5 A. Correct.

6 Q. So what did he tell you about that?

7 A. He said he didn't want his son to be his
8 heir anymore.

9 Q. Did y'all go into that at all, or where he
10 wanted to leave it?

11 A. He raised some issues regarding a property
12 sale and some money, but I did not get into the
13 depths of that.

14 I just -- because when it comes to
15 testamentary capacity, as I said, it's less
16 important the why for me and more important the, you
17 know, being able to meet those prongs of
18 testamentary capacity.

19 Q. And did he at that time disclose to you
20 what his desires were or how he wanted to direct his
21 estate?

22 A. At that time, he said that he had a church
23 that he had identified, but he didn't have it
24 formally planned out as to who all he wanted -- or
25 how he wanted it devised. He just said that he
26 wanted to change it.

27 Q. All right. I think you said a moment ago
28 that this was a spontaneous comment by Mr.
29 Sullivant, Jr. (sic.) when you were doing your IME

1 in January?

2 A. Correct.

3 Q. And just to be clear, this is not
4 something you and I even talked about?

5 A. Correct.

6 Q. Now, coming forward to today and talking
7 about Mr. Sullivant and his testamentary capacity,
8 have you had a chance to talk with him again today?

9 A. Yes. We met for 20 to 30 minutes this
10 morning before coming over to the courthouse.

11 Q. And, again, in your opinion, he has the
12 testamentary capacity to execute a will to devise
13 his property where he wants it to go?

14 A. He does. He does. He'll -- if given
15 freeform speech, he will spiral off and kind of go
16 down rabbit holes and kind of miss the topic of the
17 conversation.

18 But with redirection, he is still able to
19 demonstrate capacity and retention of the ability to
20 identify those prongs of testamentary capacity.

21 Q. And, again, in your opinion, he is aware
22 of what his estate is?

23 A. Yes. Yes.

24 Q. And he can articulate and express to you
25 how he wants that estate to be devised by a will?

26 A. Yes.

27 Q. You put in your report, I believe, you
28 know, that he does have an awareness and an ability
29 to voice his wishes and needs, I think, was

1 something you stated?

2 A. I did.

3 Q. So in terms of knowing what he wants and
4 how to express that, he can do that?

5 A. Yes.

6 Q. What you said was that he needs --
7 sometimes he needs somebody to help carry out what
8 he wants to do?

9 A. Correct. Correct.

10 Q. And as it relates to his will, he was able
11 to express that awareness and that desire? He was
12 able to express that to you?

13 A. Yes, sir.

14 Q. Do I understand, it's in your report --
15 and Judge Whitwell has already appointed a
16 conservator.

17 But your opinion was a conservator but one
18 that was independent?

19 A. Correct.

20 Q. And someone that would be neutral?

21 A. Correct.

22 Q. I think you heard Judge Whitwell appoint
23 Chancery Clerk, Sherry Wall, in that capacity.

24 And I'm assuming you would agree that that
25 is somebody who is neutral and independent and they
26 could do --

27 A. Very common appointee, the chancery clerk.
28 Very common.

29 MR. SWAYZE ALFORD: Tender the

1 witness, Your Honor.

2 HONORABLE ROBERT Q. WHITWELL: Okay.

3 Cross-examination, Mr. Sullivant, Jr.?

4 MR. ROBERT SULLIVANT, JR.: Excuse
5 me, sir?

6 HONORABLE ROBERT Q. WHITWELL: I
7 said, cross-examination --

8 MR. ROBERT SULLIVANT, JR.: All
9 right. Thank you.

10 HONORABLE ROBERT Q. WHITWELL: -- Mr.
11 Sullivant, Jr.

12 That's the only way I know how to
13 distinguish you.

14 MR. ROBERT SULLIVANT, JR.: I know.
15 I just couldn't hear you. I'm sorry.

16 Well, first, I would like to say that
17 having Dr. Perkins here as a witness was a
18 complete surprise to me.

19 It wasn't mentioned anywhere in the
20 motion that he would be a witness, so I
21 haven't really had a chance to prepare to
22 cross-examine him, but I did have some
23 questions I did want to ask him.

24 As a matter of fact, I tried to
25 depose Dr. Perkins, but he was very
26 uncooperative in the -- in the deposition
27 process.

28 And that was one of the other things
29 I was going to amend or wanted to postpone

1 the trial was for the conservatorship, but
2 since I had filed that emergency petition,
3 I didn't think that would be needed.

4 But I have attempted to depose
5 Dr. Perkins because I found his report to
6 be a little bit unusual, and I wanted to
7 ask him some more about it. And I was
8 denied that opportunity.

9 He did contact Mr. Alford, and he
10 would not contact me but said I had to
11 contact Mr. Alford in order to depose him,
12 which I think that is improper.

13 So I'm really caught today without
14 any basis to ask these questions.

15 HONORABLE ROBERT Q. WHITWELL: You've
16 had his report; have you not?

17 MR. ROBERT SULLIVANT, JR.: I have
18 his report right here.

19 HONORABLE ROBERT Q. WHITWELL: And
20 you have had it for some time?

21 MR. ROBERT SULLIVANT, JR.: I have
22 had it for some time, but I didn't come
23 prepared today knowing that he would be
24 here.

25 I wanted to ask him questions about
26 it, but I didn't come here today -- it
27 wasn't in a motion, and this was a
28 complete surprise to me.

29 But I will go ahead and ask some

1 questions.

2 HONORABLE ROBERT Q. WHITWELL: If you
3 want to, you can cross-examine him.

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

6 CROSS-EXAMINATION

7 BY MR. ROBERT SULLIVANT, JR.:

8 Q. First thing in your report, you go to the
9 fact that -- if I can turn to the report that -- if
10 I can find it here again.

11 As I said, this has really caught me by
12 surprise.

13 HONORABLE ROBERT Q. WHITWELL: All
14 right. I have heard enough of that, Mr.
15 Sullivant --

16 MR. ROBERT SULLIVANT, JR.: I'm
17 sorry.

18 HONORABLE ROBERT Q. WHITWELL: --
19 just proceed to ask your questions.

20 BY MR. ROBERT SULLIVANT, JR.:

21 Q. Well, you mentioned that my father would
22 need an independent conservator; is that correct, in
23 your opinion?

24 A. It was my opinion that he needed a
25 conservator, and that an independent, neutral
26 conservator would be the most appropriate.

27 Q. Why would that be opposed as to the
28 conservatorship code? It prefers somebody of his
29 family to be his conservator.

1 Why would that be better?

2 A. Because when both the individual and the
3 family member are in the same lane and in agreement
4 with how things should move forward, it works well.

5 But when they're opposed on issues about
6 how things should move forward, a lot of times it
7 can lead to a lot more difficulty and has a lot more
8 stress on the elderly individual that needs the
9 conservator.

10 And so it is better for their care if it's
11 just an independent person to do the financial
12 things.

13 Q. Okay. Good enough. In your experience of
14 doing this when a family member does petition the
15 court or goes forward with the process of putting
16 their parents into a conservatorship, do you find it
17 common that the parent becomes angry with the child?

18 A. Not all. All sorts of different things
19 happen.

20 Q. Does that ever happen?

21 A. It does, but not all the time.

22 Q. Okay. How often?

23 Let's say on a percentage basis, how often
24 would a parent be upset that their child is going to
25 put them into a conservatorship?

26 A. Less than half the time in my experience.

27 Q. How much less than half?

28 A. I don't know. I can't provide a specific
29 number.

1 Q. So you would say about half?

2 A. I said less than half.

3 Q. Okay. But you didn't say how much less
4 than half?

5 HONORABLE ROBERT Q. WHITWELL: He
6 said he didn't know.

7 MR. ROBERT SULLIVANT, JR.: Okay. I
8 just want to be clear that it was -- he
9 said a half, but somewhere below that but
10 wasn't sure because that's a very wide
11 range of percentages.

12 BY MR. ROBERT SULLIVANT, JR.:

13 Q. Now, you also stated when it came to his
14 testamentary capacity that you didn't ask, you know,
15 why would you want to change your will. You were
16 just concerned that he was able to change his will?

17 A. I was concerned that he met the bar for
18 capacity to have testamentary capacity.

19 Testamentary capacity doesn't look at why
20 someone is doing it. It's just whether they can.

21 Q. Okay. Would that not conflict with the
22 rest of the report that you said that he needs a
23 conservatorship, that he cannot handle his own
24 financial choices?

25 A. So capacity is a fluid assessment that
26 changes based on time and based on the level of
27 functioning and the decision at that time.

28 So, for example, somebody can have
29 capacity to decide whether they want to be DNR,

1 whether they want to have chest compressions, but
2 they can't decide whether they want to have cancer
3 treatment because those are two very difficult
4 conversations.

5 One being more a simplistic if you're in
6 the throes of death, do you want to die, or do you
7 want us to try to keep you alive, or here is all of
8 these risks, here's these benefits, here's the
9 chances that it will work. It's a very much more
10 difficult idea to understand treatment versus just
11 do you want chest compressions.

12 In a similar way, when it comes to
13 financial things, you know, there's a lot of
14 contracts, a lot of opportunities that people can
15 take advantage of adults that they need assistance
16 with.

17 But when it comes to testamentary
18 capacity, that's not as complex of an issue as
19 signing a, you know, contract for a lease or buying
20 a house, or something like that where there is a lot
21 more that goes into it that you have to be aware to
22 protect yourself.

23 Q. I see. But you said there was an
24 exception to you don't wonder why, and that is if
25 his reasoning was outside of reality?

26 A. So if you had a psychotic illness. He
27 does not have a psychotic illness in my opinion.

28 Q. Did you receive the information that I
29 sent to you prior to his examination of him?

1 A. No.

2 Q. You did not receive that?

3 A. (Nodding head negatively).

4 Q. I did send some information to your
5 office, and it was the same exact information that I
6 had sent to a Dr. Thomas, who did the first IME.

7 And just -- so, therefore, you did not get
8 that information?

9 A. (Nodding head negatively).

10 Q. All right. So in that --

11 HONORABLE ROBERT Q. WHITWELL: The
12 answer was no?

13 THE WITNESS: No. No. I apologize,
14 Judge. I know, I just --

15 BY MR. ROBERT SULLIVANT, JR.:

16 Q. Okay. I believe in -- I'm sorry. That
17 information that I would have sent I think did show
18 that his reasoning was outside of reality, and I
19 wish you would have gotten it and were aware of that
20 before you had examined him.

21 And just to clarify, he just spontaneously
22 said in the meeting in your examination he wanted to
23 change his will?

24 A. While we were talking about his family and
25 things like that, yes.

26 Q. And he just -- and he just -- he mentioned
27 that first?

28 A. Yeah. Yes, sir.

29 Q. What is your thoughts if my father is

1 under undue influence of somebody else?

2 Would he have the testamentary capacity if
3 he is under undue influence of another person?

4 A. So undue influence is a very, very
5 large -- a very different area, okay, and I would
6 need a lot more information as to whether someone
7 was in -- under undue influence.

8 Having reviewed the will that -- or having
9 had him tell me, you know, who he intends to have
10 profit from his will, it would seem like it would be
11 the church that would be the most -- the person that
12 would be the cause of it, because that seems to be
13 where most of his assets are flowing.

14 So I don't understand how undue influence
15 has anything to do with it.

16 Q. Well, he has not done a new will yet, so
17 we're not certain that the church will be that
18 person -- well, will be the entity that receives all
19 of his assets.

20 A. Okay. I mean, I have no information that
21 he's under undue influence in my interview with him.
22 There is usually -- during an IME if someone is
23 exerting undue influence on someone, there is
24 typically signs of it.

25 Q. Right.

26 A. I did not get any of those while I was
27 there talking to him.

28 Q. But you are stating that undue influence
29 could affect his testamentary capacity?

1 A. I'm not going to say one way or the other
2 because that is a very loaded statement, and I would
3 need more specifics before I say whether it can or
4 can't in his situation.

5 Q. Okay. Have you ever ran into that case
6 before when a person, say, a caregiver was close to
7 the person and had exerted undue influence upon a
8 person, did you find that in those cases it would
9 affect their testamentary capacity?

10 HONORABLE ROBERT Q. WHITWELL: Well,
11 first of all, you asked two questions.

12 MR. ROBERT SULLIVANT, JR.: Okay.

13 HONORABLE ROBERT Q. WHITWELL: He
14 asked you first had you ever run into that
15 before?

16 THE WITNESS: I have had cases that
17 I've been involved in that undue influence
18 was an issue.

19 HONORABLE ROBERT Q. WHITWELL: All
20 right. Now, go to your second question.

21 BY MR. ROBERT SULLIVANT, JR.:

22 Q. Okay. And in those cases, was it your
23 opinion that that undue influence affected their
24 testamentary capacity?

25 A. There is a lot of nuance to undue
26 influence and undue influence evaluations. And in
27 some cases it has, and in some cases it has not.

28 But, typically, in those situations when
29 those wills have been drawn up, those wills were

1 drawn up outside of the setting of a courtroom where
2 a judge had not ruled one way or the other whether a
3 will could be exercised.

4 Q. When did you first see my father's will?

5 A. I have never seen his current will because
6 testamentary capacity is not determined by past
7 wills.

8 Q. Right. But you had said you -- I might
9 have misunderstood you, but I thought you said that
10 you had reviewed his will?

11 A. Today he told me, he was able to tell me
12 what his plans were for the will --

13 Q. Today?

14 A. -- for his new will when I assessed him.

15 Q. Good enough. But he did not indicate to
16 you just -- although, it's not important, but he did
17 not indicate to you why he wanted to change his
18 will?

19 A. He started going down a road about some
20 money over the proceeds of some property sale or
21 something, but I did not explore that and I didn't
22 care to explore it.

23 Q. Did you take notes to that effect?

24 A. No, I don't think so.

25 Q. And you didn't -- you don't -- is that the
26 only thing that you recall about that?

27 That's the only specifics that you recall
28 that he said?

29 A. I steered the conversation in a different

1 direction when he started going down that road
2 because that was not important to me to know.

3 Q. So it wasn't -- so you decided at that
4 point that his reason why just wasn't important, so
5 you steered the conversation or the examination in a
6 different direction?

7 A. I steered the examination towards the
8 prongs of testamentary capacity because he doesn't
9 have a psychotic illness, so I wasn't concerned
10 about his reasonings why. It was just a matter of
11 whether he could.

12 Q. And how did you reach the conclusion that
13 he did not have a psychotic disease or illness?

14 A. During my IME.

15 Q. All right. When I did contact you, do you
16 recall me trying to call you and -- at all to --

17 A. My staff was sending me messages. And the
18 way that I have interacted in all courts was having
19 the other party go through the retaining attorney
20 that retained me to schedule things.

21 Q. Really?

22 A. Uh-huh (Indicating yes).

23 Q. Okay. So, therefore, you just didn't feel
24 the need to respond to me at all?

25 A. I did not. It was not that I didn't need
26 to respond to you, it was that the most appropriate
27 road by which to schedule a deposition with me was
28 through Mr. Alford.

29 Q. Okay. So is that, as you understand it,

1 the Rules of Civil Procedure, or is this a
2 medical -- a medical standard?

3 MR. SWAYZE ALFORD: Your Honor, I've
4 tried to let Mr. Sullivant, Jr. ask
5 whatever questions he wants to ask, but I
6 think we are getting pretty far abroad
7 here, so I object to this line of
8 questioning.

9 HONORABLE ROBERT Q. WHITWELL: Well,
10 it seems to me that that's the policy of
11 Dr. Perkins, and he hasn't quoted any rule
12 or anything else. That's just been his
13 policy and his ways that developed through
14 the years of people scheduling
15 depositions.

16 I'm going to sustain the objection.
17 You're going down the wrong path here with
18 that.

19 MR. ROBERT SULLIVANT, JR.: Okay.
20 Yes, Your Honor.

21 HONORABLE ROBERT Q. WHITWELL: He
22 told you he didn't get back to you because
23 he thought you should go through Mr.
24 Alford.

25 That was his policy, so that's what
26 he did.

27 MR. ROBERT SULLIVANT, JR.: I
28 understand.

29 HONORABLE ROBERT Q. WHITWELL: If you

1 were having trouble with Mr. Alford
2 getting a date, you would come to me and
3 file a motion to require it if you wanted
4 a deposition and if he wasn't cooperative.

5 We're here today, and that's where we
6 are. Let's move on.

7 BY MR. ROBERT SULLIVANT, JR.:

8 Q. Okay. So what pronouncements do you
9 follow on the medical side when you issue one of
10 these opinions?

11 Is there pronouncements that you follow
12 like I had to follow as a CPA? When I issued an
13 opinion, I had to follow certain pronouncements and
14 guidance from my professional body?

15 A. I don't understand what you mean when you
16 say *pronouncement*.

17 Q. Okay. Is there any guidance that you get
18 from the entities that accredit you as an expert, do
19 they give you any guidance saying what you can issue
20 an opinion on and what you cannot issue an opinion
21 on?

22 A. So there is no accrediting body for expert
23 witness, expert testimony, you know, it's basically
24 a court-by-court basis where you're either tendered
25 an expert or not as to whether you can weigh an
26 expert witness.

27 Q. Right.

28 A. As to this document and this affidavit and
29 report, you know, this is the product of the GAP

1 Act. This was created by, basically, a workgroup
2 from the legislature after the legislature
3 created -- passed the GAP Act Law.

4 And so even though there are, you know,
5 templates for IMEs for evaluations for
6 conservatorships and things like that, you know,
7 this is created by our state. So it is kind of a
8 this is what you're supposed to use in our state.

9 Q. In the GAP Act, does it state that the
10 physician or medical professional should exert an
11 opinion on what type of conservator should be
12 appointed, be it independent or a family member?

13 A. I don't think it gives any steering one
14 way or the other.

15 Q. So does the GAP Act rely upon professional
16 expert opinion on what type of conservator to
17 appoint?

18 A. So to my understanding -- which I'm not an
19 attorney. But to my understanding, it's the judge's
20 choice as to who the conservator is.

21 My role in this is not to be the one
22 picking the conservator, not to be the one picking
23 anything. I'm just trying to help the court with
24 this information.

25 And so if there is information that I feel
26 is helpful the court, I include it in my affidavit.
27 And if the court doesn't want to listen to me, they
28 don't have to.

29 Q. Okay. I understand.

1 MR. ROBERT SULLIVANT, JR.: All
2 right. That's all the questions I have.

3 HONORABLE ROBERT Q. WHITWELL: Okay.
4 Any redirect?

5 MR. SWAYZE ALFORD: Just quickly,
6 Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. SWAYZE ALFORD:

9 Q. Just to be clear, I think we said this,
10 Dr. Perkins, but Mr. Sullivant, Jr. asked you a lot
11 of questions about undue influence.

12 Just to be clear in Mr. Sullivant, Sr.'s
13 case, you didn't detect or observe any presence of
14 undue influence by anyone?

15 A. I had -- had, have no inkling, no
16 suspicion of undue influence in this case at all.

17 MR. SWAYZE ALFORD: And, Your Honor,
18 I think Dr. Perkins -- I think his report
19 is probably already in the court record,
20 but I guess I will just out of an
21 abundance of caution make it -- offer it
22 as an exhibit.

23 HONORABLE ROBERT Q. WHITWELL: I have
24 seen it, I think, in the attachments, but
25 it's not a part of this record.

26 MR. SWAYZE ALFORD: I think I will
27 just go ahead and make it --

28 HONORABLE ROBERT Q. WHITWELL: Any
29 objection to it?

1 MR. ROBERT SULLIVANT, JR.: No, Your
2 Honor.

3 HONORABLE ROBERT Q. WHITWELL: It
4 will be marked as Exhibit 1 and admitted
5 into evidence.

6 (WHEREUPON, THE SAME, DR. PERKINS'S
7 REPORT, WAS MARKED AND ADMITTED AS EXHIBIT
8 NUMBER 1.)

9 HONORABLE ROBERT Q. WHITWELL: Are
10 you done with Dr. Perkins?

11 MR. SWAYZE ALFORD: Yes, Your Honor.

12 HONORABLE ROBERT Q. WHITWELL: You
13 are free to go.

14 THE WITNESS: Thank you, sir.

15 HONORABLE ROBERT Q. WHITWELL: Do you
16 need to retain him? He's not under
17 subpoena, is he?

18 MR. SWAYZE ALFORD: No, sir.

19 HONORABLE ROBERT Q. WHITWELL: You're
20 free to go whenever you get ready.

21 THE WITNESS: All right.

22 HONORABLE ROBERT Q. WHITWELL: Thank
23 you for your time.

24 THE WITNESS: You're welcome.

25 (WHEREUPON, THE WITNESS WAS EXCUSED
26 FROM THE WITNESS STAND.)

27 MR. SWAYZE ALFORD: I call Robert
28 Sullivant, Sr. to the stand.

29 THE WITNESS: I get around slow.

1 HONORABLE ROBERT Q. WHITWELL: All
2 right. Stand right there, Mr. Sullivant,
3 and raise your right hand.

4 (WHEREUPON, THE WITNESS STOOD, FACED
5 THE CLERK AND RAISED HIS RIGHT HAND TO
6 TAKE THE OATH.)

7 ROBERT SULLIVANT, SR.,
8 having been called as a witness, was first duly
9 sworn and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. SWAYZE ALFORD:

12 Q. I don't know -- Mr. Bob, I don't know if
13 that's -- it may not even be on right there.

14 Hopefully, everybody can hear you. Just
15 speak up loud enough where everybody can hear you,
16 okay?

17 A. Okay. I can speak loud enough where they
18 can hear me, but now whether I can hear them or
19 not --

20 Q. I'll ask them to speak up for you, too,
21 okay? Can you hear me?

22 A. Yes.

23 Q. Would you state your name for the court
24 reporter please?

25 A. Robert Burnett Sullivant.

26 Q. And you are Senior?

27 A. Senior, yeah.

28 Q. How old are you -- I call you Mr. Bob. Is
29 it okay if I call you Mr. Bob?

1 A. Yes.

2 Q. How old are you, Mr. Bob?

3 A. I'm 89. I will be 90 in December.

4 Q. Okay. And this is your son sitting over
5 here, Robert, Jr.?

6 A. What?

7 Q. This is your son sitting over here,
8 Robert, Jr.?

9 A. Yes, sir.

10 Q. You understand that we're here -- one of
11 the things we're here today on is asking the Court
12 for permission to allow you to sign a new will?

13 A. I still didn't understand you.

14 Q. Do you understand that we're here today
15 asking the Court to allow you to sign a new will?

16 A. Yes.

17 Q. Why do you want to sign a new will?

18 A. Because I don't like the one I made to
19 start with.

20 Q. Okay. What don't you like about the one
21 you made to start with?

22 A. Well, it was made in -- after that,
23 somebody tried to steal my money.

24 Q. I understand. So when the one that you
25 had in place was made, who was going to inherit from
26 you on that will?

27 A. My son was going to inherit everything.

28 Q. Your son was going to inherit everything
29 under that will?

1 A. Everything in that will.

2 Q. Okay. And why do you want to change that?

3 A. Because he has tried to steal money from
4 me anyway.

5 Q. All right. And when did you mention that
6 you wanted to have a new will?

7 Do you remember when you first mentioned
8 that?

9 A. I don't remember when I mentioned it.

10 Q. Okay.

11 A. It was some time in the very short past.

12 Q. Yes, sir. Okay. Do you remember talking
13 to Dr. Perkins about that?

14 A. Yes.

15 Q. I've got you. So under the new will that
16 you want to ask the Court for permission to sign,
17 who do you want to leave your estate to?

18 A. Mostly to the Independence Presbyterian
19 Church.

20 Q. Okay. Where is that church?

21 A. What?

22 Q. Where is that --

23 A. On Highway 35 near Courtland.

24 Q. All right. You have a relationship with
25 that church?

26 A. I was born into it.

27 Q. Okay. And I know you live -- you live at
28 The Elison right now, right, the assisted living?

29 A. Yeah.

1 Q. Do you want to get a house for yourself?

2 A. I would like to get a house for myself.

3 Q. Okay. So that you can move out of there?

4 A. Yes, sir.

5 Q. And if you were able to get a house for
6 yourself, what is your plan about who would be there
7 with you if you could get that house?

8 A. My niece in Arkansas as long as --
9 whenever her mother dies, she wants to move over
10 here.

11 Q. What is her name?

12 A. Carolyn.

13 Q. All right. And so if that works out where
14 you can get a house and then Carolyn would come and
15 she would live with you?

16 A. She would come live with me --

17 Q. All right.

18 A. -- where she could take me where I need to
19 go.

20 Q. Okay. And if you're able to do that, you
21 want to leave -- if you buy that house, you want to
22 leave that house to her?

23 A. Yes.

24 Q. All right. And then there's also -- what
25 else do you want done with your will, besides the
26 Presbyterian church and your niece? What else do
27 you want done?

28 A. What else did I have on there? I can't --

29 (WHEREUPON, THE DOCUMENT WAS HANDED

1 TO THE WITNESS.)

2 BY MR. SWAYZE ALFORD:

3 Q. Is Jay Westfaul -- do you know Jay
4 Westfaul?

5 A. What?

6 Q. Do you know Jay Westfaul?

7 A. I have heard of the gentleman.

8 Q. Okay. And has Jay done some work for you
9 in the past?

10 A. Yes.

11 Q. All right. And did Jay draft this will
12 with the words in there that you wanted?

13 A. Yes. I think he got most of it that I --
14 that I wanted there.

15 Q. And have you reviewed that last will and
16 testament that Jay prepared?

17 A. What?

18 Q. Have you reviewed that document there?

19 A. Yeah, I agreed to this.

20 Q. You've agreed to it. Is that the document
21 that you're asking Judge Whitwell --

22 A. Yeah.

23 Q. -- to allow you to sign as your last will
24 and testament?

25 A. That is correct.

26 MR. SWAYZE ALFORD: Tender the
27 witness, Your Honor.

28 HONORABLE ROBERT Q. WHITWELL: Cross-
29 examination?

CROSS-EXAMINATION

1
2 BY MR. ROBERT SULLIVANT, JR.:

3 Q. Good morning, dad. Are you doing okay?

4 So you made a statement that you decided
5 you wanted to change your will after your son, me,
6 stole your money?

7 A. We -- there was a house that belonged to
8 my wife, his mother, and we sold it. And I didn't
9 want that money intermingled with mine, so I had it
10 put in a separate account in Regions Bank with the
11 instructions that nobody was to take it out but me,
12 and somehow you managed to get it out. I don't know
13 how you did it because it was supposed to be signed
14 by me.

15 Q. Okay. So all the money that you -- so
16 where did that money -- where did you get it from to
17 put into your account?

18 A. What?

19 Q. Where did you get the money from to put
20 into your account?

21 A. It was -- the house was sold.

22 Q. Okay.

23 A. My wife's inheritance was sold.

24 Q. Okay.

25 A. Your mother's inheritance was sold.

26 Q. Correct.

27 A. You were entitled to half of it, and I
28 was. And when I put it in the bank, if you had
29 asked me for your half, I would have given it to

1 you.

2 But when you took it out and I asked you
3 for my half back, you denied giving it to me. You
4 would not give it back to me then.

5 Q. Okay. But that's when -- okay. The money
6 at that time was in our joint account?

7 A. What?

8 Q. The money was at that time in our joint
9 account?

10 A. That money that -- sold the house for?

11 Q. Yes.

12 A. Was never in a joint account.

13 Q. Okay. So when the house was sold and the
14 attorney handed me a check, do you recall what I did
15 with that check?

16 A. You gave it to me, and I deposited in the
17 bank in a special account where nobody else could
18 get it but me, and you could get it back if you
19 wanted it.

20 Q. Okay.

21 A. If you had just asked me for it, you would
22 have got it back.

23 Q. Okay. Do you recall if that check who it
24 was paid -- paid to order to?

25 A. What?

26 Q. Do you recall the check being who it was
27 paid to order to?

28 A. No, I don't recall who it was -- the
29 closing people gave me the check. I don't know who

1 signed it. I don't remember.

2 Q. Okay. So you don't recall that you and I
3 went to Regions Bank on Jackson Avenue as we came
4 back from the closing on that house?

5 A. No, I don't recall going back to Regions
6 Bank with you.

7 Q. Okay. Do you recall that I gave you a
8 piece of paper that stated when Regions Bank would
9 release those funds?

10 A. I didn't understand your question.

11 Q. Do you recall when -- if I gave you a
12 piece of paper that was from Regions Bank that had
13 the dates that it was going to release the funds of
14 that check?

15 A. I don't recall anything about that.

16 Q. Okay. So your testimony is, the closing
17 attorney gave you the check and you put it in your
18 own individual account at Regions Bank?

19 A. Put it in an account by itself.

20 Q. Okay.

21 A. Not with my other bank accounts.

22 Q. Okay. And you had told -- and you stated
23 that you told them that nobody else could take any
24 money out of that account?

25 A. There was nobody else supposed to take it
26 out.

27 Q. Okay. Do you recall going to
28 Mr. Westfaul's office, say, mid-June, 2021, and him
29 writing up a document that revoked my power of

1 attorney?

2 A. I don't remember anything about it.

3 Q. You don't, okay.

4 HONORABLE ROBERT Q. WHITWELL: Mr.
5 Sullivant, I'm being very patient here
6 with you, but the law is that a person can
7 execute a document at the time which he
8 has testamentary capacity.

9 MR. ROBERT SULLIVANT, JR.: Okay.

10 HONORABLE ROBERT Q. WHITWELL: If he,
11 in fact, didn't know whether he had a
12 joint account -- we know all about that
13 because we have been over that 100 times.

14 MR. ROBERT SULLIVANT, JR.: Right.

15 HONORABLE ROBERT Q. WHITWELL: It was
16 a joint account. It was drawn out by you
17 and later deposited to Mr. Alford's
18 account.

19 But the point is, is he can -- the
20 question is, is he capable of executing a
21 will now?

22 They're asking can he sign a will
23 today?

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

25 HONORABLE ROBERT Q. WHITWELL: And
26 Mr. Perkins has testified that he can,
27 that he has testamentary capacity.

28 So I don't know what effect -- what
29 he did in '21 about the bank account and

1 revoking the power of attorney and all of
2 that and all of y'all's controversy
3 between you, I don't know what that has to
4 be with this.

5 But I'm being very liberal with
6 you --

7 MR. ROBERT SULLIVANT, JR.: Okay.

8 HONORABLE ROBERT Q. WHITWELL: -- but
9 let's move on.

10 MR. ROBERT SULLIVANT, JR.: The basis
11 for this questioning is that Dr. Perkins
12 stated that if his reasoning was outside
13 of reality, and I believe that my
14 questions will prove that.

15 So I think I'm entitled to state that
16 or prove that Dr. Perkins's conclusions
17 were incorrect.

18 HONORABLE ROBERT Q. WHITWELL: All
19 right. Well, I don't recall that
20 testimony, but it's your case. You
21 represent yourself. Do the best you can
22 to make it.

23 MR. ROBERT SULLIVANT, JR.: Okay.
24 Appreciate that, Your Honor.

25 THE WITNESS: I don't understand how
26 they got it out of there.

27 BY MR. ROBERT SULLIVANT, JR.:

28 Q. Okay. How they got it out? So you don't
29 understand how they got it out?

1 A. Well, somebody in Regions Bank gave it out
2 that they should not have.

3 Q. Okay. Do you recall you signing or
4 executing a power of attorney for me, say, in 2017?

5 A. Do you recall that I had canceled that
6 power of attorney about six weeks before.

7 Q. Before when?

8 A. What?

9 Q. Before? No, I'm not --

10 A. Yes.

11 Q. Before -- six weeks before when?

12 A. I canceled that power of attorney before
13 that money was put in Regions Bank.

14 Q. Okay. So you're stating you canceled it
15 before the money was deposited into Regions Bank?

16 A. What?

17 Q. You're stating that you canceled the power
18 of attorney before you deposited the money into the
19 bank?

20 A. Yes.

21 Q. Good enough. Do you recall when you --
22 okay.

23 HONORABLE ROBERT Q. WHITWELL: And he
24 gave notice to the bank, but he didn't
25 give notice to you.

26 Is that correct, Mr. Sullivant?

27 MR. ROBERT SULLIVANT, JR.: From my
28 understanding, he gave -- I have no actual
29 knowledge that he did give it to Regions

1 Bank. I do not have that knowledge
2 myself.

3 I just know that he states -- he has
4 stated before that he gave it to the
5 Regions in Batesville.

6 HONORABLE ROBERT Q. WHITWELL: I
7 thought that came out in our last hearing
8 somewhere.

9 MR. ROBERT SULLIVANT, JR.: It did,
10 but that's just what he stated. I'm going
11 on what he stated. I have no actual
12 knowledge that he --

13 HONORABLE ROBERT Q. WHITWELL: All
14 right. Go ahead.

15 BY MR. ROBERT SULLIVANT, JR.:

16 Q. When is the last time you attended the
17 Independence Presbyterian Church?

18 A. What?

19 Q. When is the last time you attended the
20 Independence Presbyterian Church?

21 A. Some time a little bit earlier this fall I
22 went to a meeting up there.

23 Q. So have you been to a service there?

24 A. What? Yeah.

25 MR. SWAYZE ALFORD: Your Honor,
26 again, I mean, who he decides to leave it
27 to at this point, I mean I don't know how
28 cross-examination about that gets us
29 anywhere.

1 It's testamentary capacity. It's
2 been testified to. And who he is going to
3 leave it to, it's been discerned he can
4 leave it to whoever he wants to, and he
5 know who he wants to leave it to.

6 HONORABLE ROBERT Q. WHITWELL: What
7 is the relevancy here of that, Mr.
8 Sullivant?

9 MR. ROBERT SULLIVANT, JR.: Well, the
10 -- is that I have never heard him mention
11 that before in my life. He has never gone
12 to church on his own.

13 I just found it very irregular that
14 he just all of a sudden decided to do
15 that.

16 And this is a hearing about him
17 putting in a request for a will, which
18 from what he stated, the beneficiary will
19 be the Independence Presbyterian Church.

20 I just thought it was very irregular
21 and wanted to examine him further on that.

22 THE WITNESS: As far as I'm
23 concerned, I was born in the Independence
24 Presbyterian Church.

25 BY MR. ROBERT SULLIVANT, JR.:

26 Q. Okay.

27 HONORABLE ROBERT Q. WHITWELL: I will
28 let you ask how you want to do it. Go
29 ahead.

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

3 BY MR. ROBERT SULLIVANT, JR.:

4 Q. You mentioned that -- do you recall when
5 we were about to sell the farmhouse, which we were
6 discussing earlier, that you and I were going to
7 purchase a house with the proceeds of those funds?

8 A. I don't recall anything about that.

9 Q. Okay. Do you recall you and I going on
10 zillow.com on your computer on a website and seeing
11 some houses for sale in Batesville, Mississippi?

12 A. I still don't understand your question.

13 Q. Okay. Do you recall right at the --
14 before the closing of the house that you and I sat
15 down in your room and looked at your computer at
16 some houses for sale that were on the internet?

17 A. I don't recall anything about that.

18 Q. Okay. Do you recall you and I driving
19 around to go look at these houses?

20 A. Well, I drove around with you and Evelyn
21 and looked at some houses. Never made an offer on
22 one.

23 Q. Do you recall you agreeing with me that we
24 would take the proceeds from the sale of the
25 farmhouse and buy a new house?

26 A. I don't recall after we sold that farmland
27 you wanting to buy anything. I don't -- I never got
28 that money yet.

29 Q. No, I said the farmhouse, the house, that

1 my mother, your wife, owned.

2 When we sold the farmhouse and you took a
3 check to Regions Bank?

4 A. It was my understanding we were looking
5 for a house, but I never found one.

6 Q. Okay.

7 A. I never made an offer on one.

8 Q. Right.

9 A. And I never found one.

10 Q. But do you recall us agreeing, us both
11 agreeing, that the proceeds from that house would go
12 toward a new house?

13 We would take the proceeds from the sale
14 of the farmhouse and buy a new house, and that's why
15 we were driving around to look at houses?

16 A. Well, I recall driving around looking at
17 houses, and I can recall having a -- I was wanting
18 to put that money in the bank to where we could buy
19 a new house, but it disappeared out.

20 Q. All right. Good enough.

21 MR. ROBERT SULLIVANT, JR.: That's
22 all I have.

23 HONORABLE ROBERT Q. WHITWELL: All
24 right. Any redirect?

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

27 HONORABLE ROBERT Q. WHITWELL: Mr.
28 Sullivant, you may step down.

29 THE WITNESS: Thank you.

1 (WHEREUPON, THE WITNESS WAS EXCUSED
2 FROM THE WITNESS STAND.)

3 MR. SWAYZE ALFORD: That's all we
4 have on that, Your Honor.

5 HONORABLE ROBERT Q. WHITWELL: All
6 right. Mr. Alford, do you wish to make
7 any argument on this matter?

8 MR. SWAYZE ALFORD: Your Honor, just
9 that based on the testimony of Dr. Perkins
10 and also the testimony of Robert
11 Sullivant, Sr. that he's demonstrated the
12 testamentary capacity to execute a last
13 will and testament, and we're asking the
14 Court for the permission and authority to
15 do that.

16 HONORABLE ROBERT Q. WHITWELL: All
17 right. Mr. Sullivant, Jr., do you have
18 any comments about that?

19 MR. ROBERT SULLIVANT, JR.: Yes, Your
20 Honor, I do.

21 I would like to quote a case, *Mask*
22 *versus Elrod*, here in the State of
23 Mississippi, *This Court has repeatedly*
24 *held that the test of one's capacity to*
25 *execute a will is the ability to*
26 *understand and appreciate the nature and*
27 *effect of his act. The natural objects*
28 *bounty and their relation to him and that*
29 *he is able to determine what disposition*

1 *he makes.*

2 I just don't believe that somebody
3 who has just been put into a
4 conservatorship because -- they don't have
5 that ability. That's why they were put
6 into the conservatorship to start with.

7 Despite the fact that our expert
8 today said that he had testamentary
9 ability, I have yet to read that in the
10 code where it allows for a will to be
11 executed or changed.

12 But nowhere in the code does it say
13 that the expert -- it grants the
14 respondent the ability to do that. I just
15 don't think that is in the code for that
16 to happen. There is no basis for that in
17 the code.

18 And because he is being put into a
19 conservatorship, that is the assumption
20 that he no longer can make those type of
21 decisions.

22 And we have from our other expert,
23 Dr. Thomas, he stated that he is incapable
24 of making executive decisions and is very
25 susceptible to being scammed.

26 Even today, well, in the recent
27 history, my father is still writing checks
28 to scammers, fake people that trick him
29 into giving them money.

1 He did not have a concept of the fact
2 that the funds at FNB Bank were restricted
3 from him to spend, but he kept on -- but
4 he spent it anyway.

5 And then upon me discovering that and
6 putting an order on those accounts to
7 restrict them, he still wrote checks, and
8 the bank still honored them. Although,
9 from what I have been told this morning,
10 they refunded the money.

11 But he still does not have a concept
12 that he cannot spend that money. He's
13 been told that, and he spends it on scam
14 people.

15 I think that proves that there's
16 enough right here that he doesn't have a
17 basis in reality. I think there is enough
18 evidence that has been shown before with
19 all the other checks he's written.

20 In an affidavit I gave, I gave
21 specifics about the Jamaica scam that he
22 fell into. And I asked him very
23 seriously, I go, *Do you really believe*
24 *that person was going to give you back*
25 *money?* He said, *Yes.*

26 I believe without a doubt --

27 HONORABLE ROBERT Q. WHITWELL: I
28 don't know what you're talking about.
29 That is something that is not in evidence

1 today --

2 MR. ROBERT SULLIVANT, JR.: It's
3 been -- it's been entered into exhibits
4 into this case.

5 HONORABLE ROBERT Q. WHITWELL: Well,
6 not in this proceeding. Nothing about
7 that in this proceeding, about all the
8 things you have talked about.

9 I have read the accounting that was
10 filed by Mr. Alford. Yes, back some time
11 ago Mr. Sullivant wrote checks to the
12 January 6th people.

13 He wrote to everybody you could think
14 of, \$5.00 checks here and \$5.00 checks
15 there. He's a giver. He, was obviously
16 very conservative and giving to a lot of
17 organizations.

18 But I do not find that -- it's not in
19 this record.

20 MR. ROBERT SULLIVANT, JR.: Well, he
21 --

22 HONORABLE ROBERT Q. WHITWELL: I hear
23 what you have to say, but in this case
24 of -- what did you say, *Elrod -- Mask*
25 *versus Elrod*, I mean, I think he does know
26 the elements of his bounty.

27 I think he knows what he wants to do,
28 if he wants to give his money to the
29 church or whoever he wants to give it to.

1 The Court is of the opinion -- as I
2 said a while ago, the question is, what is
3 his ability right now, his testamentary
4 capacity right now, to make a will? He's
5 asking me to -- that he wants to make one.

6 You certainly -- if he makes it and
7 at some point we lose Mr. Sullivant and
8 you want to contest it, you won't be
9 prohibited from contesting it, whatever
10 you want to do.

11 But at this point, all he's asking
12 is, is can he make a will. And
13 Dr. Perkins has testified today that he's
14 capable of doing that.

15 The law is this, even though I
16 appointed a conservator just this morning,
17 the law is that a person can make a will
18 while they're under a conservatorship.

19 There is case law on that. I know it
20 is because I've read it and seen it. I
21 don't have to quote to you today, but I
22 know that a person under conservatorship
23 can make a will and be held up.

24 So the fact that I appointed Ms. Wall
25 this morning to be his conservator doesn't
26 mean that he doesn't have testamentary
27 capacity.

28 It means that he is incapable of
29 handling his financial affairs maybe and

1 his ability to do that, and it's not
2 necessarily that he's incompetent.

3 So the Court will overrule your
4 objections to that --

5 MR. ROBERT SULLIVANT, JR.: But I
6 have one more --

7 HONORABLE ROBERT Q. WHITWELL: Go
8 ahead.

9 MR. ROBERT SULLIVANT, JR.: I had one
10 more objection.

11 HONORABLE ROBERT Q. WHITWELL: Make
12 your record.

13 MR. ROBERT SULLIVANT, JR.: I think
14 it is -- I believe it is peculiar that Mr.
15 Alford filed this request even before a
16 conservatorship had been established. I
17 just think that is extremely odd.

18 The first thing he's going to do
19 before -- he doesn't even know if a
20 conservatorship is going to be
21 established, but he files this request and
22 has it set before the conservatorship is
23 ever really established. I found that
24 peculiar.

25 HONORABLE ROBERT Q. WHITWELL: Why is
26 it peculiar? What if I had put the
27 conservatorship matter off for six weeks?

28 The question was, is he capable today
29 of making a will. It doesn't have

1 anything to do with it.

2 I don't find it unusual at all. He
3 can file all the motions he wants, just
4 like you did. And I heard your motions,
5 and I heard his, and I've ruled on it.

6 And Mr. Sullivant will be allowed to
7 make a will, if that's what he wants to
8 do.

9 MR. ROBERT SULLIVANT, JR.: All
10 right.

11 HONORABLE ROBERT Q. WHITWELL: Like I
12 said, at some point it may be contested.
13 It may be -- you know, he may change his
14 mind about who he wants to make
15 beneficiary. I don't know. But he will
16 be allowed to make a will if he wants to.

17 The fact that a conservatorship has
18 been set up has no bearing on it in my
19 opinion.

20 All right. That concludes this case.
21 Anything else?

22 MR. SWAYZE ALFORD: Just for
23 clarification, Your Honor, when you
24 appointed Ms. Wall as conservator, I know
25 we had -- it was sort of divided between
26 financial -- conservator with financial
27 affairs and then a general conservator.

28 I just want to understand what I need
29 to put in the order about her being

1 conservator.

2 HONORABLE ROBERT Q. WHITWELL: I do
3 not follow you here.

4 MR. SWAYZE ALFORD: Well, so --

5 HONORABLE ROBERT Q. WHITWELL: She
6 will be a general conservator.

7 MR. SWAYZE ALFORD: Okay. That's
8 what I want to be clear about, Your Honor,
9 because Mr. Thomas had just said in his
10 affidavit, he had just marked -- there is
11 a box on here. Mr. Thomas had just marked
12 that he needed a conservator for financial
13 affairs. Dr. Perkins had marked both.

14 And so I just wanted to be sure that
15 I put in the order what you're desiring,
16 and I hear a general conservator is what
17 you're saying.

18 Thank you, Your Honor.

19 HONORABLE ROBERT Q. WHITWELL: All
20 right. You can prepare me an order.

21 You will prepare me an order on your
22 motion to amend, Mr. Sullivant, Jr. --

23 MR. ROBERT SULLIVANT, JR.: Yes,
24 thank you.

25 HONORABLE ROBERT Q. WHITWELL: -- you
26 can get it to me and file your amendment
27 within ten days.

28 And if you'll prepare me an order and
29 run it by Mr. Sullivant in just a few

1 days.

2 MR. SWAYZE ALFORD: Yes, Your Honor.

3 HONORABLE ROBERT Q. WHITWELL: That
4 will conclude this case. We have other
5 things to do.

6 MR. ROBERT SULLIVANT, JR.: All
7 right. Thank you.

8 (WHEREUPON, THE PROCEEDINGS IN THIS
9 CASE WERE 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-one (61) 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 15th day of May, 2023.

/s/ Cecily Boone Faulkner

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My Commission Expires: 1/12/2024

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2

3 ROBERT SULLIVANT, SR. PLAINIFF

4 VS. CAUSE NO. CV-2021-612

5 ROBERT SULLIVANT, JR. DEFENDANT

6

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8 Transcript of 5/9/23

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11 Original Transcript: \$274.50

12 Deposit Paid: \$270.00

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18 Thank you,

19 Cecily

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