

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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STATE OF MISSISSIPPI
LAFAYETTE COUNTY
2023 JUN 21 PM 12:40
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BY DC TJ

**ROBERT SULLIVANT, SR.,
PLAINTIFF,**

v.

**ROBERT SULLIVANT, JR.,
DEFENDANT.**

CASE NO. 2021-612(W)

**ROBERT SULLIVANT JR.,
THIRD-PARTY PLAINTIFF,**

v.

**ROBERT SULLIVANT SR.,
and EVELYN STEVENS,
THIRD-PARTY DEFENDANTS.**

DEFENDANT'S MOTION FOR RECUSAL

Comes now, defendant and third-party plaintiff Robert Sullivant Jr., ("JR") and hereby requests that the Honorable Judge Robert Q. Whitwell respectfully recuse himself from the above-referenced matter. As will be further detailed in JR's memorandum, it is his belief that Your Honor has demonstrated a considerable level of bias in favor counsel for Robert Sullivant Sr., ("SR") making it impossible for JR to receive a fair trial.

At multiple hearings in this matter, the court has testified on behalf of SR. The court also inappropriately took notice, on its own accord, and placed in the record, that Your Honor believes that JR does not love his father. A judgement that was based on untrue and disputed facts of the matter. The court has refused to hear a motion that criticizes Mr. Alford because "members of the public were present", allowed witnesses to be called by Alford with no notice to JR, misstated facts on the record, and testified as to disputed facts.

SCANNED

For these reasons, and the additional reasons outlined in JR's memorandum, recusal is appropriate in this matter.

I. BACKGROUND

The background in this matter has been well established. This is a matter related to the conservatorship of Robert Sullivant Sr, where SR sued JR for allegedly taking funds from an individual account that SR believed he did not have the authority to withdraw. SR filed this action alleging 13 different counts, including fraud, conversion, and accounting. JR responded with an Answer and Counterclaims, to which Mr. Alford filed a response to over a year later. The parties have conducted a deposition, discovery, and several motions have been heard and decided, including allowing SR to execute a will and placing him into a conservatorship with the clerk without a proper hearing.

Ms. Evelyn Stevens organized the hiring of attorney Swayze Alford on the behest of SR to represent him. It cannot be disputed that Mr. Alford is well-known, well liked, and has maintained somewhat of a celebrity status in this venue. However, this status should not play out as influence in a court of law against a *Pro Se* litigant, and Mr. Alford should be held to the same standards as all other litigants and not be provided preferential treatment by the court.

Mr. Alford, thus far, has been allowed to violate discovery rules, overtly violate this court's orders and the parties' stipulations, call witnesses at hearing without any notice to JR, and misappropriate the funds of the parties in this case to the point where JR had to draft a temporary restraining order before Mr. Alford would reconcile the funds. Since the Court never took action to discipline Mr. Alford for the above actions, JR attempted to address these matters through a motion to disqualify Mr. Alford. However, the court refused to hear this motion because it was concerned with Mr. Alford's reputation in the presence of members of the public. The court then determined that it would not hear JR's motion to disqualify until the Bar Association produced a report related to JR's complaint. There is no legal justification for JR's motion to disqualify to be in any way contingent on the Bar Association and their investigation. The court simply did not want to embarrass Mr. Alford in front of his colleagues that were in court that day. Finally, information that Your Honor and Mr. Alford have engaged in inappropriate ex-parte communications without the knowledge of JR is also evident. It does appear that this court had

knowledge of certain aspects of the case that it would have no way of knowing without speaking to Mr. Alford outside the presence of JR.

II. STANDARD OF REVIEW

According to the Code of Judicial Conduct, a judge must disqualify when that judge's "impartiality might be questioned by a reasonable person knowing all the circumstances . . . including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding." *Code of Judicial Conduct*, Canon 3(E)(1). The question to ask is, would a reasonable person, knowing all the circumstances, harbor doubts about the judge's impartiality? *Frierson v. State*, 606 So.2d 604, 606 (Miss. 1992). To overcome the presumption that a judge is qualified and unbiased, the evidence must produce a reasonable doubt about the validity of the presumption. *Turner v. State*, 573 So.2d 657, 678 (Miss. 1990).

This Court does not recognize inconvenience as a factor to be considered when deciding a recusal motion. More than inconvenience must be shown in order to refuse a recusal motion where there is some doubt as to a judge's impartiality. A recusal decision is entirely dependent on the peculiarities of each case at bar. Recusal motions must be considered on their own circumstances. *Collins v. Joshi*, 611 So. 2d 898 (Miss. 1992).

If a **reasonable person**, knowing all the circumstances, would doubt the judge's impartiality, the judge is **required** to recuse him or herself from the case. (*Id*) [emphasis added].

III. ARGUMENT

1. Your Honor Testified as a Character Witness Against JR at the Hearing on May 9, 2023, and the Summary Judgement hearing on January 25, 2023.

At the hearing on May 9th, 2023, Your Honor commented on what he allegedly witnessed at a prior hearing between JR and SR. Stating that he was present at the Summary Judgement hearing in Holly Springs, You Honor then says that the two parties never hugged or spoke to one another after the hearing was over. Your Honor than concluded that it means there is no love between the two and used his own testimony as a partial reason to deny JR his request for conservatorship. (*Bates No. 122*).

First, this is improper character testimony given by a Judge in violation of the Code of Judicial Conduct (CJC), Cannon 2B, which explicitly states that “Judges shall not testify voluntarily as a character witness.” The commentary to the rule explains as follows: “A judge must not testify voluntarily as a character witness because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies.”

Your Honor’s testimony was not only in strong favor of Mr. Alford, but it was also not true and needed serious clarification. However, JR, of course, could not cross-examine Your Honor. Moreover, this is testimony related to a disputed fact, was relied upon to resolve the issue of conservator, and there is no evidence on the record to support Your Honor’s contentions. It is also highly prejudicial to JR going forward to have the Judge’s unchallengeable and incorrect testimony, calling into question his love for his father, as part of the record.

The second instance of improper testimony, and quite frankly blatant discourteousness to a litigant, is found in the hearing conducted in this matter on January 12th, 2023, where Your Honor refers to JR as being a “hooligan sandbag”. (*Bates No. 114*). Cannon 3(B)(4) states that “Judges shall be patient, dignified, and courteous to litigants.” Ad hominem attacks on a litigant run afoul to the CJC and are demonstrative of bias and prejudice. “A judge is to act courteously to anyone in her courtroom and to expect the same behavior from others subject to her control.” *Mississippi Comm’n on Jud. Perf. v. Sanders*, 749 So. 2d 1062, 1071 (Miss. 1999); and the courts have made it “quite clear that the power granted to judges does not license them to be disrespectful to the lawyers and citizens who appear in their courtrooms; and that judges must conduct themselves with appropriate judicial demeanor.” *Miss. Comm’n on Judicial Performance v. Smith*, 78 So.3d 889, 893 (Miss. 2011).

The third instance of improper testimony was at the January 25th, 2023 Summary Judgment hearing when Your Honor stated that “You accuse Mr. Alford of a half-truth in some of your responses, and now you’re telling me a half-one there”. (*Bates No. 127*). Your Honor testifies that the Defendant lied, when stating he did not go to Batesville to withdraw monies. Also, just earlier, Your Honor implies the Defendant is lying by stating “You’re under oath Mr. Sullivant,” (*Bates No. 126*), after the Defendant testified that he did not go to Batesville. The allegation that the Defendant went to Batesville, is speculation at best, and disproven by Mississippi Code Title 87, Ch.3; §87-3-113 coupled with the Defendant’s numerous affidavits stating that he did not go to

Batesville. There is no evidence to the contrary of the Defendant's affidavits nor to support the Plaintiff's speculation in the record.

The fourth instance of improper testimony was at the same Summary Judgement hearing when Your Honor stated while referring to SR's TD Ameritrade accounts "you put it in your name with your PIN – you put it in his name, but you had your PIN on it. He couldn't get into it because you kept the PIN to open the account." (*Bates Nos. 101-102*). Not only does Your Honor offer new and unknown testimony for the record to the Defendant's detriment, but the testimony is false, and not based upon anything stated in the record. Again, the Defendant was not able to cross-examine the witness of testimony against him.

2. Your Honor Failed to Act When put on Notice of Mr. Alford's Malfeasance, but Admonished JR in Court for a Completely Harmless Error. Your Honor Also Refused to Hear a Motion to Disqualify Mr. Alford on the Sole Basis of Public Presence.

The court in this matter has not treated the litigants equally. Due to the actions, ethical violations, and general malfeasance from Mr. Alford in this case, a Motion to Disqualify him from this case was filed by JR. This Motion was set to be heard on May 9th, 2023. However, Your Honor refused to hear the Motion on that day, citing public presence and the fact that the "Bar Association will deal with it". (*Bates No. 123*).

Cannon 3(B)(2) states that "A judge shall not be swayed by partisan interests, *public clamor, or fear of criticism.*" In this case, Your Honor refused to hear a motion related to the disqualification of counsel on the sole basis of *potential* "public clamor". A judge is to be faithful to the law and to ignore outside influences. *Mississippi Comm'n on Jud. Perf. v. Sanders*, 749 So. 2d 1062,1070 (Miss. 1999).

Salvaging the reputation of Mr. Alford is not only not a reason to deny a motion, but it is also strong evidence of bias in favor of Mr. Alford and shows that Your Honor has clearly taken a side and is not impartial. Your Honor has had no problem however, with accusing JR in open court of not loving his father, or admonishing him, again in open court and on the record, for filing an unsigned proposed order, which was a completely harmless error. (*Bates Nos. 111-113*).

While JR is getting admonished for a harmless error, Mr. Alford has been allowed, without any admonishment whatsoever, to misappropriate client funds, to not file an answer in this case for over a year, to intentionally withhold discovery, and to allow a third-party access to SR's bank

accounts and the parties joint funds. A \$41,000 truck was purchased with these funds and Mr. Alford repeatedly failed to reconcile the accounts. In response, this court did nothing.

Mr. Alford has violated court orders and has been shown to be persistently dishonest with JR and the Court, and the Court does nothing. Canon 3(D)(2) states that “A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.” This court has taken no action against Mr. Alford, not even an admonishment, yet has chastised JR on the record for a harmless error. Ironically, Mr. Alford’s counsel in the Bar Complaint argues numerous times that his client could not have done anything unethical, because “the Judge has never admonished him.”

Not only has the court failed to admonish Mr. Alford, but Your Honor has also provided excuses for his behavior and has stated on the record that “he didn’t think Mr. Alford just moved those funds on a whim to some bank account.” (*Bates No. 110*). However, this is exactly what Mr. Alford did and he admits to doing it. (*Bates Nos. 114-115*). In another instance, when Mr. Alford was asked to explain why he intentionally delayed a motion hearing for two months, Your Honor came to Mr. Alford’s rescue by stating that “*I* may not have been available.” (*Bates No. 117*).

At the hearing on May 9th, 2023, the court allowed Mr. Alford to call two witnesses, Dr. Perkins and his client, whom he knew he was going to call in advance and had prepared them to testify. However, as another obvious bad faith tactic, Mr. Alford never disclosed these witnesses to JR prior to the hearing. Despite the fact that Mr. Alford knew he was going to call witnesses, had his client allegedly examined just before the hearing *at the courthouse*, and gave JR no warning, Your Honor allowed Mr. Alford to call these witnesses over JR’s objections. (*Bates Nos 124-125*). Canon 3(B)(3) states that “A judge shall require order and decorum in proceedings before the judge.” Allowing two witness to be called without notice to the opposing party is not proper. These witnesses should have been disclosed prior to the hearing so JR could prepare to examine them rather than having to come up with an entire examination on the spot. This decision was calculated to prejudice JR and it worked. He unsurprisingly lost every motion heard that day.

It was also pointed out when Mr. Alford called Dr. Perkins, that Dr. Perkins had been previously evading communications from JR and being very uncooperative. The court seems to have no problem with this and in fact perpetuates Dr. Perkins’ flouting of JR’s right to depose him by offering the excuse that the witness was hired by Mr. Alford, and so it is completely acceptable for the *court appointed* expert witness in this matter, (according to Your Honor), to communicate

solely with one party and ignore the other. (*Id.*) This violates Canon 3(C)(2), stating that “A judge shall require staff, court officials and *others subject to the judge's direction and control* to observe the standards of fidelity and diligence that apply to the judge and to *refrain from manifesting bias or prejudice in the performance of their official duties.*” Dr. Perkins has an overt and undeniable bias in favor of Mr. Alford and this court has nurtured and facilitated it.

4. Your Honor Has Demonstrated Overt Bias in Favor of Mr. Alford by Either Willfully or Negligently Misinterpreting the Law in the Plaintiff's Favor.

The Plaintiff's entire case in this matter is premised on Mississippi Code Title 87, Ch.3; §87-3-113, reads as follows:

As to acts undertaken in good faith reliance thereon, **an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the non-revocation or nontermination of the power at that time.**

JR has submitted numerous affidavits to the court stating exactly this, yet Your Honor continues to ignore this law and the language that said affidavits are “*conclusive proof*”; by arguing on behalf of the Plaintiff in a way that misapplies the law in a manner favorable to Mr. Alford. First, he condescendingly asks JR, whom he knows is a 20 plus year CPA who has been handling finances for decades, if JR knows what a joint account is. (*Bates No. 106*).

Your Honor than proceeds to state that the plaintiff “had the power of attorney revoked.” This is entirely not true. By law, he did not revoke the POA, yet Your Honor refuses to apply this law, likely because doing so would be fatal to Mr. Alford's case. Ignoring black-letter law and statutory mandates is the exact type of disregard for state law that the CJC works to prevent and address... “A sitting judge is charged with knowing and carrying out the law of the state in which she sits. This disregard of state law, whether done intentionally or mistakenly, most certainly brings the integrity and independence of the office into question.” *Mississippi Comm'n on Jud.Perf. v. Sanders*, 749 So. 2d 1062, 1071 (Miss. 1999).

Second, Your Honor unequivocally states that the plaintiff “had someone do a revocation of his power of attorney”, and that “[plaintiff] had an absolute right as a joint tenant to withdraw [money].” (*Bates No. 118*). Here, Your Honor has essentially decided the case on an unknown

basis, and certainly not any within Mississippi law. JR has no chance at a fair trial when concrete evidence and well-settled state law is being ignored in favor of pure, and not even reasonable, speculation.

5. Your Honor and Mr. Alford Have Engaged in Prejudicial Ex-Parte Communications.

On the hearing conducted on January 23rd, 2023, Your Honor, on his own fruition, raised an issue related to JR placing a personal PIN on the TD Ameritrade account in question. He then accuses of JR of keeping a PIN on the account to prevent the plaintiff from accessing it without any evidence to support the accusation. (*Bates Nos. 101-102*). This line of questioning from Your Honor had to have come directly from Mr. Alford during an ex-parte communication, else Your Honor pulled this allegation from thin air. There is no mention anywhere in the parties' briefings on a PIN number.

Such ex parte communications with a litigant are clearly prohibited by Canon 3B(7), and such conduct has been found by this Court to constitute misconduct. *Mississippi Comm'n on Judicial Performance v. Bradford*, 18 So. 3d 251, 254 (Miss. 2009).

6. Your Honor Would Not Allow a Proper Cross-Examination of Dr. Frank Perkins, and Allowed His Testimony With No Notice to JR.

Prior the hearing on May 9th, 2023, no witnesses had been disclosed by either party that they intended to call. However, Mr. Alford had Dr. Perkins drive nearly three hours to the hearing, evaluate Mr. Alford's client in the hallway of the courthouse (*Bates No. 137*), and then present his "findings" through testimony that again, was never disclosed to JR, nor was Dr. Perkins' courthouse medical examination of the plaintiff disclosed to JR prior. The majority of information testified to by Dr. Perkins was unknown to JR prior to that moment as it involved a courthouse medical examination literally moments before Dr. Perkins was called to testify.

Despite this and over the multiple objections and confusion of JR, Your Honor allowed Dr. Perkins to testify. During Mr. Alford's direct examination, Your Honor did not interrupt a single time. However, during JR's cross-examination, Your Honor interrupted him multiple times, and even began testifying on behalf of the witness (*Bates Nos. 143 & 150*).

Mississippi Rules of Evidence 611 and 616 both allow JR to cross-examine the witness "without limitation" (Rule 611(b)), and the advisory committee notes state that "Subdivision (b)

permits a wide-open cross-examination.” Rule 616 relates to witness bias, stating that “Evidence of a witness’s bias, prejudice, or interest – for or against any party – is admissible to attack the witness’s credibility.”

When JR began to probe Dr. Perkins about his bias in refusing to communicate with JR and only responding to communication from the opposing party, Your Honor promptly shut down this line of questioning without justification and antithetical to the Rules of Evidence. (*Bates No. 150*). Not only did Your Honor not allow this questioning, but he also offered multiple excuses for Dr. Perkins’ behavior in ignoring one party over another. Dr. Perkins should have been admonished, not excused. Your Honor than blames JR of all people for Dr. Perkins’ behavior, stating that “if you were having trouble with Mr. Alford getting a date, you would come to me and file a motion to require it if you wanted a deposition, and he wasn’t cooperative.” (*Id.*)

Despite the fact that both parties who were actively illicitly stonewalling JR’s legal right to depose Dr. Perkins were present, Your Honor admonished JR instead and directed him to file a motion, despite previously refusing to even hear a motion that criticized Mr. Alford due to “public presence”.

Further, JR should not have to file a motion to compel a court-appointed expert witness deposition which was reasonably noticed and lawfully subpoenaed, and to an expert witness who admitted under oath to completely ignoring JR and only communicating with Mr. Alford. Dr. Perkins explicitly tells the court that his policy is to only communicate “with the party that retained him”. (*Bates No. 149*). Rather than reminding Dr. Perkins that he is a **court-appointed** expert witness and was not retained by Mr. Alford, Your Honor instead supports Dr. Perkins’ facially incorrect position and makes excuses for his behavior.

Finally, if Dr. Perkins was in fact “retained” by Mr. Alford as he testified to, and was and is being paid by him, then that is a significant issue that must be addressed, as it indicates the bribery of a witness pursuant to MS Code § 97-9-109. ¹ Dr. Perkins’ compensation in this matter

¹ MS Code § 97-9-109: (1) A person commits the crime of bribing a witness if he intentionally or knowingly offers, confers or agrees to confer any benefit upon a witness or a person he believes will be called as a witness in any official proceeding with intent to:

- (a) Influence the testimony of that person;
 - (b) Induce that person to avoid legal process summoning him to testify; or
 - (c) Induce that person to absent himself from an official proceeding to which he has been legally summoned.
- (2) Bribing a witness is a Class 1 felony.

is governed by MRE 706(c), which clearly states that is the court who both sets and collects the fees of a court appointed expert witness. Any monies paid directly from Mr. Alford to Dr. Perkins would be highly improper bordering on criminal.

7. The “Appearance of Impropriety” is Clearly Present, and a Reasonable Person *Might* Harbor Doubts’ About Your Honor’s Impartiality.

Judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances or for other grounds provided in the Code of Judicial Conduct or otherwise as provided by law, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. (*Mize v. Westbrook Constr. Co. of Oxford, LLC*, 146 So. 3d 352 (Miss. Ct. App. 2014).

Here, Your Honor has both the foregoing personal bias **and** personal knowledge of disputed evidentiary facts. Your Honor testified that he personally witnessed JR not approach or hug his father, the plaintiff, after a hearing in Holly Springs. This directly inserts Your Honor into this case as a witness, as JR disputes not only Your Honor’s version of events, but also the conclusion that he inferred from it and his subsequent ruling against JR which he rendered immediately following his testimony.

A judge must disqualify when that judge's "impartiality might be questioned by a reasonable person knowing all the circumstances . . . including but not limited to instances where: (a) the judge has a personal bias or prejudice concerning a party." Code of Judicial Conduct, Canon 3(E)(1). The question to ask is, would a reasonable person, knowing all the circumstances, harbor doubts about the judge's impartiality? *Frierson v. State*, 606 So.2d 604, 606 (Miss. 1992). To overcome the presumption that a judge is qualified and unbiased, the evidence must produce a reasonable doubt about the validity of the presumption. *Turner v. State*, 573 So.2d 657, 678 (Miss. 1990).

There is more than sufficient evidence to raise reasonable doubt as to Your Honor’s impartiality. The facts contained in this Motion show that Your Honor has admonished JR for harmless error while allowing Mr. Alford to flout the rules of procedure and basic court decorum

without taking any action. Your Honor allowed Mr. Alford to violate court orders and misappropriate client funds without taking any action, allowed Mr. Alford to call witnesses at a hearing with no notice provided to JR, inferred on the record that JR does not love his father and is not close to him, and continuously ignores Mississippi Code Title 87, Ch.3; §87-3-113, which, if applied, would essentially foreclose on Mr. Alford's claims and effectively end this case. He accuses JR of illicitly taking money from a joint account he had with the plaintiff but justifies the plaintiff doing the *exact same thing*. (*Bates No. 106*... "Well, [SR] had **just as much a right** to write it out as you did").

Your Honor has testified in favor of Mr. Alford to facts not in evidence and which are disputed, and his allegations related to JR placing a PIN on the account in question raise serious questions as to ex-parte communications in this matter as this allegation must have come directly from Mr. Alford. Your Honor also pulled from experience as a US Attorney and compared to JR to other people he had criminally prosecuted for financially defrauding the State, which is clearly not parallel to this case. You Honor then seemed to decide the case almost entirely by stating "**you committed the offense** before it happened." (*Bates No.103*). Your Honor does not cite how he concluded that JR was guilty of committing an offense, and this comment is highly prejudicial and indicative of bias.

Your Honor has also held that the court appointed expert witness does not have to communicate with JR, but only with Mr. Alford. (*Bates No. 125*). He relied on his own disputed testimony to rule on a conservatorship and ruled on the conservatorship without a formal hearing, which violates the Mississippi GAP Act requiring that a hearing specifically on the matter of conservator be held prior to the appointment. "The chancery court shall conduct a hearing to determine whether a conservator is needed." (Miss. Code Ann. § 93-13-255); (*Campbell v. Conservatorship of Campbell*, 5 So. 3d 470, 473 (Miss. Ct. App. 2008)).

To overcome the presumption that a Judge is qualified and unbiased, the party must produce evidence of a reasonable doubt about the validity of the presumption. The test of whether a reasonable person would harbor doubt is objective (*Kinney v. S. Mississippi Planning & Dev. Dist., Inc.*, 202 So. 3d 187, 194 (Miss. 2016)). The issue is not any wrongdoing on the part of the trial judge, but how this situation appears to the general public and the litigants whose cause comes before this judge. Every litigant is entitled to nothing less than the **cold neutrality** of an impartial judge, who must possess **the disinterestedness of a total stranger** to the interest of the parties

involved in the litigation. . . .” (*Jenkins v. Forrest County Gen. Hosp.*, 542 So. 2d 1180, 1181-82 (Miss. 1988)). A reasonable person, considering the totality of the circumstances, would certainly harbor doubts as to the bias and impartiality of Your Honor in this matter.

WHEREFORE, judicial recusal is appropriate in this matter, and Mr. Sullivant Jr respectfully requests that Your Honor recuse himself from this case.

Dated: June 21, 2023.


/s/ 

Robert Sullivant Jr.
Defendant/Third-Party Plaintiff Pro Se

CERTIFICATION

I do hereby certify that on June 21, 2023; I have served by hand delivery and/or email a true and correct copy of the above and foregoing document to:

**Swayze Alford
1221 Madison Avenue
Oxford, MS 38655
Attorneys for Plaintiff Robert Sullivant, Sr.**

A handwritten signature in black ink, appearing to read "Robert Sullivant, Jr.", written over a horizontal line.

Robert Sullivant, Jr.,
Defendant Pro Se

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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4 ROBERT SULLIVANT, SR. PLAINTIFF

5 VS. CAUSE NO. CV-2021-612

6 ROBERT SULLIVANT, JR. DEFENDANT

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8 *****

9 TRANSCRIPT OF THE MOTION HAD AND DONE IN THE
10 ABOVE-STYLED AND NUMBERED CAUSE, NOT FOR APPEAL
11 PURPOSES, BEFORE THE HONORABLE ROBERT Q. WHITWELL,
12 CHANCELLOR, ON THE 25TH DAY OF JANUARY, 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 *****

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18 APPEARANCES:

19 Present and Representing the Plaintiff:

20

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

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25 Present and Pro Se:

26

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

29

1 He has stated that, for instance, the
2 Costco card that is -- was used for
3 personal expenses, it never was.

4 That mortgage that he did not own
5 any --

6 HONORABLE ROBERT Q. WHITWELL: He
7 contests -- that's another contested fact
8 that he says --

9 MR. ROBERT SULLIVANT, JR.: Okay.

10 HONORABLE ROBERT Q. WHITWELL: --
11 that you paid off the Costco card --

12 MR. ROBERT SULLIVANT, JR.: Right.

13 HONORABLE ROBERT Q. WHITWELL: -- and
14 that all the expenses on the Costco card
15 were not his.

16 MR. ROBERT SULLIVANT, JR.: Correct.

17 HONORABLE ROBERT Q. WHITWELL: Isn't
18 that what he says?

19 MR. ROBERT SULLIVANT, JR.: Uh-huh
20 (Indicating yes).

21 HONORABLE ROBERT Q. WHITWELL: All
22 right. That's his allegation in his
23 answer and affidavit.

24 It also says that you only put
25 \$50,000.00 in the Ameritrade, and you put
26 it in your name with your PIN -- you put
27 it in his name, but you had your PIN on
28 it.

29 He couldn't get into it because you

1 kept the PIN to open the account; is that
2 not right?

3 MR. ROBERT SULLIVANT, JR.: No, Your
4 Honor, that is not correct. That was one
5 of the other things I wish to correct.

6 And that is, I had given my father
7 credentials, showed him how to get on to
8 the website, and each month I would show
9 him the balances.

10 I would tell him what was going on
11 with his two accounts, and he didn't want
12 to show any interest.

13 And I wrote down the credentials for
14 him when we lived at the farmhouse, and he
15 never went on to the website at all.

16 So then after the lawsuit was filed,
17 I was asked to give him some credentials.
18 So I didn't remember what his were, so I
19 changed -- you know, I went through the
20 process of changing it and gave him the
21 credentials so he could log on.

22 I understand it was quite hard, as it
23 should be, but, I assume, he got on to it.

24 HONORABLE ROBERT Q. WHITWELL: You're
25 asking for a summary judgment and a
26 judgment in your favor --

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

28 HONORABLE ROBERT Q. WHITWELL: -- and
29 you admit in your pleadings that you owe

1 there with the fact that the money that he
2 put into his name was his. There's some
3 dispute over that money.

4 It's kind of like the 51,000 when you
5 paid it back after the lawsuit. When I
6 was US Attorney, I prosecuted some very
7 influential people, who decided at the
8 last minute they would write us a check
9 and pay it into the state auditor to see
10 if they couldn't get around being
11 prosecuted.

12 And the fact that you paid the money
13 after the fact doesn't fly. You committed
14 the offense already before, before it
15 happened.

16 So I find that the 51,000 was not
17 paid on time, and that that was a
18 violation of Mr. Sullivant, Sr.'s rights.

19 And it creates some issues that the
20 Court feels are substantially enough to
21 override the motion for summary judgment
22 based on the pleadings and what's been
23 filed and my statements about these
24 particular instances and the dispute of
25 the fact about Ms. Stevens being -- having
26 created undue influence.

27 All of those factors are factual
28 issues that have to be ferreted out in the
29 proof at trial.

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

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4 ROBERT SULLIVANT, SR. PLAINTIFF

5 VS. CAUSE NO. CV-2021-612

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25 Present and Pro Se:

26

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

29

1 Sr. for things that he's done.

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

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

11 MR. SWAYZE ALFORD: Yes.

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

19 MR. SWAYZE ALFORD: No, sir.

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

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

1 rules.

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

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

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

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

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

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

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

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

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

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

25 MR. ROBERT SULLIVANT, JR.: Right.

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

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

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

6 MR. ROBERT SULLIVANT, JR.:

7 Originally, I had the bank move it back to
8 the joint account.

9 HONORABLE ROBERT Q. WHITWELL: Okay.

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

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

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

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

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

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

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

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

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

23 MR. ROBERT SULLIVANT, JR.: Right.

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

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

29 HONORABLE ROBERT Q. WHITWELL: Well,

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

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

10 MR. ROBERT SULLIVANT, JR.: Right.

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

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

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

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

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

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

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

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

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

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

22 MR. ROBERT SULLIVANT, JR.: Right.

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

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

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

4 Why did you do that?

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

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

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

15 MR. ROBERT SULLIVANT, JR.: Right.

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

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

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

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

1 rule --

2 MR. ROBERT SULLIVANT, JR.: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 thing he said was an answer is required.

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

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

10 MR. SWAYZE ALFORD: Yes, Your Honor.

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

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

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

29 So I talked about that with

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

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

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

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

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

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

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

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

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

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

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

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

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

1 cases. Mr. Golman had other cases.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

2
3
4 ROBERT SULLIVANT, SR. PLAINTIFF

5 VS. CAUSE NO. CV-2021-612

6 ROBERT SULLIVANT, JR. DEFENDANT

7
8 *****

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
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24 Oxford, Mississippi 38655

25 Present and Pro Se:

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INDEX

Page No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Style, Number and Appearances..... 1

Motion..... 3

DR. FRANK PERKINS

Direct Examination by Mr. Alford.....12

Cross-Examination by Mr. Sullivant.....23

Redirect Examination by Mr. Alford.....35

ROBERT SULLIVANT, SR.

Direct Examination by Mr. Alford.....37

Cross-Examination by Mr. Sullivant.....43

Court Reporter's Certificate.....61

EXHIBITS

Exhibit 1 Report 36

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 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 you went to -- did you go to Regions Bank
2 in Batesville?

3 MR. ROBERT SULLIVANT, JR.: I
4 absolutely did not.

5 HONORABLE ROBERT Q. WHITWELL: You
6 did not go to Regions Bank in Batesville?

7 MR. ROBERT SULLIVANT, JR.: (Nodding
8 head negatively).

9 HONORABLE ROBERT Q. WHITWELL: And
10 you were not told at Regions Bank that the
11 power of attorney had been given to them
12 and that you could not withdraw the funds?

13 MR. ROBERT SULLIVANT, JR.:
14 Absolutely not.

15 HONORABLE ROBERT Q. WHITWELL: You're
16 under oath, Mr. Sullivant.

17 MR. ROBERT SULLIVANT, JR.: Yes, I
18 understand that completely.

19 HONORABLE ROBERT Q. WHITWELL: But
20 then you went to Oxford --

21 MR. ROBERT SULLIVANT, JR.: I started
22 at Oxford.

23 HONORABLE ROBERT Q. WHITWELL: Okay.
24 But you found out over there, didn't you,
25 at Batesville --

26 MR. ROBERT SULLIVANT, JR.: No. I
27 never went to Batesville.

28 HONORABLE ROBERT Q. WHITWELL: How
29 did you find out about the power of

1 attorney?

2 MR. ROBERT SULLIVANT, JR.: Well, I
3 found out, basically, when I received a
4 lawsuit and that was one of the exhibits.
5 And my father did state in his
6 interrogatory in the discovery that he
7 never told me.

8 HONORABLE ROBERT Q. WHITWELL: Yeah,
9 he stated, also, that the bank told you in
10 Batesville --

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

12 HONORABLE ROBERT Q. WHITWELL: -- in
13 his interrogatory response; did he not?

14 MR. ROBERT SULLIVANT, JR.: Right.
15 So that -- I believe that would be
16 hearsay --

17 HONORABLE ROBERT Q. WHITWELL: Let's
18 not leave out all of it. Let's put it all
19 in there.

20 MR. ROBERT SULLIVANT, JR.: Right.

21 HONORABLE ROBERT Q. WHITWELL: The
22 Court has read your paperwork and read
23 this file.

24 MR. ROBERT SULLIVANT, JR.: Correct.
25 And I would --

26 HONORABLE ROBERT Q. WHITWELL: You
27 accused Mr. Alford of a half truth in some
28 of your responses, and now you're telling
29 me a half one there, that he did answer

1 that he thought the bank had told you in
2 Batesville about --

3 MR. ROBERT SULLIVANT, JR.: I
4 understand -- yes, I understand that has
5 been stated, but it is not the truth. Why
6 would I go to Batesville --

7 HONORABLE ROBERT Q. WHITWELL: Well,
8 that's a fact. Whether it is or not, it's
9 a disputed fact. He says yes, and you say
10 no.

11 So that would be something that I
12 would have to consider in a factual basis.

13 MR. ROBERT SULLIVANT, JR.: And I
14 would reply that there is no evidence that
15 I went to Batesville.

16 HONORABLE ROBERT Q. WHITWELL: Well,
17 that's your testimony.

18 So anything further on your motion?

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

21 There was some -- speaking of
22 material statements of fact, I wanted to
23 clear up a few that were filed in the
24 plaintiff's -- well, his objection to
25 my -- to my motion.

26 First, he will allege that -- hold on
27 one second, please. Sorry, I have not
28 done this -- or I have only done it one
29 time and that was two weeks ago.

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.