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STATE OF MISSISSIPPI
LAFAYETTE COUNTY
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IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT SR.	**PLAINTIFF**
V.	
ROBERT SULLIVANT JR.	**DEFENDANT**
	CAUSE NO. 2021-612W
ROBERT SULLIVANT JR.	**THIRD-PARTY PLAINTIFF**
V.	
ROBERT SULLIVANT SR.	**THIRD-PARTY CO-DEFENDANT**

ORDER ON MOTION FOR RECUSAL

THIS CAUSE came on to be heard on July 6, 2023 in Calhoun County, Pittsboro, Mississippi on *Motion for Recusal*, filed by Robert Sullivant Jr. ("JR") on June 21, 2023; and the Court having considered the same and oral argument, took this matter under advisement, and does hereby find and order as follows:

I. Jurisdiction and Venue

The Court has jurisdiction over the parties and subject matter herein, and venue is proper.

II. Procedural History

A. Year 2021

The initial action was filed by Robert Sullivant Sr. ("SR") on October 25, 2021 and was and still is represented by the Honorable T. Swayze Alford.

A *Rule 81 Summons*, returnable to November 17, 2021, was issued for JR on October 25, 2021 and executed on him by personal service on November 10, 2021 and filed by SR.

A *Rule 4 Summons* was also issued to JR on October 25, 2021 and executed on him by personal service on November 10, 2021 and filed by SR.

On November 16, 2021, the Honorable Bradley T. Golmon entered his appearance on behalf of JR.

An *Agreed Order of Continuance and Resetting* was entered into by the parties and filed on November 17, 2021, resetting this matter for December 10, 2021, and ordering JR to provide a full sworn accounting of all monies that he has spent for the benefit of SR on or before December 10, 2021; to provide a full sworn accounting of the remaining funds from the $230,000.00 transferred from SR's account; and to also provide a full sworn accounting of the monies from the Charles Schwab accounts 2454-6369 and 8175-1125. JR was also ordered to be enjoined from transferring, disposing, selling, or depleting any monies in his possession that he obtained from SR's accounts.

On December 9, 2021, JR filed his *Answer, Affirmative Defenses, and Counter-Claim.*

On December 10, 2021, JR filed his *Accounting.*

On December 10, 2021, an *Agreed Order of Continuance and Resetting* was entered into and filed by the parties, resetting this matter for January 31, 2022.

On December 14, 2021, JR filed his *Notice of Service of his First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions Propounded to Plaintiff.*

On December 22, 2021, SR filed his *Notice of Service of his First Set of Interrogatories and Requests for Production of Documents Propounded to Defendant.*

B. Year 2022

On January 13, 2022, SR filed his *Notice of Service of his Responses to Defendant's First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions Propounded to Plaintiff.*

On January 18, 2022, JR filed his *Notice of Issuance of Trial Subpoenas* for Calvin Vick, Evelyn Stevens, Shawn Harmon, and Carolyn Nicholas.

On January 18, 2022, a *Subpoena Duces Tecum* was issued to Regions Bank and filed by JR.

On January 18, 2022, *Trial Subpoenas* were issued for Calvin Vick, Shawn Harmon, and Carolyn Nicholas and filed by JR.

On January 19, 2022, a *Subpoena Duces Tecum* was executed on Regions Bank and filed by JR.

Also on January 19, 2022, a *Trial Subpoena* to Shawn Harmon was executed and filed by JR.

On January 21, 2022, JR filed his *Notice of Service of his Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents* by SR.

On January 25, 2022, an *Agreed Order Setting Trial* was entered into and filed by the parties, setting JR's *Counter-Claim* for January 31, 2022 as his *Counter-Claim* was filed after the original *Agreed Order of Continuance and Resetting* was signed and entered on November 17, 2021.

Also on January 25, 2022, *Trial Subpoenas* for Calvin Vick and Evelyn Stevens were executed and filed by JR.

On January 26, 2022, *Blank Trial Subpoenas* were issued and filed by SR.

Also on January 26, 2022, *Blank Trial Subpoenas* were executed and filed by SR.

For whatever reason, a trial was not held on January 31, 2022.

On February 8, 2022, an *Agreed Order for Independent Medical Exams* was entered into and filed by the parties.

On March 9, 2022, *Notice of Issuance of Trial Subpoenas to Swayze Alford* was filed by JR.

Also on March 9, 2022, *Trial Subpoenas* were issued to Milton D. Hobbs, M.D, Calvin Vick, and Evelyn Stevens and filed by JR.

On March 21, 2022, *Trial Subpoenas* were executed on Evelyn Stevens, Calvin Vick, and Milton D. Hobbs, M.D. and filed by JR.

On March 28, 2022, *Notice of Deposition of Milton D. Hobbs, M.D.* was filed by JR.

On April 25, 2022, *Notice of Service of Defendant's Second Set of Combines Discovery Propounded to Plaintiff* filed by JR.

On May 5, 2022, an *Agreed Order of Withdrawal and Substitution of Counsel* was entered into and filed by the parties, allowing withdrawal of the Honorable Bradley T. Golmon and substituting the Honorable Mitchell O. Driskell, III and the Honorable Marissa Watson as counsel for JR.

On June 20, 2022, a *Motion to Strike or Exclude Opinion of Dr. Milton Hobbs* and *Memorandum in Support of Motion to Strike or Exclude Medical Opinion of Dr. Milton Hobbs* was filed by JR.

On July 21, 2022, JR filed an Order of Setting for his Motion to Strike or Exclude, setting it for August 29, 2022.

On August 11, 2022, JR filed a *Motion to Compel.*

On August 15, 2022, an *Agreed Order Granting Withdrawal of Counsel* was entered into and filed by the parties, allowing the Honorable Marissa Watson to withdraw and the Honorable Mitchell O. Driskell, III to remain as counsel of record for JR.

On September 14, 2022, an *Agreed Order of Withdrawal of Counsel* was entered into and filed by the parties, allowing the Honorable Mitchell O. Driskell to withdraw as counsel of record for JR, and allowing JR a reasonable time to have new counsel to enter an appearance on his behalf or notify the Court that he intends to proceed *pro se.*

On September 27, 2022, a *Motion for Order of the Agreed Order Granting Motion to Exclude Testimony* and *Motion to Compel* was filed by JR, pro se.

On October 28, 2022, JR filed his *Notice of Deposition* of Evelyn Stevens, *pro se.*

On October 31, 2022, an *Agreed Order Granting Motion to Exclude Testimony* was entered into and filed by the parties.

On November 3, 2022, a *Motion for Order to Compel the Second Exam of the Agreed Order for Independent Medical Exams* was filed by JR, *pro se.*

Also on November 3, 2022, JR filed his *Notice of Deposition of Evelyn Stevens, pro se.*

On November 21, 2022, JR issued and filed his *Subpoena Duces Tecum* to Robert B. Sullivant, Sr., First Security Bank, and FNB of Oxford Bank, *pro se.*

Also on November 21, 2022, JR executed and filed his *Subpoena Duces Tecum* on Robert B. Sullivant, Sr., *pro se.*

On November 28, 2022, an *Affidavit in Support of Plaintiff's Application to the Clerk for Entry of Default Against Plaintiff* and *Application to Clerk for Entry of Default Against Plaintiff* was filed by JR, *pro se.*

On November 29, 2022, JR executed and filed his *Subpoena Duces Tecum* on First Security Bank, *pro se.*

On November 30, 2022, JR executed and filed his *Subpoena Duces Tecum* on FNB Oxford Bank, *pro se.*

On December 1, 2022, JR filed his *First Amendment to Defendant's Responses to Plaintiff's First Set of Interrogatories and Requests for Production of Documents, pro se.*

On December 2, 2022, the *Clerk's Certificate of Default* was filed.

On December 5, 2022, *Plaintiff's Motion to Set Aside Clerk's Certificate of Default and Plaintiff's Motion to Appoint Conservator* was filed by SR.

On December 8, 2022, *Defendant's Motion for Summary Judgment as to All Counts, Affidavit in Support of Summary Judgment, Defendant's Request for Judicial Notice in Support of Summary Judgment, Defendant's Notice of Motion for Summary Judgment,* and *Defendant's Exhibits Filed Concurrently with Motion for Summary Judgment* were all filed by JR, *pro se.*

On December 12, 2022, *Defendant's Emergency Ex-Parte Motion for Temporary Order Restraining and Preliminary Injunction Freezing Accounts, Affidavit in Support of Defendant's Emergency Ex-Parte Motion for Temporary Order Restraining and Preliminary Injunction Freezing Accounts, and Defendant's Exhibits Filed Concurrently with Emergency Ex-Parte Motion* and *Affidavit* was filed by JR, *pro se.*

On December 13, 2022, an *Agreed Order to Freeze Accounts* was entered into and filed by the parties.

C. Year 2023

On January 3, 2023, *Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment as to All Counts* was filed by SR.

On January 4, 2023, an *Agreed Order of Setting* was entered into and filed by the parties, setting *Plaintiff's Motion to Set Aside Clerk's Certificate of Default.*

On January 5, 2023, *Defendant's Objection to Plaintiff's Motion to Vacate Default and Defendant's Cross-Motion for Default Judgment, Affidavit of Robert Sullivant JR in Support of*

His Cross-Motion for Default Judgment, and *Proposed Order* (with a Clerk notation that Defendant wanted it filed even though it was not signed by Judge Whitwell) was filed by JR, *pro se.*

On January 9, 2023, *Defendant's Rebuttal to Plaintiff's Objection to Motion for Summary Judgment* was filed by JR, *pro se.*

On January 10, 2023, an *Agreed Order for Independent Medical Exam* was entered into and filed by the parties.

On January 10, 2023, *Affidavit in Support of Defendant's Claim for Conservatorship for Plaintiff* was filed by JR, *pro se.*

On January 12, 2023, *Order Granting Plaintiff's Motion to Set Aside Clerk's Certificate of Default* was filed.

Also on January 12, 2023, an *Agreed Order of Setting* was entered into and filed by the parties, setting *Defendant's Motion for Summary Judgment* for January 25, 2023.

On January 19, 2023, *Plaintiff's Answer to defendant's Counter-Claim* was filed by SR.

On January 25, 2023, an *Amendment to Agreed Order to Freeze Accounts* was entered into and filed by the parties.

On January 26, 2023, *Order Denying Defendant's Motion for Summary Judgment* was filed.

On April 3, 2023, an *Order* was filed by the Supreme Court of Mississippi denying *Defendant's Interlocutory Appeal from Summary Judgment.*

On April 14, 2023, a *Motion for Trial Setting* was filed by SR.

On April 20, 2023, an *Affidavit of Robert Sullivant JR in Support of His Motion to Disqualify Attorney Swayze Alford as Counsel for Plaintiff* was filed by JR, *pro se.*

Also on April 20, 2023, JR filed his *Petition for Emergency Appointment of Conservator of Robert Sullivant, Sr.* in a separate cause number, Robert Sullivant, Jr. v. Robert Sullivant, Sr., Lafayette County Cause Number 2023-214W, *pro se*.

On April 21, 2023, *Request for Permission for Robert Sullivant Sr. to Execute a Will* and *Motion for Partial Disbursement* was filed by SR.

On April 25, 2023, a *Notice of Hearing* and *Order Setting Cause for Hearing* on *Plaintiff's Motion for Trial Setting, Motion for Partial Disbursement, Plaintiff's Motion to Appoint Conservator*, and *Request for Permission for SR to Execute a Will* was filed by SR, setting these matters for May 9, 2023.

On April 26, 2023, *Defendant's Objection to Plaintiff's Request for Setting with Cross-Motion to Continue Trial* was filed by JR, *pro se*.

On April 27, 2023, an *Agreed Order of Setting* was entered into and filed by the parties, setting *Defendant's Objection to Plaintiff's Request for Setting with Cross-Motion to Continue Trial* and *Motion to Disqualify Attorney Swayze Alford as Counsel for Plaintiff*, setting it for May 9, 2023.

Also on April 27, 2023, JR, *pro se*, filed a unilateral *Order of Setting* and *Rule 81 Summons* was issued in the *Emergency Conservatorship* cause number listed above, setting the *Emergency Petition* for May 9, 2023. Said *summons* was never executed on SR.

On April 28, 2023, *Defendant's Notice of Motion for Leave to Amend Counterclaims* and *Memorandum in Support of Defendant's Motion for Leave to Amend Counterclaims* was filed by JR, *pro se*.

On May 1, 2023, *Plaintiff's Response in Opposition to Defendant's Motion to Disqualify Counsel* was filed by SR.

On May 5, 2023, *Defendant's Rebuttal to Plaintiff's Response to Motion to Disqualify Attorney Swayze Alford as Counsel for Plaintiff* was filed by JR, *pro se*.

On May 8, 2023, SR filed his *Response of Robert Sullivant Sr. to Petition for Emergency Appointment of Conservator* in the above listed *Emergency Conservatorship* cause number.

On May 12, 2023, an *Agreed Order for Partial Disbursement* was entered into and filed by the parties.

On May 16, 2023, an *Order Denying Motion to Continue Trial Setting, Order Denying Defendant's Motion to Disqualify*, and *Order Allowing Amended Counter-Claim* was filed.

Also on May 16, 2023, an *Order Denying Petition for Emergency Appointment of Conservator* was filed.

On May 17, 2023, an *Order of Appointment of Guardian and Conservator of an Adult* was filed.

On May 18, 2023, *Oath of Guardian and Conservator, Letters of Guardianship and Conservatorship* was filed.

On May 18, 2023, an *Entry of Appearance* was filed by the Honorable Walter Alan Davis as attorney for the Conservator/Guardian.

On May 18, 2023, an *Order Granting Robert Sullivant Sr.'s Request to Execute a Will* was filed.

On June 1, 2023, *Defendant's Amended Counterclaim* was filed by JR, pro se.

On June 2, 2023, a *Rule 4 Summons* was issued to Mary H. "Evelyn" Stevens and filed by JR, *pro se*.

Also on June 2, 2023, a *Deposition Subpoena* was issued to Dr. Frank Perkins and filed by JR, *pro se*.

On June 9, 2023, a *Deposition Subpoena* was issued again to Dr. Frank Perkins and filed by JR, *pro se*.

On June 9, 2023, a *Rule 4 Summons* was issued again to Mary H. "Evelyn" Stevens and filed by JR, *pro se*.

On June 9, 2023, a *Motion to Quash Deposition Subpoena* and *Notice of Hearing* was filed by the Honorable J. Hale Freeland on behalf of Dr. Perkins, setting his motion for June 22, 2023.

On June 13, 2023, *Defendant's and Third-Party Plaintiff Robert Sullivant JR's Objection to the Motion to Quash* filed by Dr. Frank Perkins was filed by JR, pro se.

On June 21, 2023, a *Notice of Motion* was filed by JR, *pro se*, however it included no setting date.

On June 21, 2023, *Defendant's Motion for Recusal* and *Affidavit of Robert Sullivant JR* was filed by JR, *pro se*.

On June 21, 2023, *Rebuttal in Response to Objection to Motion to Quash* was filed by Dr. Perkins.

The hearing on *Motion to Quash* and any *Objection and Response* to it was continued pending the Court's decision on Defendant's *Motion for Recusal*.

On June 23, 2023, an *Order Setting Hearing* on JR's *Motion for Recusal* was filed and set for July 7, 2023.

On June 28, 2023, an *Agreed Order Setting Hearing* on Dr. Perkins' *Motion to Quash* was filed and set for August 30, 2023.

On June 30, 2023, JR filed a Motion to Strike All Testimony and Reports of Dr. Frank Perkins or In the Alternative to Compel His Deposition by Court Order.

On July 3, 2023, SR filed *Plaintiff's Answer to Defendant's Amended Counterclaims.*

On July 5, 2023, Ms. Evelyn Stevens, through her attorney James Justice, filed an *Answer to Defendant's Counterclaims and Counterclaim by Third-Party Defendant Evelyn Stevens Against Third-Party Plaintiff Robert Sullivant JR.*

On July 6, 2023, JR filed a *Motion to Strike the Affirmative Defenses of Plaintiff and Third-Party Defendant Robert Sullivant SR.*

Also on July 6, 2023, SR filed a *Response in Opposition to JR's Motion for Recusal.*

On July 7, 2023, a hearing was held on JR's *Motion for Recusal*, and SR's *Response in Opposition to JR's Motion for Recusal.* At the opening of the hearing, JR made an *ore tenus Motion* that he objected to SR's *Response*. The Court considered the *ore tenus Motion* that day and later filed an *Order On Ore Tenus Motion by Defendant* on July 10, 2023 where it held that JR's *ore tenus Motion* is DENIED but allowed him 5 days from the date of the hearing to submit a *Rebuttal to Plaintiff's Response*, which he did on July 12, 2023.

On July 10, 2023, SR filed *Plaintiff's Response in Opposition to Defendant Robert Sullivant JR's Motion to Strike All Testimony and Reports of Dr. Frank Perkins or in the Alternative, to Compel His Deposition by Court Order.*

Also on July 10, 2023, an *Order on Ore Tenus Motion by Defendant* was filed.

On July 12, 2023, JR filed his *Rebuttal to Plaintiff's Opposition to Robert Sullivant JR's Motion to Recuse, pro se.*

III. Official Transcripts

A. January 12, 2023 Hearing on *Motion to Set Aside Clerk's Entry of Default*

During the January 12, 2023 hearing, the Court took up *Plaintiff's Motion to Set Aside Clerk's Certificate of Default.* The Court called up the case and both parties were present and ready to proceed.

The following dialogue is from the *Official Court Transcript* from the hearing on January 12, 2023:

> (WHEREUPON, THE CHANCERY COURT OF MARSHALL COUNTY WAS DULY AND LEGALLY CONVENED, AND THE FOLLOWING OCCURRED IN THIS MATTER.)
>
> HONORABLE ROBERT Q. WHITWELL: You may be seated.
> All right. We're getting started a little early this morning, but we only have one case. It appears to the Court that everybody is here that needs to be here. Any objection to getting started early, Mr. Sullivant?
>
> MR. ROBERT SULLIVANT, JR.: No, Your Honor.
>
> HONORABLE ROBERT Q. WHITWELL: Mr. Swayze?
>
> MR. SWAYZE ALFORD: No, sir, Your Honor.
>
> HONORABLE ROBERT Q. WHITWELL: All right. Then the Court is going to call Chancery Court of Lafayette County,
> Mississippi, CV-2021-612, Robert Sullivant, Sr. versus Robert Sullivant, Jr., Mr. Alford, Ms. Ware, and Mr. Sullivant, Jr., Pro Se.
> This is a plaintiff's motion by Robert Sullivant, Sr. through Mr. Alford to set aside the clerk's certificate of default that was entered in December of
> 2022. Are both parties ready? Are you ready, Mr. Alford?
>
> MR. SWAYZE ALFORD: Yes, Your Honor.
>
> HONORABLE ROBERT Q. WHITWELL: Are you ready, Mr. Sullivant?
>
> MR. ROBERT SULLIVANT, JR.: Yes, sir.
>
> HONORABLE ROBERT Q. WHITWELL: All right. You're the movant.
>
> MR. SWAYZE ALFORD: Your Honor, when I first received the motion by Mr. Sullivant, Jr. for default, my first reaction was – in thinking about the conservatorship was that, well, you know, it's one of those matters that

an answer is not required and is covered by Rule 81 as such. And in looking at Rule 81, you know, it talks about the actions triable not for seven days. And it says an estate matter and a ward's business, which notice is required, but time is not described by a statute. I really though the Rule 81 summons at one time actually talked about guardianship and conservatorship. It just refers to wards and the ward's business. And then looking at the statute, Your Honor, as Mr. Sullivant, Jr.'s response said yesterday that he had a conversation with Mr. Golman [sic] about the fact that an answer hadn't been filed. And Mr. Golman [sic]said, well, a judge is not going to make him file an answer. That's silly. And that's sort of the way I thought about it as well at the time, you know, we had – I know Your Honor always reads what has been submitted, and I feel like you have read already my motion and what part of it – I don't want to rehash all of that. But we were moving pretty quickly towards a trial. We had set the matter for trial, you know, in November. We had set it for late January. They then filed their answer and countercomplaint. That original order didn't mention to countercomplaint because it hadn't been filed at the time, so we filed a second order, you know, saying that, he, not only is the complaint and the issues in the complaint set to be heard on January 31st, but the countercomplaint has been filed. And that the Court sets a hearing in to the merits of the countercomplaint and any other relief sought on January 31st. So, I think, Mr. Golman [sic] and I, you know, we had both had filed our respective complaints setting them for a hearing as to all matters on January 31st with the idea that there would be a hearing. And, Your Honor, that's what is required under the statute for conservatorships. I know your Honor is familiar with them, but, you know, I have printed out statutes that I thought were applicable for conservatorships. It seems to be the crux of Mr. Sullivant, Jr.'s response is that, well, the conservatorship – basically, you ought to have a conservatorship by default. But it you look, Your Honor – and I will just go in order. So 93-24-01 talks about what must be done and what must be filed. And in this – under 401(3), The Court shall grant a conservator only on those powers necessitated by demonstrated limitations and needs of the respondent and issue orders that will encourage the development of the respondent's maximum self-determination – development of the respondent's maximum self-determination and independence. The Court may not establish a full conservatorship if a limited conservatorship or other less restrictive alternative would meet the need of the respondent. So you've got to decide that, Your Honor, based on the evidence presented to you. In 92-24-02, it speaks to the petition and what the petition must state in order to proceed on the appointment of a conservator. The petition must state the name and address of the attorney representing the petition, if any, and must set forth under the style of the case and before the body of the petition the following language in bold or highlighted title set forth in the statute. The relief sought in this petition may affect your legal rights. You have a right to notice of any hearing on this petition, to attend any hearing,

and to be represented by an attorney. Your Honor, again, I'm looking at these statutes, you know, in new light when I'm getting ready for a hearing. I mean, that's not in the counterpetition, and the statute says it must be there. There is no provision if its not there. Now, I think that can be cured, but, nevertheless, the petition that they filed doesn't comply with the statute. Under 93-24-03, under subsection 1, on receipt of a petition under 93-24-02 for appointment of a conservator for a respondent, The Court must set a date, time, and place for a hearing on the petition. Again, Your Honor, saying – there is no other way to interpret that, other than the Court has a hearing on it and the Court must set the time, date – which we did. We set a time, date, and a place for a hearing. Unless the Court finds that the respondent from whom the conservator can be appointed is competent can join in the petition, the petitioner must cause summons to be served not less than seven days before the hearing. Again, Your Honor, this is why I say that this is covered under Rule 81 because it contemplates potentially you could have a hearing within seven days. Well, seven days, you wouldn't have time to file an answer, if it was set that quickly. So again – and it requires that the respondent be personally served, which again wasn't done in this case. It was served as a countercomplaint served upon me. Again, we set it for hearing, but in this case Mr. Sullivant, Sr. is not personally served. Under 93-24-07 it talks about the professional evaluation. So we ended up agreeing on that, Your Honor. That was part of their countercomplaint was they wanted the Court to appoint a professional to perform an independent medical examination. As we got up close to that January 31st hearing date, we were trying to resolve what we could resolve. And one of the things that Mr. Golman [sic] and I agree upon was to do the IMEs. So we entered an agreed order, which I know you have seen, where we appointed Dr. Hobbs and Mr. Thomas as the two doctors who would do the IME. And I put it in that order, Your Honor, just at the time I wasn't thinking that I would be here today trying to defend it, but at the time I put in there that Mr. Sullivant, Sr. contests the allegations in the countercomplaint that he needed a conservator. So that's in that order, Your Honor. So certainly, in terms of whether we denied that, put a defense up to that, that is included in that order that we set or the order we entered on the independent medical examinations. And then we continued the matter so we could do that, Your Honor. Of course, we did Dr. Hobbs. We did Mr. Thompson. Later on, some time that—they filed a motion to strike Dr. Hobbs's testimony. Not long after they filed the motion, Dr. Hobbs retired from the practice of medicine. My understanding was that he was having some health issues, and my thought at the time was that it was probably not wise to make Dr. Hobbs come into court and testify about an examination due t o his health reasons. And I talked with Mr. Sullivant. I said, Look, I said, this could be a problem with Dr. Hobbs. I said, I think we ought to agree to get somebody else. And we did. And we have that – we entered an order earlier this week for Dr. Perkins to do the second IME. He's going to do that next week. So

we're following that court order that we entered, Your Honor. It took longer than was ideal, but, nevertheless, we have entered an order for that. And my other point about that, Your Honor, is the case still is not right to be set for a hearing because we don't have the second opinion and the second certificate from a doctor, which is required by the statute. So the fact that, okay, an answer hasn't been filed, if required, has not delayed anything or prejudiced Mr. Sullivant, Jr., because we would be in the same situation we are today waiting on the second IME. They'll issue the report, and then presumably we'll have a hearing. We can't – we couldn't have had it before now anyway. Under 93-24-07, it says, That the chancery court must conduct a hearing to determine whether a conservator is needed for the respondent. So, again, it's not – it's just like these matters under Rule 81, they're not taken as confessed. In other words, you can't just file this asking for a conservator. We have entered an order for the IME pursuant to the statute. You can't egress and say, Well, you haven't answered, so a default is entered into and a conservator is appointed. This says you've got to have a hearing on it. The chancery judge shall be the judge of the number and the character of the witnesses and the proof to be presented, except that the proof must include certificates from the doctor, which we have already talked about. So again, the statute contemplates and says that the chancery judge must conduct a hearing as to the conservatorship. An then in 93-24-08, Your Honor, it talks about the respondent's rights at a hearing. At a hearing under this article, Respondent may present evidence and subpoena witnesses, which we had done that in January. Both sides were subpoenaing witnesses to be there until we agreed to get the IMEs done first. Examine witnesses and otherwise participate in the hearing. My client has a statutory right, Your Honor, to come to a hearing, call witnesses, put on evidence, participate however he deems necessary to be a part of it. And again –

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

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

HONORABLE ROBERT Q. WHITWELL: All right.

MR. SWAYZE ALFORD: Both parties subpoenaed witnesses to come testify. And then finally, Your Honor, 93-24-11, the order on appointment of a conservator, it sets forth what you must include in an order appointing a conservator for an adult. The Court must include a specific finding that clear and convincing evidence has established. Identified needs of the respondent cannot be met by a less restrictive alternative. So again, Your Honor, you've got to have a hearing. You've got to weigh the evidence,

witnesses, whatever documents, and include a specific finding that clear and convincing evidence established that the respondent was given proper summons, notifying the respondent of the hearing. It goes on to say, If it's a full conservatorship, you've got to state the basis for a full conservatorship. If it's a limited conservator, then you've got to state the specific property placed under the control of the conservator and the powers granted to the conservator. So again, Your Honor, all the statutes on establishing a conservatorship contemplate that a hearing must be had, evidence must be put on, witnesses must testify, and then you've got to make a decision based on all of those things.

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

MR. SWAYZE ALFORD: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: -- by mail?

MR. SWAYZE ALFORD: Yes, sir.

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

MR. SWAYZE ALFORD: That's correct, Your Honor. And that's one of my – my points is, now, you know, looking in hindsight, you know, at the time I wasn't thinking about that. Mr. Golman [sic] and I are trying to get things set. We're setting orders. But now looking at the statute, it wasn't even complied with.

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

MR. SWAYZE ALFORD: Yes, sir. The statute is clear on personal service for Mr. Sullivant, Sr., Your Honor. So I feel like the conservatorship issue is well setout, Your Honor. It's not a situation where you can take a default. It requires proof to be put on. It requires a hearing for you to hear witnesses and take on proof. And the conservatorship, Your Honor, runs throughout the countercomplaint. My argument would be that you can't separate the rest of his claims, you know, from the conservatorship, that the conservatorship runs throughout. But as far as the rest of it goes, you know, he's asked – he asked for an accounting. Basically, he says he wants Mr. Sullivant, Sr. to account for this personal

property that is listed as to, you know, retrieving those items and where it is. Again, there is no prejudice to that, not having been done at this point. Those things can be done. He mentions that certain – Mr. Sullivant, Sr. has taken possession of certain funds, but – in paragraph 34, but it doesn't ask for anything to be done about that. So again, I say that there is nothing lost as far as the accounting of his personal property. In paragraphs 35 and 36, Mr. Sullivant Jr. is asking for compensation for actions that he's done on behalf of his father. You know, as far as having a colorable defense, that is one of the issues. But, again, I think the conservatorship has got to be addressed in order to address these things, number one; but number two, he states no authority for which he would be able to collect retroactively money from Mr. Sullivant, Sr. for things that he's done. I don't know under what theory of law because it's not set forth. I don't know of any theory of law that would allow him to now come back and charge his father for services that he provided prior to the filing of the counterclaim. But, certainly, we have got –

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

MR. SWAYZE ALFORD: Yes.

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

MR. SWAYZE ALFORD: No, sir. And then the last thing he asked for, Your Honor, was by way of emergency relief, and at the time there was a contract pending for the sale of some property. It was supposed to close at the end of the year – on or before the end of the year 2021. Mr. Sullivant, Jr. we learned wasn't going to close. And he pled in his countercomplaint his concern was that, well, he didn't want to close because he wanted there to be a 1031 exchange. And if Senior didn't comply, the consequences would be severe, so he didn't close on time. So that carries over into January when the buyers hired a lawyer, Roy Liddell, to represent them to enforce the contract. And that was going to be an issue before that January 31st hearing as well, but we dealt with that. Part of my motion to set aside had to do with, we settled a number of things, which we did. We agreed upon a number of things to try to get things resolved. It's not like I just ignored this countercomplaint that was filed. We were trying to resolve issues that we could, litigate the issues that we needed to and get the IMEs done. But at any rate, we closed on that property. So the emergency relief, you know, that's sought I would say is not because we closed on the sale. The monies are being held, and the Court can decide what to do with that, again after the conservatorship is ruled upon at a hearing, Your Honor. So for all of those reasons, Your Honor, mostly

because I say there is not an answer required under the statute or the rules. The Court has got to require a hearing, got to hear proof. And as to the rest of it, Your Honor, you know, we did – we did defend the complaint. We did take actions to protect Mr. Sullivant, Sr.'s interest in the matter. We agreed on certain things we could agree on and addressed those by order, and the things that we didn't are going to be before the Court. But, again, we can't do that until Dr. Perkins finishes his evaluation next week, and then we can set a hearing. And there is no prejudice, you know, on Mr. Sullivant, Jr. to having a hearing after that comes back, and that's what was contemplated when we entered the order.

HONORABLE ROBERT Q. WHITWELL: All right.

MR. SWAYZE ALFORD: Thank you.

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

MR. ROBERT SULLIVANT, JR: Thank you. I'm not sure exactly where to start, but I would like to address some of the things that Mr. Alford stated. He stated in my – that the language in my cross-complaint, pertaining to putting my father into a conservatorship, was not in compliance with the code, which I agree it is not. And I did ask Mr. Golman [sic] about that explicitly and expressly the same time that I asked him about the answer – why I haven't gotten an answer to my crossclaim. And he said flatout that he didn't have to do that. I didn't quite understand that, but that is exactly what Mr. Golman [sic] has told me. And it has been on my mind ever since, and I assumed that that was not correct. And, additionally, I was going to have to correct that. But in all candor, my application for default does not really pertain to the conservatorship because actually right after I filed my application for default, Mr. Alford filed a motion to put my father into a conservatorship. And I thought that was out of order and too soon because we haven't done the things as he's pointed out in the code to do. So I thought we were beginning to rush into putting him into a conservatorship and making an appointment of a conservator before some other issues had been cleared up. And –

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

MR. ROBERT SULLIVANT, JR: Well, as Mr. Alford referred to in my complaint, there's issues of personal equipment – personal property that I have not gotten back that my father has given away, which I have asked for it to be returned. And quite frankly, I've brought that issue up many times. I've never heard anything about it from Mr. Alford about how we can get the farm equipment, for example, back. I need to have it. I have

missed – I've missed being able to do jobs for other people because I did not have this farm equipment. And I have asked for it back many times, but my father has given it to my cousins. And upon my former counsel, Mr. Driskell, calling my cousin asking for the return of it, my cousin said that he would call the sheriff's department if I came out there and tried to get it. So I kind of assumed at that point that my cousins had converted it to their own property. So – that whole issue. And meanwhile on the issue of compensation that Mr. Alford brought up, and you said correctly there is no contract, but I did have a contract with my parents. It was verbal and it was expressed, and it was very clear – and it was very clear. Upon my parents purchasing the remaining shares of my grandparent's estate, they asked me if I wanted to do that. I said, Yes. And they said, Well, you will have to take care of us when we get older. And I said I would do that. So my parents expended the funds to purchase the remaining shares from the other heirs of my grandparent's estate so I could have more land. And my mother said, This land will be for you to make a start or to do what you want to with it after you take care of us. And that was the expressly, verbal contract. Being between parents, I didn't think we needed to really write that down. And I never thought anything would ever happen to – would happen to where my parents would breach their side of the contract. But without a doubt, I have fulfilled my side of the contract. When my father called me in approximately –

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

MR. ROBERT SULLIVANT, JR: Okay.

HONORABLE ROBERT Q. WHITWELL: If you would prevail on my denying the –

MR. ROBERT SULLIVANT, JR: Motion?

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

MR. ROBERT SULLIVANT, JR: Okay.

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

MR. ROBERT SULLIVANT, JR: Okay.

HONORABLE ROBERT Q. WHITWELL: But until you get to that point, that's really irrelevant. The issue is, and it seems to me, that we're dealing

with – regardless of whether – there are other issues, I assume, that y'all are going to have to ferret out if we go to trial on this?

MR. ROBERT SULLIVANT, JR: Yes.

HONORABLE ROBERT Q. WHITWELL: But there is still the issue that you were asking for a conservatorship, and he's asked for a conservatorship; and, therefore, we've got to comply with the rules. And the rules came into effect January 1st, 2020. Not last year. They were effective January 1st, 2020. And anything involving a conservatorship goes back to that date, and it applies to these rules that he's presented. And if there is a conflict in the rules and the statutes that he's cited, the rules prevail. And the rule provides, Rule 81, that he can have minor business and so forth with seven days' notice, and you don't have to file an answer in those type of things. So to do part of it, I mean, there is – there are some issues here that are going to have to be resolved beyond that. But even in the statute of the GAP Act, it requires that we serve notice on Mr. Sullivant. So in order to get to all of those things, you're asking – what you're asking for is to accept the conservatorship over him, but then turn over assets to you that you think belong to you that somehow might be through some inheritance or something. This man is still alive. It didn't come to that point. But at any rate, I'm hearing what you have to say, but if you're going to testify about all of these things, I think you need to be put under oath because you are not a lawyer. You are operating for yourself. Do you want to continue with what you're doing on that:

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

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

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

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

(WHREUPON, MR. SULLIVANT FACED THE CLERK AND RAISED HIS RIGHT HAND TO TAKE THE OATH.)

HONORABLE ROBERT Q. WHITWELL: And do you also swear or affirm – raise your hand – that the testimony you have given on the record to this point is the truth and the whole truth and nothing but the truth?

MR. ROBERT SULLIVANT, JR: I do.

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

MR. ROBERT SULLIVANT, JR: Okay.

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

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

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

MR. ROBERT SULLIVANT, JR: All right. Well, so let me just jump into what I was going to respond to the actual motion to set aside the – my application for entry of default. First, I would like to say how we basically – how we king of got here, and this will, I guess, be me testifying. But what had happened was and how we got here on this position that I'm very shocked that we got into is back in April of 2021, we sold – my father and I sold the farmhouse that we had both inherited from my mother. And in the process, I also had hired a sitter for my father, Evelyn Stevens, which I believe she's in the courtroom today, to take care of him or to sit with him and take care of him the days that I wasn't able to be there. Well, that – everything with her went very fine until the point where I had decided to finally move forward with putting my father into a conservatorship. I had been discussing this with my former counsel, Tom Suszek, since 2017, and I didn't feel like I could do it. But then my father was writing checks for over $1,000.00 a month to various scam – what I would call scam organizations, and I believed it to be an obsession that he couldn't control. So I had told Ms. Stevens that, you know, I just could not manage that anymore, and I was going to have to move forward with putting my father into a conservatorship. At that time or soon thereafter, she tells my father that I'm putting him into a conservatorship, basically, so I could steal his money. And that –

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

MR. ROBERT SULLIVANT, JR: Okay.

MR. SWAYZE ALFORD: -- you know, but now we're getting into hearsay. And we've gone way beyond why we're here, but, again, I was

going to let him go. But I can't just sit here and let him give comments and statements from somebody else to his dad where he wasn't there.

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

MR. ROBERT SULLIVANT, JR: I know. I understand. So at that time, I told my father we would find a new house for him to live in, which he for some reason didn't like his current house. So I said, As soon as we put this house on the market, we will buy a new house with the proceeds from the farm sale. Well, Ms. Stevens and him started to look for houses on Zillow. I know this for a fact because I went and tracked his browser activity. And a real estate agent did call the house the day they went to go see a house to see if they made it over there. So at that time, I became very nervous that my father was going to take the money from the joint account and go buy a house. So once he moved the money, our joint funds, to his own account, I promptly, on advisement from my counsel at the time, moved the funds back through my power of attorney, which was still in effect, because I had not been told that my father had canceled it the day after he transferred the funds. But things that Ms. Stevens did say in her deposition is that she did find the POA, and that she did take my father to Jaw Westfaul's office to have –

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

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

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

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

MR. ROBERT SULLIVANT, JR: Yeah. She stated clearly in the deposition that she had found the power of attorney, and she stated that she took my father to Jay Westfaul's office in Batesville, Mississippi, to have it revoked. And that was the day after my father had transferred our money to his own personal account.

HONORABLE ROBERT Q. WHITWELL: All right. Let me ask you about that, Mr. Sullivant. If I understand what you're telling me, you and your father put money that came out of the sale of the property into a joint account. Do you understand what a joint account is?

MR. ROBERT SULLIVANT, JR: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: Well, Mr. Sullivant had just as much right to write it all out as you did. Power of attorney or no power of attorney, he wrote it out. Now, you went back and got it by use of a power of attorney that he had revoked.

MR. ROBERT SULLIVANT, JR: Right.

HONORABLE ROBERT Q. WHITWELL: You claim you didn't have notice of that, I assume, is what your position is. But he still had – I don't know if he gave it to the bank or not, but the money should have stayed where it was. He had authority to draw it out in a joint account. So go to the bank and you put it back where?

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

HONORABLE ROBERT Q. WHITWELL: Okay.

MR. ROBERT SULLIVANT, JR: And then from there, I moved it to my personal account. I moved some of the funds to my father's investment account, and then I moved some to my investment account because I was still planning on using that money to purchase a house. And the part that I put in my investment account, which, you know, is part mine too, is what I was going to expend on – put down on a new house for us.

HONORABLE ROBERT Q. WHITWELL: How much was that?

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

HONORABLE ROBERT Q. WHITWELL: All right. Well, I guess Mr. Alford is right. We're getting off into matters that would be presented to me at trial as to what these facts are. I guess what I'm interested in from you is, is that you pretty will set out your position as to why this shouldn't be set aside, but we're dealing with an entry of default. A lot of your cases and things that you cited in there are dealing with default judgments, and there is a difference in an entry of default and a default judgment. An no default judgment has been entered in this case, and one is not going to be entered without proof and evidence to even prove any damages or to prove the conservatorship or prove anything else. It would have to be a full blown hearing on that. So the real issue is, is what is the prejudice of setting aside the entry of default? And in addition to that, Rule 60(b) provides that – the Court can look at 60, Rule 60, in these type of matters,

and there are certain things – there's inadvertence, mistake, other things. Mr. Alford used the word overlooked. I don't know if that's the correct word, but a mistake. Others are mentioned in the rule.

MR. ROBERT SULLIVANT, JR: Right.

HONORABLE ROBERT Q. WHITWELL: So for whatever reason, he didn't file an answer. And at this point, the Court can allow him to file an answer and can't allow this matter to go forward because it's going to go forward with or without an answer to the proof that you're getting into right now. We're going to have to resolve those issues. And we're going to have to resolve the issue of the conservatorship, and that is an integral part of this proceeding, the conservatorship. An y'all both have agreed that your father needs to be reevaluated. Dr. Hobbs, he's been my document [sic] for 40 years. He's kind of gone off the map, and he's having to retire. And so he's not really – shouldn't be giving an opinion, in my opinion, in this case. That's why y'all agreed for some other – Dr. Perkins or somebody else. He's a great doctor, been a great doctor for all this time here in Oxford. He's had some issues. I don't think he would – I would accept him as a qualified expert right now to testify about your father's condition. All he can do is read from his notes pretty much. But, anyway, I'm interested in what you have to say about that. I have read your memorandum. You have done an excellent job of writing down what you put here in your response. You have given a long affidavit, which as I said is really not applicable to this part of the procedure.

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

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: And when you come into court as a pro se lawyer, you're required to know the rules and abide by

the rules, and you've done a pretty doggone good job of filing what you've filed.

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

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

MR. ROBERT SULLIVANT, JR: Yes, sir.

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

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

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

MR. ROBERT SULLIVANT, JR: Okay.

HONORABLE ROBERT Q. WHITWELL: I'm not cutting you off.

MR. ROBERT SULLIVANT, JR: In Mr. Alford's motion, he states that there is a three-prong test. I think it is via – or from the Allstate case, that good cause has to be shown, a colorable defense, and that prejudice has not occurred to the non-movant if this -- if his motion prevails. And I would like to go into those very quickly –

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

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

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

MR. ROBERT SULLIVANT, JR: Exactly. But to show a matter of good cause, if I can quote from Tucker versus Williams, which Mr. Alford cites in his motion, Good cause shown requires the moving party to provide an explanation for the default or give reasons why vacation of the default

entry would serve in the best interest of justice. And I just don't believe Mr. Alford has done that by stating that – I just don't think an oversight is a good cause to have a – have the default entry set aside. And I would like to go further into, Mr. Alford – I don't think that his refusing or over sighting the filing of the answer is really a nominally [sic] or just an oversight because, I think, almost everything on the case on my claims he's pretty much ignored or tried to delay as much as possible. I would like to state few examples of that. I think it goes toward his bad faith toward trying to defend against my crossclaims, and that the – his oversight of filing an answer is just not an oversight. It's just that he was trying to delay this case as much as possible.

HONORABLE ROBERT Q. WHITWELL: We have been through Tom Suszek to start within 2017 –

MR. ROBERT SULLIVANT, JR: Right.

HONORABLE ROBERT Q. WHITWELL: -- and then you've been with Mr. Golman [sic] when you filed this complaint –

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

HONORABLE ROBERT Q. WHITWELL: Well, he was advising you. You talked to him about matters and the estate and so forth and what to do with your estate, your mom's estate and your dad's estate and all of that. Then you got Brad, and then they were negotiating. You admitted here that Brad told you that you weren't required to file an answer –

MR. ROBERT SULLIVANT, JR: Right.

HONORABLE ROBERT Q. WHITWELL: -- under the GAP Act when you have a seven-day notice on an 81 deed [sic] of business matters of the ward. Then you – I don't know how long Brad was in it, but it was a good while because I read most of the pleadings. And then Mitchell got in, Mitchell Driskell, and you terminated both of them. There had been negotiations back and forth with Mr. Alford and them, and I don't know what was said between those two as to what they were trying to do. I don't know, but it seems to me from reading some of this that there was some misunderstanding about when he was supposed to hold the trust funds in his account, but yet they got transferred to a bank account. Something happened there that somebody had to agree to that to move those funds. I wouldn't think that Mr. Alford just moved those funds on a whim to some bank account. So there were a lot of things that were going on, negotiations, and negotiations about doctors and depositions and taking Ms. Stevens's deposition. There were plenty of things going on, and discovery had been filed. This case wasn't ready for trial.

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

HONORABLE ROBERT Q. WHITWELL: Well, now you've gotten in it, and you're pushing it, Mr. Sullivant. And what we're trying to do here today is, we're going to get it on the books. This is the first time I have seen you.

MR. ROBERT SULLIVANT, JR: Right.

HONORABLE ROBERT Q. WHITWELL: You could have filed some things. You have been filing stuff and going down to the clerk's office. By the way, I checked the records yesterday, and you had my clerk's file something that is totally improper for you to file. You had them file an order that you were trying to submit that had never been signed by me. Why did you do that?

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

HONORABLE ROBERT Q. WHITWELL: When you filed whatever you filed yesterday or day before, you filed an order that you had – I guess you were requesting me to sign an order granting your motion, or whatever, today. You filed that motion, and the clerk made a notation in the record –

MR. ROBERT SULLIVANT, JR: Right.

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

MR. ROBERT SULLIVANT, JR: Okay. Now I do remember that. That's the proposed order, and I was going towards the rules of procedure that said that I had to file a proposed order. And it states that it's styled, Proposed Order, and it's not signed by anybody. And I was just following –

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

MR. ROBERT SULLIVANT, JR: Okay.

HONORABLE ROBERT Q. WHITWELL: -- but the proper process would have been for you to bring it to court today. And if I denied it, then you could ask the court reporter to make it a part of the record. And if you take an appeal at some point – this not a final judgment in this case. Until a final judgment is rendered, you can't file an appeal anyway, but you can

make a record by putting it in the official record. Because the only official record of this proceeding is what this court reporter takes down. It's not what some clerk does in Oxford, Mississippi. So it was an improper order, and I didn't appreciate it because you're not supposed to do things that a lawyer is not supposed to do.

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

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

MR. ROBERT SULLIVANT, JR: Well –

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: Well, anyway. On 1/15/23 Robert Sullivant, Jr. had the clerk file a proposed order that was not signed by the judge. Not signed by me. That is what was done. Anyway, so that's the date it was signed. But, anyway, you don't file orders that aren't signed by me. I mean, until I –

MR. ROBERT SULLIVANT, JR: Well, I misunderstood the rules. I was merely trying to comply with the Mississippi Rules of Civil Procedure when it had to do with objecting to the motion to set aside –

HONORABLE ROBERT Q. WHITWELL: You see, you were telling a clerk what you -- your interpretation of the rule was trying to tell a clerk what to file. And you should have been coming to me and asking me if this is the proper way to do it. I'm presenting an order for you, Judge, and would you sign it? And if I look at it and say, I'm not signing this, you would have presented it today, is what you should have done.

JR.: Okay.

HONORABLE ROBERT Q. WHITWELL: And at the end of this hearing, you would present your order. But be that as it may, let's move on.

JR.: Okay.

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

JR.: As I was stating --

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

JR.: Yes, sir. Yes, Your Honor. I believe Mr. Alford has shown bad faith in how he has conducted his defense of the complaint that I have filed. He has never addressed or conferenced with me on any of the other items or my other demands that I've made in my cross-complaint.

HONORABLE ROBERT Q. WHITWELL: When did you take over as your own counsel? When did you do that?

JR.: August, September.

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

JR.: Yes, sir. Yes, Your Honor.

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

JR.: I would have to -- it seems like it was at the very end of the summer, beginning of the fall.

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

JR.: And so back to that order that Mr. Alford referred to, that order for the IMEs, basically, that order had two things it asked for. It asked for two independent medical examinations, and it asked for -- to have the funds from the land proceeds put into Mr. Alford's trust account and that was per me requesting that. And I had discussions with Mr. Golman [sic] about it, and he assured me that that money would be put into Mr. Alford's trust account, and that was in the court order. Then I said, Well, that will be fine. We'll go ahead and sign that order. But at the same time, it also asked
for two IMEs, and there was a delay by Mr. Alford in getting that order signed. I recall asking Mr. Golman [sic], why is this -- what's the delay? He goes, I don't know. But it turns out that in my – what my understanding and belief is, is that Mr. Alford was waiting to get back the

Hobbs opinion before he signed the – that order because the Hobbs opinion is dated on the 7th, and he signed the order on the 8th, which was, you know, many days after he had received the order and had agreed to it with Mr. Golman [sic]. So I believe there was some gamesmanship being played there to my detriment. And then I think also trying to select Hobbs to do the IME, as you pointed out, he really wasn't qualified for this type of an exam, and that's basically why his opinion was struck from the record.

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

MR. ROBERT SULLIVANT, JR.: And then when I finally got Mr. Driskell to get a motion to strike Hobbs, Mr. Alford took as long as possible as he could to set that motion. And we never heard that motion, until August the 30th is when it was set, and we originally set out trying to strike Hobbs, you know, back in April. And it just seems like it was taking a long time because we weren't getting the proper cooperation in doing so. And then the day before we were supposed to have the hearing to strike Hobbs, Mr. Alford agrees with Mr. Driskell to strike Hobbs. But again, he won't sign the order that actually makes that happen. And so he delayed -- according to Mr. Driskell, he couldn't get through to him. He didn't respond. He didn't know why Mr. Alford was delaying. So, again, I think that is just bad faith in pretty much all of his actions toward my crossclaims complaint was, you know, trying to thwart or not defend or not respond to them. I'm getting a little dry throat here. And then, furthermore, in that order -- no, later in March, I had asked Mr. Golman [sic] -- because I had learned that my father purchased a pickup truck. I go, I need to see that sales information for that pickup truck to see where he got the money and did he get a good deal on that truck.
So Mr. Golman [sic] -- per Mr. Golman [sic] that told me is that he had asked Mr. Alford for that. He would not give it to him by verbal request, so Mr. Golman [sic] filed a request for discovery, I think, on April 22nd. That request was ignored by Mr. Alford. Then Mr. Driskell sends Mr. Alford a letter on July the 6th, asking for that discovery to be produced in ten days. That did not happen. Then on that motion on August 30th, the truck sales information was agreed to be produced. And, again, Mr. Alford did not agree with his verbal agreement to provide that, and I actually had to have a conference with Mr. Alford to get that information, at which time he tells me that Ms. Stevens's name is on the truck. So I think that's why he was delaying in getting me that information is because he did not want me to know that Ms. Stevens's name was on the truck, which I think is very improper in my opinion. Then I find out from reading through the sales information that -- sorry, I'm getting a very dry throat.

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

Bailiff: (Complies.)

MR. ROBERT SULLIVANT, JR: I saw a sign out there that said, No Drinks Allowed, so I didn't bring anything in. So at that point, I saw that he had paid cash for the truck. And I was, like, how did he get that much money? So during the deposition, Ms. Stevens said her name and my father's name was on two accounts at FNB Bank at Oxford, so I subpoenaed the bank statements. And then that's when I learned that the farm proceeds actually went into the FNB account and not Mr. Alford's trust account, which is a direct overt violation of the court order. I don't know what kind of deal Mr. Golman [sic] and Mr. Alford had, but I think the court order rises above whatever kind of agreement they had because that was put in there by me to make me happy that the money would be safe, and it wasn't. My father did spend the money. So we found out that Mr. Alford violated that court order, and what I was afraid was going to happen did happen. So I guess my point is, all the actions that I have seen Mr. Alford do, responding to my complaint, is in bad faith. And so I don't think he has good cause. I think the -- his not filing an answer is not an isolated event – I appreciate that. Thanks. But just his behavior --

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

MR. ROBERT SULLIVANT, JR.: His behavior toward my cross-complaint. So on that basis, I don't think Mr. Alford has good cause. And then in the rules it says that you must show good cause, and I don't think he has shown good cause as to why he did not file an answer. It's just that simple. And that, you know, you have to file
an answer, and he didn't; and, so, therefore, I think that the default must be not set aside or his motion be denied. That's all I have.

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

MR. SWAYZE ALFORD: I mean, I don't have anything further -- well, the last thing he said was an answer is required.

HONORABLE ROBERT Q. WHITWELL: He made a statement that he didn't know what kind of agreement you and Mr. Golman [sic] had. I think you need to address it. The money was not held in – he hasn't cited you for contempt, but if there is some explanation for that and it's not some hooligan sandbag here --

MR. SWAYZE ALFORD: Yes, Your Honor.

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

MR. SWAYZE ALFORD: -- the money -- it was, I'm going to say, $400,000.00 – I don't have the number in front of me -- that Mr. Sullivant, Sr. was going to get from the proceeds of the property that we agreed to hold. As I thought about that, I thought if I'm trying to do what is in his best interest, it doesn't make sense for that much money to be sitting in my trust account earning no interest. My thought was that I, at least, need to put it in a bank account earning a little bit of interest over time. It might not come up much, but it would be something. I felt an obligation to have him earn something. So I talked about that with Mr. Golman [sic]. Mr. Golman's [sic] attitude was like mine, the money shouldn't just be sitting there if it could earn some interest. I think the money ought to earn some interest. Now, granted we agreed Mr. Sullivant, Sr. wouldn't touch it, and I would shop around for the best interest rates I could find. First National Bank of Oxford had the best interest rate, and we put it in there. I failed to follow up with a second order saying, Hey, we deposited it in First National Bank, and the money won't be touched. In the meantime, Mr. Sullivant bought the truck. He spent some money out of that account. That account has now been replenished. We sold the truck. I put that money in there to -- so the truck has been sold and the money put back in the account. The rest of the money has been returned to the account. The account has got as much money in it as it would have had at the time. It's my fault that I didn't come up
with a second --

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

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

HONORABLE ROBERT Q. WHITWELL: All right. Let's see if there is anything else. Do you remember when Mr. Driskell got out of it?

MR. SWAYZE ALFORD: My recollection is the end of -- after August is what I remember, end of that or end of September, is when he got out. I have been communicating with Mr. Sullivant, Jr. I have not -- I don't think he could say I have failed to respond to him or ignored him. We have met. We sat down and tried to talk about how we can resolve some of these issues. I arranged for him to go out to see his father. Hadn't seen each other in a year and a half. I arranged for them to meet and went out there and joined in the meeting so the meeting could happen. So I have not ignored him. Look, I get that he can be frustrated. But, you know, and I'm not using this as an excuse, but he's got one case that he's involved in, and I've got

other cases. Mr. Driskell had other cases. Mr. Golman [sic] had other cases. So, you know, things don't happen as quick as you want to. The August setting, you know, that was the first date that the Court had, that I had, that Mr. Driskell had that we could set it. Mr. Driskell is a public defender. He couldn't do anything in July. The Court --

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

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

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: Well, all right. All of this equipment and all of that stuff is something that will have to be hashed out at another date. I don't know what has been done on that or where all of that goes.

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

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

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

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

MR. ROBERT SULLIVANT, JR.: I think I made the application for default on the first day after Thanksgiving holiday on that Monday. I think

it's the 28th. And then Ms. Wall made the entry for default, I think, on December -- it's filed stamped December the 1st.

HONORABLE ROBERT Q. WHITWELL: That's what I was thinking. All right. The Court has heard the argument of the parties. This case is a complex case in that it is a dispute between father and son, Mr. Sullivant, Sr. and Mr. Sullivant, Jr. Mr. Sullivant, Jr. has indicated that he was trying to provide some ways to see that his father was taken care of, even hired a lady, Ms. Stevens, to help him. They had some property that they were going to sale [sic] in Panola County, and according to Mr. Swayze's argument that part of the delay in each of these situations involved in the whole case, everything from land to joint accounts to conservatorship to the tractors and equipment and all sorts of disputes that seem to be raised in these pleadings, the first time out of the box Mr. Sullivant, Jr. delays the sale of the property because he thinks it ought to be a 1031rather than the sale it was. The buyer had to hire Roy Liddell, who is one of the finest real estate lawyers in the state, to come up and move to enforce the -- get the thing moving to close it. The case was set in January and about the same time the closing ended up happening. The parties put money in a joint account. At the time of all of this happening, Mr. Sullivant, Jr. had a power of attorney over Mr. Sullivant, Sr. But prior to him getting the money out of the joint account, Mr. Sullivant, Sr., who had an absolute right as a joint tenant to withdraw -- he hadn't withdrawn all the money, but he withdrew a good bit of money out, put it in a separate account, and he had someone do a revocation of his power of attorney. Again, according to Mr. Sullivant, Jr., he wasn't aware of that. And he went back and removed some of the money back to another account, put it in his own name, which might have been somewhat -- shouldn't have done. If his intent was to use this money to buy a house for Mr. Sullivant, Sr. and take care of him and so forth, maybe it shouldn't have been put in his name, but that's what he did. And then he put some of it back, and some of it he kept. All of those are facts that are going to have to be ferreted out at a trial. The Court differentiates the difference between an entry of default by a clerk, which is an administrative-type decision that is provided for in Rule55(a). The clerk really doesn't have much choice if somebody comes in and says they want an entry of default, they're in it. They don't necessarily know the facts and what is going on and involved in all of that. There is a difference in that and a party after that being done having to give notice for Rule 55(c) to move for a default judgment and put on proof of what they claim. And based on what I've heard here today, it's not a simple matter of just slam -- slim, bam, thank you, ma'am, take a judgment for X number of dollars. It's going to be some ferreting out of all of these factual issues as to what should be done and what relief should be granted. It's going to be a good bit of proof involved in all of that. The criteria for setting aside an entry of default in my opinion is not as stringent as it is for a motion for default. And the Court can look at a good cause shown

setting aside an entry of default, Rule 60(b), which takes into consideration such things as illness, clerical mistake, misunderstanding, failure to receive service. All of those things can be a good cause. It also says in the Allstate case that Mr. Sullivant, Jr. has cited that this is not a result of gross negligence on Mr. Alford's part. I think it is more of an oversight and misunderstanding and clerical error. I also think that the Court can recognize another reason to set aside one is excusable neglect. I think excusable neglect because it is good cause, because this thing has been going on since Lawyer Golman [sic] was in it. Lawyer Driskell was in it, and then in September of 2022, Mr. Sullivant gets in it himself. And things are still rocking along, take depositions of Dr. Hobbs and these other doctors and Ms. Stevens. All of these things are going on. A lot of negotiations going back and forth during this period of time since these lawyers and Mr. Sullivant have been in it that's caused the delay of why it hasn't moved on to trial. And based on rules involving joint accounts and so forth, Mr. Sullivant, Sr. may have some colorable defenses that might be important in how the Court rules finally in this case. And so I think it would behoove the Court to show that defaults are not favored in any way to settle lawsuits. It is a policy of our system of judicial administration that favor disposition of cases on its merits. It's citing Bell versus City of St. Louis, 467 So.2d 657, (Miss. 1985). And the comment under that is, [W]henever there is a doubt whether a default judgment should be entered, the Court ought to allow the case to be tried on its merits. So the Court is of the opinion that the entry of default will be set aside. The Court is going to allow Mr. Alford ten days in which to file an answer or a response to the crossclaim or counterclaim, whatever it is -- it's a counterclaim, I think, it is styled. There will be -- is there reason for additional discovery? Other than the IME of Dr. Perkins and maybe his deposition or whatever?

MR. SWAYZE ALFORD: In my mind, Your Honor, I'll have to look back at that, but I don't think any additional discovery. I may -- I need to look back at my discovery to see if, in my opinion, was that fully responded to by Mr. Sullivant, Jr. as it relates to his claims to get paid by my client. That claim was kind of in the background because we were talking about the conservatorship. I sent out discovery to address those issues, but I just haven't looked at it in a while. It's not any really additional discovery. I may, after I look at it, ask Mr. Sullivant, Jr. to supplement it or respond if I think he hasn't responded to it.

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

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

HONORABLE ROBERT Q. WHITWELL: Well, we've got that to attend to. Have you filed a response to his motion?

MR. SWAYZE ALFORD: I have, Your Honor.

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

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

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

MR. SWAYZE ALFORD: Yes, sir.

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: All right. I'm trying to -- all I can say is, Mr. Sullivant, we will -- if y'all can agree on some type of schedule for – if there is something else that needs to be done discovery-wise and a trial date, I don't know, I'm not opposed to a scheduling order to try to set that up so you can get it heard as quickly as possible.

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

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

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

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

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

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

JR.: No, Your Honor, and thank you.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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B. January 25, 2023 Hearing on *Motion for Summary Judgment*

During the hearing on January 25, 2023, the Court addressed JR's *Motion for Summary Judgment*. The Court called up the case and both parties were present and ready to proceed.

The following dialogue is from the *Official Court Transcript* from the hearing on January 25, 2023:

HONORABLE ROBERT Q. WHITWELL: Mr. Sullivant, since you are pro se, I'm going to have the clerk swear you in.

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

HONORABLE ROBERT Q. WHITWELL: All right. You may proceed.

MR. ROBERT SULLIVANT, JR.: Thanks, Your Honor. We're here today on a motion of -- for summary judgment, and the reason I filed it I because I believe there is not -- no longer any material issue of fact in this matter. But, basically, what has happened is my father and I sold a farmhouse which we both had half interest in. We had agreed to put the money into a joint account, and that we would purchase another house with that money. We had currently owned a house here in Oxford. So, therefore, I believe we had a contract or an agreement in which to do that. And then also close to about that time, due to my father's writing lots of checks to what I

call *mail scam solicitors,* after years of that and trying to control it, I had decided that I should probably put my father into a conservatorship. And I had asked the sitter, Ms. Evelyn Stevens, to help me in that process as I had to get two IMEs in order to make that happen. Ms. Stevens betrayed me. And as she stated in her deposition, she had told my father what I was trying to do. And about that time she, basically, just quit and didn't show up anymore, and -- I'm not sure exactly what happened. But also at that time, my father decided he would transfer the monies in the joint account or withdraw them and put them in his personal account, funds that we both owned jointly. Of course, that -- you can do that. The bank cannot deny that withdrawal of request. But on a civil level, we did have an agreement that those funds were owned -- we owned them jointly, and we had agreed to buy a house. So using a power of attorney, which he had issued me in 2017, and up to that point had no complaints, problems whatsoever -- and I managed everything for him quite well in my opinion. After he moved the money to the account, Ms. Stevens, according to what she said in her deposition, found the power of attorney and took my father to Attorney Jay Westfaul in Batesville to have it revoked. And at this time, I had no idea. And in the discovery process in an interrogatory, my father stated that he never told me that he had revoked my power of attorney. So, therefore, in Mississippi Code 87-3-113, it states that because I was not -- he did not tell me that the power of attorney had been revoked, and if I put that in the affidavit, which I have, that the termination of the power by revocation or principal's death or incapacity -- capacity is conclusive proof of the non-revocation of the power of attorney at that time. So, basically, his lawsuit is accusing me of stealing money from him, which I was actually in accordance with the POA, trying to protect the funds because it was my understanding and belief, strong understanding and belief, that Ms. Stevens and him were about to go buy a house with that money, which was jointly owned by us. So under my counsel at the time at Holcomb Dunbar, I used my power of attorney, which according to the Mississippi Code was in effect, and moved the money back to the joint account out of fear that he would do -- would lose the money somehow and it was at risk. I moved that to both an investment account that he owned and an investment account that I owned. So my father was very unhappy about that and since moved out of the house. Ms. Stevens found Mr. Alford and made an appointment for my father and took my father to that appointment. And the reason I point that out, I believe it's an undue influence that she has put on my father. And, furthermore, in an IME opinion by Thomas, he states or he concludes that my father cannot make those kind of decisions. And, so, that's basically what has happened. And I was sued, and I was accused of –

HONORABLE ROBERT Q. WHITWELL: Mr. Sullivant, Jr., don't you think that the fact that you're claiming Ms. Stevens performed undue influence on Mr. Sullivant, Sr., that that's a disputed fact?

MR. ROBERT SULLIVANT, JR.: I don't believe it is disputed by her testimony in the deposition.

HONORABLE ROBERT Q. WHITWELL: You've got testimony in her deposition that she admitted to undue influence?

MR. ROBERT SULLIVANT, JR.: She did not explicitly, but I think she implied. I just stated the fact that she did take -- she did find the power of attorney. She did state that. She did state that she took my father to the attorney in Batesville. She has stated, and I have proof of her notes, which have been admitted into court, and where she stated that she made the appointment with Mr. Alford and took him to Mr. Alford to discuss this matter, which this lawsuit was the resulting -- result of all of those actions.

HONORABLE ROBERT Q. WHITWELL: Now, you went to -- did you go to Regions Bank in Batesville?

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

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

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

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

MR. ROBERT SULLIVANT, JR.: Absolutely not.

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

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

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: How did you find out about the power of attorney?

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

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

MR. ROBERT SULLIVANT, JR.: Well --

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

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

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

MR. ROBERT SULLIVANT, JR.: Right.

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

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

HONORABLE ROBERT Q. WHITWELL: You accused Mr. Alford of a half truth in some of your responses, and now you're telling me a half one there, that he did answer that he thought the bank had told you in Batesville about --

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

HONORABLE ROBERT Q. WHITWELL: Well, that's a fact. Whether it is or not, it's a disputed fact. He says yes, and you say no. So that would be something that I would have to consider in a factual basis.

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

HONORABLE ROBERT Q. WHITWELL: Well, that's your testimony. So anything further on your motion?

MR. ROBERT SULLIVANT, JR.: Yes, Your Honor. There was some -- speaking of material statements of fact, I wanted to clear up a few that were filed in the plaintiff's -- well, his objection to my -- to my motion. First, he will allege that -- hold on one second, please. Sorry, I have not done this -- or I have only done it one time and that was two weeks ago. He has stated that, for instance, the Costco card that is -- was used for personal expenses, it never was. That mortgage that he did not own any --

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

MR. ROBERT SULLIVANT, JR.: Okay.

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

MR. ROBERT SULLIVANT, JR.: Right.

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

MR. ROBERT SULLIVANT, JR.: Correct.

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

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

HONORABLE ROBERT Q. WHITWELL: All right. That's his allegation in his answer and affidavit. It also says that you only put $50,000.00 in the Ameritrade, and 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; is that not right?

MR. ROBERT SULLIVANT, JR.: No, Your Honor, that is not correct. That was one of the other things I wish to correct. And that is, I had given my father credentials, showed him how to get on to the website, and each month I would show him the balances. I would tell him what was going on with his two accounts, and he didn't want to show any interest. And I wrote down the credentials for him when we lived at the farmhouse, and he never went on to the website at all. So then after the lawsuit was filed, I was asked to give him some credentials. So I didn't remember what his were, so I changed -- you know, I went through the process of

changing it and gave him the credentials so he could log on. I understand it was quite hard, as it should be, but, I assume, he got on to it.

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

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

HONORABLE ROBERT Q. WHITWELL: -- and you admit in your pleadings that you owe Mr. Sullivant $51,000.00?

MR. ROBERT SULLIVANT, JR.: No, I paid that amount, and I have the deposit receipt in an e-mail from Mr. Golman [sic]. I paid on -- on December the 10th, I put that money into his account.

HONORABLE ROBERT Q. WHITWELL: But that was a fact at the time of this lawsuit that you owed him $51,000.00, when Mr. Alford filed that lawsuit. That is one of the reasons he filed it is because there was money that was taken from Mr. Sullivant, Sr. that
belonged to him; was it not?

MR. ROBERT SULLIVANT, JR.: Well, correct. I moved that to the joint account, and then moved it to both of our accounts. But on December 10th, I put the remaining balance -- and I was trying to keep the money safe. And I put the remaining balance, which here is the deposit slip in an e-mail to Mr. Golman [sic], and he says he will let Swayze know. So I have -- on December 10th of '21, I put that money into his account, which he had credentials -- you know, the new, fresh credentials, so he could go on it and inspect, and I provided the actual deposit slip.

HONORABLE ROBERT Q. WHITWELL: Anything further?

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

HONORABLE ROBERT Q. WHITWELL: Mr. Alford?

MR. SWAYZE ALFORD: Your Honor, I know you have read all the filings, including my response. And I know you're well familiar with that, so I'm not going to -- I will stand on my response, Your
Honor. But other than to say that, like you said, that the $51,000.00 that he still owed was paid after we filed a lawsuit, after we served him with a complaint. Then he came in and said, *Well, wait a minute. I returned $50,000.00,* which, of course, my client had no knowledge of because he couldn't access the Ameritrade account. *I paid $6,000.00,* which we dispute that that was an appropriate credit that he should take. *I paid some utilities,* you know, at a time when my client wasn't even living in the

house. And Mr. Sullivant, Jr. was paying his utilities and the mortgage when he was living there, so we dispute those amounts. Then like you said, Your Honor, it is undisputed that the balance of $51,000.00 that was still being held by Mr. Sullivant, Jr. was paid back to Mr. Sullivant after the lawsuit was filed. As far as the power of attorney, Your Honor, I mean he's arguing about whether, you know, he had knowledge of the termination of the power of attorney. That's a moot point, Your Honor. You still can't -- even if you've got a power of attorney that's valid, you can't take it and use it for your own benefit and your own purposes with no notice and no permission and no knowledge by my client.
That's why people get sued over a misuse of a power of attorney, is because they take somebody's money unknowingly, which he admitted he did. And he put it in his own account, Your Honor, and it was only returned after we sued him, Your Honor. And so, like you said, he's asking for a judgment, I guess, and a dismissal for something he's already partially admitted to doing and returning the money. We've got a dispute over how much more money my client would be entitled to.

HONORABLE ROBERT Q. WHITWELL: The Court can rely on pleadings, depositions, affidavits filed in the trial in the court. In addition to what you've said, it's my understanding that Mr. Sullivant, Sr. claims that Junior gave him -- took credit for one half of the mortgage that he was paying while Mr. Sullivant, Sr. wasn't even living there --

MR. SWAYZE ALFORD: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: -- and the utilities as well.

MR. SWAYZE ALFORD: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: And he disputed the Costco card. One thing that troubles me, Mr. Sullivant, is -- and I think it's an issue that would have to be ferreted out at trial is, you know, this was a joint account, and Mr. Sullivant, Sr. had an absolute right to withdraw it. And then you go in, allegedly, with a power of attorney that supposedly has been revoked, and you claim you have no actual knowledge of it under 87-11-13. I still think that there's a problem there with the fact that the money that he put into his name was his. There's some dispute over that money. It's kind of like the 51,000 when you paid it back after the lawsuit. When I was US Attorney, I prosecuted some very influential people, who decided at the last minute they would write us a check and pay it into the state auditor to see if they couldn't get around being prosecuted. And the fact that you paid the money after the fact doesn't fly. You committed the offense already before, before it happened. So I find that the 51,000 was not paid on time, and that that was a violation of Mr.

Sullivant, Sr.'s rights. And it creates some issues that the Court feels are substantially enough to override the motion for summary judgment based on the pleadings and what's been filed and my statements about these particular instances and the dispute of the fact about Ms. Stevens being – having created undue influence. All of those factors are factual issues that have to be ferreted out in the proof at trial. Therefore, the motion for summary judgment will be denied.

MR. SWAYZE ALFORD: Thank you, Your Honor. Your Honor, we do have an order that we have agreed upon that had to do with that account, so Mr. Sullivant, Jr. can have just some information from that account.

HONORABLE ROBERT Q. WHITWELL: You didn't bring it up, Mr. -- do what now?

MR. SWAYZE ALFORD: That is just an order to amend the account that was frozen just to allow Mr. Sullivant, Jr. to have information on the account. Thank you.

HONORABLE ROBERT Q. WHITWELL: Swayze, you prepare the order.

MR. SWAYZE ALFORD: Yes, sir. I'll have it brought over here today, Your Honor.

HONORABLE ROBERT Q. WHITWELL: I find it interesting, Mr. Sullivant, that you filed a motion under Rule 201(b)(c)(2) to establish certain facts. I don't think that's what the intent of that rule was, but I will take everything you filed into consideration, as well as what I have said today.

MR. ROBERT SULLIVANT, JR.: Thank you, Your Honor.

MR. SWAYZE ALFORD: Thank you, Your Honor.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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C. May 9, 2023 Hearing on Multiple *Motions*

During the hearing on May 9, 2023, the Court addressed several motions which are: (1) *Plaintiff's Motion for Trial Setting*, (2) *Plaintiff's Motion for Partial Disbursement*, (3) *Plaintiff's*

Motion to Appoint Conservator, (4) *Plaintiff's Request for Permission for Robert Sullivant, Sr. to Execute Will*, (5) *Defendant's Objection to Plaintiff's Request for Trial Setting*, (6) *Defendant's Cross-Motion to Continue Trial*, (7) *Defendant's Motion to Disqualify Mr. Alford and Counsel for Plaintiff*, (8) (JR's) *Petition for Emergency Appointment of Conservator of Robert Sullivant, Sr.* (A separate action, In the Chancery Court of Lafayette County, Mississippi, Cause Number 2023-214W, Robert Sullivant, Jr., Plaintiff v. Robert Sullivant, Sr., Defendant), and (9) *Defendant's Motion to Amend Counter-Complaint* (the Court allowed him to be heard on and granted it even though it was not set by Order for this date). The Court called up the cases and both parties were present and ready to proceed.

The following dialogue is from the *Official Court Transcript* from the hearing on May 9, 2023:

> HONORABLE ROBERT Q. WHITWELL: All right. This is Chancery Court of Lafayette County, Mississippi, Robert Sullivant, Sr., Plaintiff, versus Cause Number 202-1612-W [sic], Robert Sullivant, Jr., Defendant. I have two agreed orders. The first agreed order dated April 25th, 2023, sets a hearing on the plaintiff's motion for trial setting, a motion for partial disbursement, plaintiff's motion to appoint a conservator and request for permission for Robert Sullivant, Sr. to execute a will. That's Mr. Alford's motions. Then I have an order signed by both parties setting a hearing on the defendant's objection to the plaintiff's request for a setting, and a cross-motion to continue trial and motion to disqualify Mr. Alford as counsel for the plaintiff, and that is set for today. So the Court has reviewed the file, and with reference to the motion for a partial disbursement to pay federal and state taxes, Mr. Sullivant, Jr., do you have any objection to that?
>
> MR. ROBERT SULLIVANT, JR.: I do not. And I have read the order by Mr. Alford, and I've asked him to change a few things on it, and I believe he was agreeable to that. And I think we can proceed forward upon the changes in that order, and we can proceed with paying the taxes.
>
> HONORABLE ROBERT Q. WHITWELL: I don't know what that says. As far as I'm concerned, that motion will be granted. I don't know what stipulations y'all have come to regarding that.

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

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

MR. SWAYZE ALFORD: Yes, sir.

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

MR. ROBERT SULLIVANT, JR.: Thank you.

HONORABLE ROBERT Q. WHITWELL: Get an order on that. That takes care of number one. The next motion, the way I see it, is to appoint a conservator, and then a separate action filed by Mr. Sullivant, an emergency petition to appoint a conservator -- to appoint him as conservator. The Court is of the opinion that because there is a complaint filed against Mr. Sullivant and has pending matters related to Mr. Alford representing the conservator that might be appointed, so forth, the Court is going to appoint Sherry Wall, the Chancery Clerk, as conservator of Mr. Sullivant, Sr. She will be allowed to hire her own counsel to represent her. And so all of the allegations of who is handling the money and all of that, who is going to be paying the bills, is going to be handled by Ms. Wall, or her successor in case we go way beyond January the 1st. In addition to that, I don't see any need for proceeding on an emergency petition filed by Mr. Sullivant, Jr., who is requesting that he be appointed the conservator. I have read your petition, Mr. Sullivant. One of the things that showed of interest was that you had such a great relationship with your father. The Court didn't come in on a watermelon truck. I was present in Holly Springs when you were there last time. And after the hearing was over, you sat there while Mr. Sullivant got up and left the room. You never even spoke to him. You never even went over and hugged him. You did nothing. As far as I'm concerned, there is no closeness of a relationship that would allow me to appoint you as conservator to handle this matter. So for that reason and other reasons, Sherry Wall will be appointed the conservator. The defendant's emergency petition will be denied. Any other matters involved in that petition that you want to bring forth to the Court can be brought at a later time -- can be brought up at a later time. The next -- that takes care of number two. Number three is a motion for setting. I understand your position. I'm not going to get into in front of all of this crowd your allegations against Mr. Alford, but the trial setting can be put off far enough. I noticed that the letter you have attached from the Bar Association required him to file a response pretty quickly related to that, so I'm sure that will be dealt with there. I'm not going to try the

issues of your motion to disqualify him because of all of those reasons that you claim. It would be like me telling somebody they're guilty until oven -- they're innocent until proven guilty. In my opinion, until something happens from the Bar, there is no need of that. We can set this matter off far enough that y'all can come to an agreement on a trial setting.
If you can't come to an agreement, I will set it myself some time over in the summer. So the motion for trial setting will be granted. Your motion to continue the trial is denied. Your cross-motion is denied because the trial hasn't been set yet, and so there is no need to have a motion to continue the trial because I haven't set a trial yet. I guess you may have wanted to continue the matter related to the conservator, but I'm making a ruling on that. We're going to get that out of the way now, so y'all can agree on a date as soon as possible. Do you think you can do that with Mr. Alford?

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

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

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

HONORABLE ROBERT Q. WHITWELL: All right. Let's see. I had it here somewhere. So I assume you're asking to amend your counterclaim, right?

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

HONORABLE ROBERT Q. WHITWELL: Not your emergency petition. You're talking about the counterclaim?

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

HONORABLE ROBERT Q. WHITWELL: All right. I think it is counterclaim -- whatever. You will have -- how long do you need to do that?

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

HONORABLE ROBERT Q. WHITWELL: All you've got to do is give me an order saying that I approve your amendment, and you can file your

-- whatever your proposed complaint is. I don't have to approve your proposed complaint.

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

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

MR. ROBERT SULLIVANT, JR.: Okay. So I should just go ahead and file the --

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

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

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

MR. ROBERT SULLIVANT, JR.: Okay.

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

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

HONORABLE ROBERT Q. WHITWELL: All right.

MR. ROBERT SULLIVANT, JR.: Thank you.

HONORABLE ROBERT Q. WHITWELL: You also filed with that cross-motion to continue a motion to disqualify Mr. Alford as counsel for Mr. Robert, Sr. The Court considers that motion to be premature, and I'm going to dismiss it without prejudice. If the Bar rules some way that would make it important for me to hear that, then you can bring it back to my attention. You can refile that motion. But for now, the motion to disqualify Mr. Alford will be dismissed without prejudice as premature. Seems like the last thing that I have on the motions is Mr. Alford's motion to -- for permission for Mr. Sullivant, Sr. to execute a will.

MR. SWAYZE ALFORD: Yes, Your Honor.

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

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

HONORABLE ROBERT Q. WHITWELL: Is he here?

MR. SWAYZE ALFORD: He is here.

HONORABLE ROBERT Q. WHITWELL: All right. Dr. Perkins, come around. Stand right there and raise your right hand.

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

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

MR. ROBERT SULLIVANT, JR.: Your Honor, could I have just a moment to get that stuff out? I had the other motions out. If I could get a chance to pull out my information on the motion that we're about to hear now, please?

HONORABLE ROBERT Q. WHITWELL: All right.

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

THE WITNESS: Where do you want me?

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

(WHEREUPON, THE WITNESS ENTERED THE WITNESS STAND.)

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

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

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

HONORABLE ROBERT Q. WHITWELL: All right. You may proceed.

DR. FRANK PERKINS, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION
BY MR. SWAYZE ALFORD:

Q. Will you state your name for the record,
please?
A. Frank Perkins.
Q. And your occupation or employment?
A. I'm a board certified forensic
psychiatrist. My day jobs are, I'm the chief of
psychiatry at Merit Health Central in Jackson,
Mississippi, and then I'm the medical director for
two geriatric psychiatric inpatient units at Merit
Health Wesley in Hattiesburg and Merit Health Biloxi
in Biloxi, Mississippi.
Q. And so you already told us you are board
certified, but just tell Judge Whitwell where you
got your education.
A. Yes, sir. I did my medical school
training at the University of Alabama School of
Medicine, and then I did my residency in psychiatry
at the University of Mississippi Medical Center and
then a forensic psychiatry fellowship in the State
University of New York in Syracuse, New York.
Q. And how long have you been practicing in
private practice?
A. I have been in private practice now for
going on five years.
Q. All right. Have you been qualified as an
expert before in the state courts of Mississippi?
A. Yes, sir.

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

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

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

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

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

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

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

HONORABLE ROBERT Q. WHITWELL: All right. He will be -- Dr. Perkins will be stipulated as a board certified psychiatrist, a forensic psychiatrist. Is that correct?

THE WITNESS: Yes, sir.

HONORABLE ROBERT Q. WHITWELL: All right.

BY MR. SWAYZE ALFORD:
Q. Dr. Perkins, were you appointed by court order in this matter to do an Independent Medical Examination on Mr. Robert Sullivant, Sr.?
A. I was.
Q. And did you do that?
A. I did.
Q. Do you remember when that occurred?
A. I evaluated him on the 17th of January of this year, and then I finalized a report on I believe it was the 27th.
Q. All right. Let me hand you a medical affidavit and ask you if you recognize that.
A. Yes, this is my report that I formulated in this matter.
Q. And so when you are court ordered to do the Independent Medical Examination for an individual under the GAP Act, can you tell the Court how you go about doing that?
A. So I begin off with having just a verbal conversation with the individual and doing what is considered a psychiatric evaluation, which is a standardized process for which that we do.
And then I follow that with any appropriate testing that would be necessary to help clarify diagnosis and level of impairment that someone might have.
If that individual -- if either the court order or the individual raises other issues during my interview, such as testamentary capacity, I may ask those questions at that time as well.

Q. So in that evaluation of Mr. Sullivant in
January, did you make those determinations or
evaluations on testamentary capacity then?
A. I did.
Q. And what was your opinion about his
testamentary capacity?
A. That at that time he did -- he did retain
the capacity to form testament.
Q. And what were the reasons that you went
into that with Mr. Sullivant, Sr.?
A. So from a forensic psychiatric standpoint,
which is where mental health and the law interact,
where we have been trained and where I have been
taught is the things that we pay attention to is due
to mental illness or dementia or any cognitive
impairment is there an impairment in the ability to
know who ones natural heirs are, what the assets
that they hold are, what would happen without a will
in place, and who they want to formulate the will.
It is less important about the why that
they want to formulate the will, as long as they
don't have a psychotic disorder that would make
their reasonings outside of reality.
So it is most important that they have the
capacity to know the facts of what a testament or a
will would be, and then have -- do they have the
ability to manipulate that information to formulate
however they want their will to be made.
Q. Did Mr. Sullivant, Sr. express that to
you?
A. He did.
Q. In what context? How did that come up, as
far as devising his estate or will?
A. So during our interview, during the --
before I did any of the testing when we were just
having a conversation, we were talking about his
family, he spontaneously raised that he wanted to
change his will.
And so that then sparked the conversation
with me to asking him, well, you know, do you
currently have a will? Which, at that time, he did.
Who is in your will? Without a will, who
would that flow to? Which would be his son, and in
the will it did flow to his son. And what assets he
had. He's not able to provide the exact numbers
to the assets, but he is able to say, These are

where the assets are held. So with cognitive aids,
he is able to identify what his assets are.
When it's concerning to me is when someone
would identify assets as I either have $5,000.00
when they have more than that, or they identify that
they have large wealth and they do not have it.
So he's able to appropriately gauge his
assets, and then he's able to gauge who he wanted
his assets to flow to. And then -- so at that time,
he had it intact.
Q. He informed you that he had a will in
place at the time that had his son as the heir?
A. Correct.
Q. So what did he tell you about that?
A. He said he didn't want his son to be his
heir anymore.
Q. Did y'all go into that at all, or where he
wanted to leave it?
A. He raised some issues regarding a property
sale and some money, but I did not get into the
depths of that. I just -- because when it comes to
testamentary capacity, as I said, it's less
important the why for me and more important the, you
know, being able to meet those prongs of
testamentary capacity.
Q. And did he at that time disclose to you
what his desires were or how he wanted to direct his
estate?
A. At that time, he said that he had a church
that he had identified, but he didn't have it
formally planned out as to who all he wanted -- or
how he wanted it devised. He just said that he
wanted to change it.
Q. All right. I think you said a moment ago
that this was a spontaneous comment by Mr.
Sullivant, Jr. (sic.) when you were doing your IME
in January?
A. Correct.
Q. And just to be clear, this is not
something you and I even talked about?
A. Correct.
Q. Now, coming forward to today and talking
about Mr. Sullivant and his testamentary capacity,
have you had a chance to talk with him again today?
A. Yes. We met for 20 to 30 minutes this
morning before coming over to the courthouse.

Q. And, again, in your opinion, he has the
testamentary capacity to execute a will to devise
his property where he wants it to go?
A. He does. He does. He'll -- if given
freeform speech, he will spiral off and kind of go
down rabbit holes and kind of miss the topic of the
conversation.
But with redirection, he is still able to
demonstrate capacity and retention of the ability to
identify those prongs of testamentary capacity.
Q. And, again, in your opinion, he is aware
of what his estate is?
A. Yes. Yes.
Q. And he can articulate and express to you
how he wants that estate to be devised by a will?
A. Yes.
Q. You put in your report, I believe, you
know, that he does have an awareness and an ability
to voice his wishes and needs, I think, was
something you stated?
A. I did.
Q. So in terms of knowing what he wants and
how to express that, he can do that?
A. Yes.
Q. What you said was that he needs --
sometimes he needs somebody to help carry out what
he wants to do?
A. Correct. Correct.
Q. And as it relates to his will, he was able
to express that awareness and that desire? He was
able to express that to you?
A. Yes, sir.
Q. Do I understand, it's in your report --
and Judge Whitwell has already appointed a
conservator.
But your opinion was a conservator but one
that was independent?
A. Correct.
Q. And someone that would be neutral?
A. Correct.
Q. I think you heard Judge Whitwell appoint
Chancery Clerk, Sherry Wall, in that capacity.
And I'm assuming you would agree that that
is somebody who is neutral and independent and they
could do --
A. Very common appointee, the chancery clerk.

Very common.

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

HONORABLE ROBERT Q. WHITWELL: Okay. Cross-examination, Mr. Sullivant, Jr.?

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

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

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

HONORABLE ROBERT Q. WHITWELL: -- Mr. Sullivant, Jr. That's the only way I know how to distinguish you.

MR. ROBERT SULLIVANT, JR.: I know. I just couldn't hear you. I'm sorry. Well, first, I would like to say that having Dr. Perkins here as a witness was a complete surprise to me. It wasn't mentioned anywhere in the motion that he would be a witness, so I haven't really had a chance to prepare to cross-examine him, but I did have some questions I did want to ask him. As a matter of fact, I tried to depose Dr. Perkins, but he was very uncooperative in the -- in the deposition process. And that was one of the other things I was going to amend or wanted to postpone the trial was for the conservatorship, but since I had filed that emergency petition, I didn't think that would be needed. But I have attempted to depose Dr. Perkins because I found his report to be a little bit unusual, and I wanted to ask him some more about it. And I was denied that opportunity. He did contact Mr. Alford, and he would not contact me but said I had to contact Mr. Alford in order to depose him, which I think that is improper. So I'm really caught today without any basis to ask these questions.

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

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

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

MR. ROBERT SULLIVANT, JR.: I have had it for some time, but I didn't come prepared today knowing that he would be here. I wanted to ask him questions about it, but I didn't come here today – it wasn't in a motion, and this was a complete surprise to me. But I will go ahead and ask some questions.

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

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

CROSS-EXAMINATION
BY MR. ROBERT SULLIVANT, JR.:
Q. First thing in your report, you go to the
fact that -- if I can turn to the report that -- if
I can find it here again.
As I said, this has really caught me by
surprise.
HONORABLE ROBERT Q. WHITWELL: All
right. I have heard enough of that, Mr.
Sullivant --
MR. ROBERT SULLIVANT, JR.: I'm
sorry.
HONORABLE ROBERT Q. WHITWELL: --
just proceed to ask your questions.
BY MR. ROBERT SULLIVANT, JR.:
Q. Well, you mentioned that my father would
need an independent conservator; is that correct, in
your opinion?
A. It was my opinion that he needed a
conservator, and that an independent, neutral
conservator would be the most appropriate.
Q. Why would that be opposed as to the
conservatorship code? It prefers somebody of his
family to be his conservator.
Why would that be better?
A. Because when both the individual and the
family member are in the same lane and in agreement
with how things should move forward, it works well.
But when they're opposed on issues about
how things should move forward, a lot of times it
can lead to a lot more difficulty and has a lot more
stress on the elderly individual that needs the
conservator.
And so it is better for their care if it's
just an independent person to do the financial
things.
Q. Okay. Good enough. In your experience of
doing this when a family member does petition the
court or goes forward with the process of putting
their parents into a conservatorship, do you find it
common that the parent becomes angry with the child?

A. Not all. All sorts of different things
happen.
Q. Does that ever happen?
A. It does, but not all the time.
Q. Okay. How often?
Let's say on a percentage basis, how often
would a parent be upset that their child is going to
put them into a conservatorship?
A. Less than half the time in my experience.
Q. How much less than half?
A. I don't know. I can't provide a specific
number.
Q. So you would say about half?
A. I said less than half.
Q. Okay. But you didn't say how much less
than half?

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

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

BY MR. ROBERT SULLIVANT, JR.:
Q. Now, you also stated when it came to his
testamentary capacity that you didn't ask, you know,
why would you want to change your will. You were
just concerned that he was able to change his will?
A. I was concerned that he met the bar for
capacity to have testamentary capacity.
Testamentary capacity doesn't look at why
someone is doing it. It's just whether they can.
Q. Okay. Would that not conflict with the
rest of the report that you said that he needs a
conservatorship, that he cannot handle his own
financial choices?
A. So capacity is a fluid assessment that
changes based on time and based on the level of
functioning and the decision at that time.
So, for example, somebody can have
capacity to decide whether they want to be DNR,
whether they want to have chest compressions, but
they can't decide whether they want to have cancer
treatment because those are two very difficult
conversations.
One being more a simplistic if you're in

the throes of death, do you want to die, or do you
want us to try to keep you alive, or here is all of
these risks, here's these benefits, here's the
chances that it will work. It's a very much more
difficult idea to understand treatment versus just
do you want chest compressions.
In a similar way, when it comes to
financial things, you know, there's a lot of
contracts, a lot of opportunities that people can
take advantage of adults that they need assistance
with.
But when it comes to testamentary
capacity, that's not as complex of an issue as
signing a, you know, contract for a lease or buying
a house, or something like that where there is a lot
more that goes into it that you have to be aware to
protect yourself.
Q. I see. But you said there was an
exception to you don't wonder why, and that is if
his reasoning was outside of reality?
A. So if you had a psychotic illness. He
does not have a psychotic illness in my opinion.
Q. Did you receive the information that I
sent to you prior to his examination of him?
A. No.
Q. You did not receive that?
A. (Nodding head negatively).
Q. I did send some information to your
office, and it was the same exact information that I
had sent to a Dr. Thomas, who did the first IME.
And just -- so, therefore, you did not get
that information?
A. (Nodding head negatively).
Q. All right. So in that --

HONORABLE ROBERT Q. WHITWELL: The answer was no?

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

BY MR. ROBERT SULLIVANT, JR.:
Q. Okay. I believe in -- I'm sorry. That
information that I would have sent I think did show
that his reasoning was outside of reality, and I
wish you would have gotten it and were aware of that
before you had examined him.
And just to clarify, he just spontaneously

said in the meeting in your examination he wanted to
change his will?
A. While we were talking about his family and
things like that, yes.
Q. And he just -- and he just -- he mentioned
that first?
A. Yeah. Yes, sir.
Q. What is your thoughts if my father is
under undue influence of somebody else?
Would he have the testamentary capacity if
he is under undue influence of another person?
A. So undue influence is a very, very
large -- a very different area, okay, and I would
need a lot more information as to whether someone
was in -- under undue influence.
Having reviewed the will that -- or having
had him tell me, you know, who he intends to have
profit from his will, it would seem like it would be
the church that would be the most -- the person that
would be the cause of it, because that seems to be
where most of his assets are flowing.
So I don't understand how undue influence
has anything to do with it.
Q. Well, he has not done a new will yet, so
we're not certain that the church will be that
person -- well, will be the entity that receives all
of his assets.
A. Okay. I mean, I have no information that
he's under undue influence in my interview with him.
There is usually -- during an IME if someone is
exerting undue influence on someone, there is
typically signs of it.
Q. Right.
A. I did not get any of those while I was
there talking to him.
Q. But you are stating that undue influence
could affect his testamentary capacity?
A. I'm not going to say one way or the other
because that is a very loaded statement, and I would
need more specifics before I say whether it can or
can't in his situation.
Q. Okay. Have you ever ran into that case
before when a person, say, a caregiver was close to
the person and had exerted undue influence upon a
person, did you find that in those cases it would
affect their testamentary capacity?

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

MR. ROBERT SULLIVANT, JR.: Okay.

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

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

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

BY MR. ROBERT SULLIVANT, JR.:
Q. Okay. And in those cases, was it your opinion that that undue influence affected their testamentary capacity?
A. There is a lot of nuance[s] to undue influence and undue influence evaluations. And in some cases it has, and in some cases it has not. But, typically, in those situations when those wills have been drawn up, those wills were drawn up outside of the setting of a courtroom where a judge had not ruled one way or the other whether a will could be exercised.
Q. When did you first see my father's will?
A. I have never seen his current will because testamentary capacity is not determined by past wills.
Q. Right. But you had said you -- I might have misunderstood you, but I thought you said that you had reviewed his will?
A. Today he told me, he was able to tell me what his plans were for the will --
Q. Today?
A. -- for his new will when I assessed him.
Q. Good enough. But he did not indicate to you just -- although, it's not important, but he did not indicate to you why he wanted to change his will?
A. He started going down a road about some money over the proceeds of some property sale or something, but I did not explore that and I didn't care to explore it.

Q. Did you take notes to that effect?
A. No, I don't think so.
Q. And you didn't -- you don't -- is that the
only thing that you recall about that?
That's the only specifics that you recall
that he said?
A. I steered the conversation in a different
direction when he started going down that road
because that was not important to me to know.
Q. So it wasn't -- so you decided at that
point that his reason why just wasn't important, so
you steered the conversation or the examination in a
different direction?
A. I steered the examination towards the
prongs of testamentary capacity because he doesn't
have a psychotic illness, so I wasn't concerned
about his reasonings why. It was just a matter of
whether he could.
Q. And how did you reach the conclusion that
he did not have a psychotic disease or illness?
A. During my IME.
Q. All right. When I did contact you, do you
recall me trying to call you and -- at all to --
A. My staff was sending me messages. And the
way that I have interacted in all courts was having
the other party go through the retaining attorney
that retained me to schedule things.
Q. Really?
A. Uh-huh (Indicating yes).
Q. Okay. So, therefore, you just didn't feel
the need to respond to me at all?
A. I did not. It was not that I didn't need
to respond to you, it was that the most appropriate
road by which to schedule a deposition with me was
through Mr. Alford.
Q. Okay. So is that, as you understand it,
the Rules of Civil Procedure, or is this a
medical -- a medical standard?

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

HONORABLE ROBERT Q. WHITWELL: Well, it seems to me that that's the policy of Dr. Perkins, and he hasn't quoted any rule

or anything else. That's just been his policy and his ways that developed through the years of people scheduling depositions. I'm going to sustain the objection. You're going down the wrong path here with that.

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

HONORABLE ROBERT Q. WHITWELL: He told you he didn't get back to you because he thought you should go through Mr. Alford. That was his policy, so that's what he did.

MR. ROBERT SULLIVANT, JR.: I understand.

HONORABLE ROBERT Q. WHITWELL: 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 if he wasn't cooperative. We're here today, and that's where we are. Let's move on.

BY MR. ROBERT SULLIVANT, JR.:
Q. Okay. So what pronouncements do you follow on the medical side when you issue one of these opinions?
Is there pronouncements that you follow like I had to follow as a CPA? When I issued an opinion, I had to follow certain pronouncements and guidance from my professional body?
A. I don't understand what you mean when you say pronouncement.
Q. Okay. Is there any guidance that you get from the entities that accredit you as an expert, do they give you any guidance saying what you can issue an opinion on and what you cannot issue an opinion on?
A. So there is no accrediting body for expert witness, expert testimony, you know, it's basically a court-by-court basis where you're either tendered an expert or not as to whether you can weigh an expert witness.
Q. Right.
A. As to this document and this affidavit and report, you know, this is the product of the GAP Act. This was created by, basically, a workgroup from the legislature after the legislature created -- passed the GAP Act Law.
And so even though there are, you know,

templates for IMEs for evaluations for
conservatorships and things like that, you know,
this is created by our state. So it is kind of a
this is what you're supposed to use in our state.
Q. In the GAP Act, does it state that the
physician or medical professional should exert an
opinion on what type of conservator should be
appointed, be it independent or a family member?
A. I don't think it gives any steering one
way or the other.
Q. So does the GAP Act rely upon professional
expert opinion on what type of conservator to
appoint?
A. So to my understanding -- which I'm not an
attorney. But to my understanding, it's the judge's
choice as to who the conservator is.
My role in this is not to be the one
picking the conservator, not to be the one picking
anything. I'm just trying to help the court with
this information.
And so if there is information that I feel
is helpful the court, I include it in my affidavit.
And if the court doesn't want to listen to me, they
don't have to.
Q. Okay. I understand.

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

HONORABLE ROBERT Q. WHITWELL: Okay. Any redirect?

MR. SWAYZE ALFORD: Just quickly, Your Honor.

REDIRECT EXAMINATION
BY MR. SWAYZE ALFORD:
Q. Just to be clear, I think we said this,
Dr. Perkins, but Mr. Sullivant, Jr. asked you a lot
of questions about undue influence.
Just to be clear in Mr. Sullivant, Sr.'s
case, you didn't detect or observe any presence of
undue influence by anyone?
A. I had -- had, have no inkling, no
suspicion of undue influence in this case at all.

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

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

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

HONORABLE ROBERT Q. WHITWELL: Any objection to it?

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

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

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

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

MR. SWAYZE ALFORD: Yes, Your Honor.

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

THE WITNESS: Thank you, sir.
HONORABLE ROBERT Q. WHITWELL: Do you need to retain him? He's not under subpoena, is he?

MR. SWAYZE ALFORD: No, sir.

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

THE WITNESS: All right.

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

THE WITNESS: You're welcome.
(WHEREUPON, THE WITNESS WAS EXCUSED
FROM THE WITNESS STAND.)

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

THE WITNESS: I get around slow.

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

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

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

DIRECT EXAMINATION
BY MR. SWAYZE ALFORD:
Q. I don't know -- Mr. Bob, I don't know if that's -- it may not even be on right there. Hopefully, everybody can hear you. Just speak up loud enough where everybody can hear you, okay?
A. Okay. I can speak loud enough where they can hear me, but now whether I can hear them or not --
Q. I'll ask them to speak up for you, too, okay? Can you hear me?
A. Yes.
Q. Would you state your name for the court reporter please?
A. Robert Burnett Sullivant.
Q. And you are Senior?
A. Senior, yeah.
Q. How old are you -- I call you Mr. Bob. Is it okay if I call you Mr. Bob?
A. Yes.
Q. How old are you, Mr. Bob?
A. I'm 89. I will be 90 in December.
Q. Okay. And this is your son sitting over here, Robert, Jr.?
A. What?
Q. This is your son sitting over here, Robert, Jr.?
A. Yes, sir.
Q. You understand that we're here -- one of the things we're here today on is asking the Court for permission to allow you to sign a new will?
A. I still didn't understand you.
Q. Do you understand that we're here today

asking the Court to allow you to sign a new will?
A. Yes.
Q. Why do you want to sign a new will?
A. Because I don't like the one I made to
start with.
Q. Okay. What don't you like about the one
you made to start with?
A. Well, it was made in -- after that,
somebody tried to steal my money.
Q. I understand. So when the one that you
had in place was made, who was going to inherit from
you on that will?
A. My son was going to inherit everything.
Q. Your son was going to inherit everything
under that will?
A. Everything in that will.
Q. Okay. And why do you want to change that?
A. Because he has tried to steal money from
me anyway.
Q. All right. And when did you mention that
you wanted to have a new will?
Do you remember when you first mentioned
that?
A. I don't remember when I mentioned it.
Q. Okay.
A. It was some time in the very short past.
Q. Yes, sir. Okay. Do you remember talking
to Dr. Perkins about that?
A. Yes.
Q. I've got you. So under the new will that
you want to ask the Court for permission to sign,
who do you want to leave your estate to?
A. Mostly to the Independence Presbyterian
Church.
Q. Okay. Where is that church?
A. What?
Q. Where is that --
A. On Highway 35 near Courtland.
Q. All right. You have a relationship with
that church?
A. I was born into it.
Q. Okay. And I know you live -- you live at
The Elison right now, right, the assisted living?
A. Yeah.
Q. Do you want to get a house for yourself?
A. I would like to get a house for myself.

Q. Okay. So that you can move out of there?
A. Yes, sir.
Q. And if you were able to get a house for yourself, what is your plan about who would be there with you if you could get that house?
A. My niece in Arkansas as long as -- whenever her mother dies, she wants to move over here.
Q. What is her name?
A. Carolyn.
Q. All right. And so if that works out where you can get a house and then Carolyn would come and she would live with you?
A. She would come live with me --
Q. All right.
A. -- where she could take me where I need to go.
Q. Okay. And if you're able to do that, you want to leave -- if you buy that house, you want to leave that house to her?
A. Yes.
Q. All right. And then there's also -- what else do you want done with your will, besides the Presbyterian church and your niece? What else do you want done?
A. What else did I have on there? I can't –

(WHEREUPON, THE DOCUMENT WAS HANDED TO THE WITNESS.)

BY MR. SWAYZE ALFORD:
Q. Is Jay Westfaul -- do you know Jay Westfaul?
A. What?
Q. Do you know Jay Westfaul?
A. I have heard of the gentleman.
Q. Okay. And has Jay done some work for you in the past?
A. Yes.
Q. All right. And did Jay draft this will with the words in there that you wanted?
A. Yes. I think he got most of it that I -- that I wanted there.
Q. And have you reviewed that last will and testament that Jay prepared?
A. What?

Q. Have you reviewed that document there?
A. Yeah, I agreed to this.
Q. You've agreed to it. Is that the document
that you're asking Judge Whitwell --
A. Yeah.
Q. -- to allow you to sign as your last will
and testament?
A. That is correct.

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

HONORABLE ROBERT Q. WHITWELL: Crossexamination?

CROSS-EXAMINATION
BY MR. ROBERT SULLIVANT, JR.:
Q. Good morning, dad. Are you doing okay?
So you made a statement that you decided
you wanted to change your will after your son, me,
stole your money?
A. We -- there was a house that belonged to
my wife, his mother, and we sold it. And I didn't
want that money intermingled with mine, so I had it
put in a separate account in Regions Bank with the
instructions that nobody was to take it out but me,
and somehow you managed to get it out. I don't know
how you did it because it was supposed to be signed
by me.
Q. Okay. So all the money that you -- so
where did that money -- where did you get it from to
put into your account?
A. What?
Q. Where did you get the money from to put
into your account?
A. It was -- the house was sold.
Q. Okay.
A. My wife's inheritance was sold.
Q. Okay.
A. Your mother's inheritance was sold.
Q. Correct.
A. You were entitled to half of it, and I
was. And when I put it in the bank, if you had
asked me for your half, I would have given it to
you.
But when you took it out and I asked you
for my half back, you denied giving it to me. You
would not give it back to me then.

Q. Okay. But that's when -- okay. The money
at that time was in our joint account?
A. What?
Q. The money was at that time in our joint
account?
A. That money that -- sold the house for?
Q. Yes.
A. Was never in a joint account.
Q. Okay. So when the house was sold and the
attorney handed me a check, do you recall what I did
with that check?
A. You gave it to me, and I deposited in the
bank in a special account where nobody else could
get it but me, and you could get it back if you
wanted it.
Q. Okay.
A. If you had just asked me for it, you would
have got it back.
Q. Okay. Do you recall if that check who it
was paid -- paid to order to?
A. What?
Q. Do you recall the check being who it was
paid to order to?
A. No, I don't recall who it was -- the
closing people gave me the check. I don't know who
signed it. I don't remember.
Q. Okay. So you don't recall that you and I
went to Regions Bank on Jackson Avenue as we came
back from the closing on that house?
A. No, I don't recall going back to Regions
Bank with you.
Q. Okay. Do you recall that I gave you a
piece of paper that stated when Regions Bank would
release those funds?
A. I didn't understand your question.
Q. Do you recall when -- if I gave you a
piece of paper that was from Regions Bank that had
the dates that it was going to release the funds of
that check?
A. I don't recall anything about that.
Q. Okay. So your testimony is, the closing
attorney gave you the check and you put it in your
own individual account at Regions Bank?
A. Put it in an account by itself.
Q. Okay.
A. Not with my other bank accounts.

Q. Okay. And you had told -- and you stated
that you told them that nobody else could take any
money out of that account?
A. There was nobody else supposed to take it
out.
Q. Okay. Do you recall going to
Mr. Westfaul's office, say, mid-June, 2021, and him
writing up a document that revoked my power of
attorney?
A. I don't remember anything about it.
Q. You don't, okay.

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

MR. ROBERT SULLIVANT, JR.: Okay.

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

MR. ROBERT SULLIVANT, JR.: Right.

HONORABLE ROBERT Q. WHITWELL: It was a joint account. It was drawn out by you and later deposited to Mr. Alford's
account. But the point is, is he can – the question is, is he capable of executing a will now? They're asking can he sign a will
today?

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

HONORABLE ROBERT Q. WHITWELL: And Mr. Perkins has testified that he can, that he has testamentary capacity. So I don't know what effect – what he did in '21 about the bank account and revoking the power of attorney and all of that and all of y'all's controversy between you, I don't know what that has to be with this. But I'm being very liberal with
you --

MR. ROBERT SULLIVANT, JR.: Okay.

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

MR. ROBERT SULLIVANT, JR.: The basis for this questioning is that Dr. Perkins stated that if his reasoning was outside of reality, and I believe that my questions will prove that. So I think I'm entitled to state that

or prove that Dr. Perkins's conclusions were incorrect.

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

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

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

BY MR. ROBERT SULLIVANT, JR.:
Q. Okay. How they got it out? So you don't understand how they got it out?
A. Well, somebody in Regions Bank gave it out that they should not have.
Q. Okay. Do you recall you signing or executing a power of attorney for me, say, in 2017?
A. Do you recall that I had canceled that power of attorney about six weeks before.
Q. Before when?
A. What?
Q. Before? No, I'm not --
A. Yes.
Q. Before -- six weeks before when?
A. I canceled that power of attorney before that money was put in Regions Bank.
Q. Okay. So you're stating you canceled it before the money was deposited into Regions Bank?
A. What?
Q. You're stating that you canceled the power of attorney before you deposited the money into the bank?
A. Yes.
Q. Good enough. Do you recall when you -- okay.

HONORABLE ROBERT Q. WHITWELL: And he gave notice to the bank, but he didn't give notice to you. Is that correct, Mr. Sullivant?

MR. ROBERT SULLIVANT, JR.: From my understanding, he gave -- I have no actual knowledge that he did give it to Regions Bank. I do not have that knowledge myself. I just know that he states -- he has stated before that he gave it to the Regions in Batesville.

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

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

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

BY MR. ROBERT SULLIVANT, JR.:
Q. When is the last time you attended the Independence Presbyterian Church?
A. What?
Q. When is the last time you attended the Independence Presbyterian Church?
A. Some time a little bit earlier this fall I went to a meeting up there.
Q. So have you been to a service there?
A. What? Yeah.
MR. SWAYZE ALFORD: Your Honor, again, I mean, who he decides to leave it to at this point, I mean I don't know how cross-examination about that gets us anywhere.
It's testamentary capacity. It's been testified to. And who he is going to leave it to, it's been discerned he can leave it to whoever he wants to, and he know who he wants to leave it to.

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

MR. ROBERT SULLIVANT, JR.: Well, the -- is that I have never heard him mention that before in my life. He has never gone to church on his own. I just found it very irregular that he just all of a sudden decided to do that. And this is a hearing about him putting in a request for a will, which from what he stated, the beneficiary will be the Independence Presbyterian Church. I just thought it was very irregular and wanted to examine him further on that.

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

BY MR. ROBERT SULLIVANT, JR.:
Q. Okay.

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

ahead.

MR. ROBERT SULLIVANT, JR.: Thank
you.

BY MR. ROBERT SULLIVANT, JR.:
Q. You mentioned that -- do you recall when
we were about to sell the farmhouse, which we were
discussing earlier, that you and I were going to
purchase a house with the proceeds of those funds?
A. I don't recall anything about that.
Q. Okay. Do you recall you and I going on
zillow.com on your computer on a website and seeing
some houses for sale in Batesville, Mississippi?
A. I still don't understand your question.
Q. Okay. Do you recall right at the --
before the closing of the house that you and I sat
down in your room and looked at your computer at
some houses for sale that were on the internet?
A. I don't recall anything about that.
Q. Okay. Do you recall you and I driving
around to go look at these houses?
A. Well, I drove around with you and Evelyn
and looked at some houses. Never made an offer on
one.
Q. Do you recall you agreeing with me that we
would take the proceeds from the sale of the
farmhouse and buy a new house?
A. I don't recall after we sold that farmland
you wanting to buy anything. I don't -- I never got
that money yet.
Q. No, I said the farmhouse, the house, that
my mother, your wife, owned.
When we sold the farmhouse and you took a
check to Regions Bank?
A. It was my understanding we were looking
for a house, but I never found one.
Q. Okay.
A. I never made an offer on one.
Q. Right.
A. And I never found one.
Q. But do you recall us agreeing, us both
agreeing, that the proceeds from that house would go
toward a new house?
We would take the proceeds from the sale
of the farmhouse and buy a new house, and that's why

we were driving around to look at houses?
A. Well, I recall driving around looking at houses, and I can recall having a -- I was wanting to put that money in the bank to where we could buy a new house, but it disappeared out.
Q. All right. Good enough.

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

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

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

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

THE WITNESS: Thank you.

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

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

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

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

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

MR. ROBERT SULLIVANT, JR.: Yes, Your Honor, I do. I would like to quote a case, Mask versus Elrod, here in the State of Mississippi, This Court has repeatedly held that the test of one's capacity to execute a will is the ability to understand and appreciate the nature and effect of his act. The natural objects bounty and their relation to him and that he is able to determine what disposition he makes. I just don't believe that somebody who has just been put into a conservatorship because -- they don't have that ability. That's why they were put into the conservatorship to start with. Despite the fact that our expert today said that he had testamentary ability, I have yet to read that in the code where it allows for a will to be

executed or changed. But nowhere in the code does it say that the expert -
- it grants the respondent the ability to do that. I just don't think that is in the code for that to happen. There is no basis for that in the code.
And because he is being put into a conservatorship, that is the assumption that he no longer can make those type of decisions. And we have from our other expert, Dr. Thomas, he stated that he is incapable of making executive decisions and is very susceptible to being scammed. Even today, well, in the recent history, my father is still writing checks to scammers, fake people that trick him into giving them money. He did not have a concept of the fact that the funds at FNB Bank were restricted from him to spend, but he kept on – but he spent it anyway. And then upon me discovering that and putting an order on those accounts to restrict them, he still wrote checks, and the bank still honored them. Although, from what I have been told this morning, they refunded the money. But he still does not have a concept that he cannot spend that money. He's been told that, and he spends it on scam people. I think that proves that there's enough right here that he doesn't have a basis in reality. I think there is enough evidence that has been shown before with all the other checks he's written.
In an affidavit I gave, I gave specifics about the Jamaica scam that he fell into. And I asked him very seriously, I go, Do you really believe that person was going to give you back money? He said, Yes.
I believe without a doubt --

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

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

HONORABLE ROBERT Q. WHITWELL: Well, not in this proceeding. Nothing about that in this proceeding, about all the things you have talked about. I have read the accounting that was filed by Mr. Alford. Yes, back some time ago Mr. Sullivant wrote checks to the January 6th people.
He wrote to everybody you could think of, $5.00 checks here and $5.00 checks there. He's a giver. He, was obviously very conservative and giving to a lot of organizations. But I do not find that -- it's not in this record.

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

HONORABLE ROBERT Q. WHITWELL: I hear what you have to say, but in this case of -- what did you say, Elrod – Mask versus Elrod, I mean, I think he does know the elements of his bounty. I think he knows what he wants to do, if he wants to give his money to the church or whoever he wants to give it to. The Court is of the opinion -- as I said a while ago, the question is, what is his ability right now, his

testamentary capacity right now, to make a will? He's asking me to -- that he wants to make one. You certainly -- if he makes it and at some point we lose Mr. Sullivant and you want to contest it, you won't be prohibited from contesting it, whatever you want to do. But at this point, all he's asking is, is can he make a will. And Dr. Perkins has testified today that he's capable of doing that. The law is this, even though I appointed a conservator just this morning, the law is that a person can make a will while they're under a conservatorship. There is case law on that. I know it is because I've read it and seen it. I don't have to quote to you today, but I know that a person under conservatorship can make a will and be held up. So the fact that I appointed Ms. Wall this morning to be his conservator doesn't mean that he doesn't have testamentary capacity. It means that he is incapable of handling his financial affairs maybe and his ability to do that, and it's not necessarily that he's incompetent. So the Court will overrule your objections to that --

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

HONORABLE ROBERT Q. WHITWELL: Go ahead.

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

HONORABLE ROBERT Q. WHITWELL: Make your record.

MR. ROBERT SULLIVANT, JR.: I think it is -- I believe it is peculiar that Mr. Alford filed this request even before a conservatorship had been established. I just think that is extremely odd. The first thing he's going to do before -- he doesn't even know if a conservatorship is going to be established, but he files this request and has it set before the conservatorship is ever really established. I found that peculiar.

HONORABLE ROBERT Q. WHITWELL: Why is it peculiar? What if I had put the conservatorship matter off for six weeks? The question was, is he capable today of making a will. It doesn't have anything to do with it. I don't find it unusual at all. He can file all the motions he wants, just like you did. And I heard your motions, and I heard his, and I've ruled on it. And Mr. Sullivant will be allowed to make a will, if that's what he wants to do.

MR. ROBERT SULLIVANT, JR.: All right.

HONORABLE ROBERT Q. WHITWELL: Like I said, at some point it may be contested. It may be -- you know, he may change his mind about who he wants to make beneficiary. I don't know. But he will be allowed to make a will if he wants to. The fact that a conservatorship has been set up has no bearing on it in my opinion. All right. That concludes this case.

Anything else?

MR. SWAYZE ALFORD: Just for clarification, Your Honor, when you appointed Ms. Wall as conservator, I know we had -- it was sort of divided between financial -- conservator with financial affairs and then a general conservator. I just want to understand what I need to put in the order about her being conservator.

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

MR. SWAYZE ALFORD: Well, so --

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

MR. SWAYZE ALFORD: Okay. That's what I want to be clear about, Your Honor, because Mr. Thomas had just said in his affidavit, he had just marked -- there is a box on here. Mr. Thomas had just marked that he needed a conservator for financial affairs. Dr. Perkins had marked both. And so I just wanted to be sure that I put in the order what you're desiring, and I hear a general conservator is what you're saying. Thank you, Your Honor.

HONORABLE ROBERT Q. WHITWELL: All right. You can prepare me an order. You will prepare me an order on your motion to amend, Mr. Sullivant, Jr. --

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

HONORABLE ROBERT Q. WHITWELL: -- you can get it to me and file your amendment within ten days. And if you'll prepare me an order and run it by Mr. Sullivant in just a few days.

MR. SWAYZE ALFORD: Yes, Your Honor.

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

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

(WHEREUPON, THE PROCEEDINGS IN THIS CASE WERE CONCLUDED.)

* * *

This Court included the dialogue from the Official Transcripts of all hearings in question listed above due to the seriousness of JR's allegations against this Court and because JR only included excerpts from them.

IV. Court's Analysis of JR's *Motion for Recusal*

This Court will now address JR's allegations as set out below:

A. JR's *Motion for Recusal* is Barred

First, a *Motion for Recusal of Judges* is governed by **Uniform Chancery Court Rule 1.11**, which states:

> Any party may move for the recusal of a judge of the chancery court if it appears that the judge's 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. A motion seeking recusal shall be filed with an affidavit of the party or the party's attorney setting forth the factual basis underlying the asserted grounds for recusal and declaring that the motion is filed in good faith and that the affiant truly believes the facts underlying the asserted grounds for recusal and declaring that the motion if filed in good faith and that the affiant truly believes the facts underlying the grounds stated to be true. Such motion shall, in the first instance, be filed with the judge who is the subject of the motion within 30 days following notification to the parties of the name of the judge assigned to the case; or, *if it is based upon facts which could not reasonable have been known to the filing party within such time, it shall be filed within 30 days after the filing party could reasonably discover the facts underlying the grounds asserted.* The subject judge shall consider and rule on the motion within 30 days of the filing of the motion, with hearing if necessary. If a hearing his held, it shall be on the record in open court. The denial of a motion to recuse is subject to review by the Supreme Court on motion of the party filing the motion as provided in M.R.A.P. 48B.

***Id.* (emphasis added).**

Three hearings have been referenced to as JR's basis for his *Motion for Recusal*. The first hearing was January 12, 2023, the second hearing was January 25, 2023, and the third hearing was May 9, 2023. JR argues that it was a culmination of all three hearings that have illustrated to

him that this Court should recuse. JR was present and represented himself, *pro se*, for all of those hearing dates. He participated in them as a party and as his own lawyer. The Court finds that the date that JR "could reasonably discover the facts underlying the grounds asserted" for this Court to recuse itself was on May 9, 2023, on the third hearing date. Thirty days from May 9, 2023 is June 9, 2023. JR did not file his *Motion for Recusal* until June 21, 2023, which is well outside the 30-day requirement as stated and emphasized above in **Uniform Chancery Court Rule 1.11**. For this reason, JR's *Motion* is out of time and is therefore barred; but out of abundance of caution, this Court is still going to address JR's allegations below.

B. Law on Recusals and/or Disqualification of Judges

The law surrounding the recusal of judges in Mississippi is well settled. **Canon 3** of the **Code of Judicial Conduct** places a burden on the courts to use an objective standard in deciding whether or not a judge should have disqualified himself from earing a case. ***Tubwell v. Grant*, 760 So. 2d 687, 689 (¶7)(Miss. 2000)**(internal quotation marks omitted)(*quoting Jenkins v. Forrest Cty. Gen. Hosp.*, 542 So. 2d 1180, 1181 (Miss. 1988)). A trial judge is presumed to be qualified and unbiased, and the presumption may only be overcome by evidence creating a reasonable doubt about the validity of the presumption. ***Bredemeier v. Jackson*, 689 So. 2d 770, 774 (Miss. 1997)**. "When a judge is not disqualified under the constitutional or statutory provisions the decision is left up to each individual judge and is subject to review only in the case of manifest abuse of discretion." ***Tubwell*, 760 So. 2d at 689 (¶7)**(*citing Buchanan v. Buchanan*, 587 So. 2d 892, 895 (Miss. 1991)). Furthermore, the Court has stated that: "In the absence of a judge expressing a bias or prejudice toward a party or proof in the record of such bias or prejudice, a judge should not recuse himself." ***Bateman v. Gray*, 963 So. 2d 1284, 1291 (¶28)(Miss. 2007)**(intermal quotation marks omitted)(*quoting Hathcock v. S. Farm Bureau Cas.*

Ins. Co., 912 So. 2d 844, 852 (¶23)(Miss. 2005)). The burden, *which is a heavy one*, is on the movant to prove facts sufficient to establish disqualifying bias or prejudice. ***Hodnett v. State*, 787 So. 2d 670 (¶18)(Miss.Ct.App. 2001)(emphasis added).**

1. JR's Argument that this Court Testified as a Character Witness Against Him at the Multiple Motion Hearing on May 9, 2023; and the Summary Judgment Hearing on January 25, 2023 is Without Merit

This Court is the finder of fact and charged with making a ruling based on facts and the law. JR alleges that this Court testified as a character witness against him at the hearing on May 9, 2023, and the summary judgment hearing on January 25, 2023. There is no requirement that a trial judge be a "silent observer." ***Copeland v. Copeland*, 904 So. 2d 1066, 1074 (Miss. 2004).** Further, a Chancery Court even has the right to "interrogate witnesses, whether called by itself or by a party" and a Chancellor's power to question witnesses is broader than those of a Circuit Judge. ***Id.*** The trial judge also has the right to clarify testimony and develop facts. ***Jones v. State*, 79 So. 2d 273, 276 (Miss. 1995).**

JR is correct in stating that this Court made a record of a fact at the May 9, 2023 hearing, something it observed, in open court, from a previous hearing on January 25, 2023. This Court noted after the hearing on January 25, 2023 that JR and SR never spoke to one another. They never hugged each other either. JR sat in his seat while SR left the courtroom very slowly. JR did nothing to greet or show any affection of love towards SR. The Court made a finding at the May 9, 2023 hearing of this interaction, or rather lack of one, and concluded that it was concerned about their relationship and how difficult it would be for this Court to appoint JR as conservator over SR. Further, JR indicated in his *Emergency Petition* that he and his father shared a love and affection for one another and is one of the reasons why JR should be appointed

conservator over SR. This Court was compelled to address that argument of JR's and is why this Court stated into the *Record* what it observed at the previous hearing. It was one consideration or finding that addressed both JR's *Emergency Petition* and SR's *Petition to Appoint Conservator*. It was not the only finding as explained below.

This Court did not testify as a character witness against JR. Instead, this Court stated a finding of fact on the record to base part of its ruling. JR's request that he be appointed conservator stated in his *Emergency Petition* that he and his dad (SR) have a loving relationship. Hence, the reason for the Court to make this finding of what it had witnessed at a previous hearing. This was not the only reason for not appointing JR as conservator over SR. It was one reason of others, for example, another reason was that SR and JR have opposite interests in this lawsuit and it would be improper for JR to be SR's conservator. This Court was not testifying and was well within its authority to make findings and give reasons for ruling as it did. This allegation lacks merit.

JR accuses this Court of calling him a "hooligan sandbag" in the hearing on January 12, 2023. As outlined above, this Court did not call JR such a name. Instead, this Court was referring to JR's allegations of how Mr. Alford handled the money at issue. JR accused Mr. Alford of misunderstanding where to hold the subject funds and the subject funds being spent improperly by SR. Mr. Alford argued that he and Mr. Golmon had been in negotiations regarding settlement. Mr. Alford also wanted to protect SR's interests by putting the money in an interest-bearing account where it could benefit his client by earning money; which Mr. Golmon agreed. Otherwise, it would be sitting in Mr. Alford's trust account not earning any interest. The subject money is approximately $400,000.00 and would earn some interest. Mr. Alford stated that between settlement negotiations and locating a bank that would deposit the money in an

interest-bearing account, he did not get a second *Order* for depositing the money at First National Bank and that the account would be frozen until further order by this Court.

JR argued that a truck was purchased by SR and some other money was spent by SR out of the account. Mr. Alford admitted SR spent some money from the account and he bought a truck, but stated that when he found out about it, the truck was sold and the money spent was returned to the account. An *Agreed Order* was then entered freezing said interest-bearing account. The Court was referring to JR's characterization of Mr. Alford operating on a whim with the subject money and conducting business as a "hooligan sandbag". This Court did not call JR such a name and this allegation is without merit.

JR alleges that this Court called him a liar in the January 25, 2023 hearing when it referred to JR telling a half-truth akin to JR's accusation of Mr. Alford only telling a half-truth. The subject matter of this hearing was *Defendant's Motion for Summary Judgment.* Defendant argued his *Motion.* He argued that his actions and statements were not at issue because he said they were not and supplied the Court with a supporting *Affidavit.* This Court was pointing out that JR's recall of his statements and actions are only half of the story, as SR has his half of the story to tell and prove. There was no way for the Court to grant *Defendant's Motion for Summary Judgment* as there are too many facts in dispute. Further, JR took this matter up on interlocutory appeal and it was DENIED.

JR is correct that this Court did remind him that he was under oath but this does not mean that this Court was implying that JR was lying. This Court has had to remind several litigants of this fact to make sure that he/she understand the gravity of his/her testimony and for clarification. It is a commonly used phrase by attorneys and this Court during trials.

In the case of ***Oliver v. Oliver (In re Estate of Oliver)***, one of the parties referenced certain quotes from the final hearing as examples of the Chancellor's "grudge" against her. The Mississippi Court of Appeals found that the Chancellor, at most, was "expressing frustration with the parties' inability to reach an agreement on any detail, including what half of the property they wanted ("I was hoping y'all could at least agree on one thing, but obviously y'all cannot agree on whether the sun is shining outside or not.")." **P. 111, (Miss. App. 2019)**. That same party went on to quote from a later hearing that she claimed "demonstrates the chancellor's alleged animosity towards her," including exchanges such as the Chancellor telling her that "[i]f you have a problem with my ruling, appeal it[;]" and the Chancellor's admonishment to her to "be careful[,]" stated in the context of her representing herself. ***Id.* at P. 112**. The Mississippi Court of Appeals said "[t]hese statements, *particularly when read in context*, are nowhere near the "combative, antagonistic, discourteous, and adversarial" conduct that would lead a reasonable person to conclude that [she] did not receive a fair hearing." ***Id.*** (emphasis added). This Court was not calling JR a liar and nowhere in the *Transcript* did this Court say: "You are lying or you are a liar." This allegation is without merit.

JR next alleges that it was improper for this Court to ask him questions about the PIN for SR's Ameritrade accounts. JR mistakenly attributed these questions as testifying against him. This is absolutely false.

As analyzed above, this Court is allowed to question witnesses and lawyers. This Court sits as both judge and jury and has to make a decision on all of the facts and law. After this Court asks any questions, it always allows further questions from lawyers/parties based on this Court's questions. By answering the questions, JR was allowed the opportunity to clear up any confusion, which he did. JR alleges that he could not cross-exam this Court but again, this Court

was not testifying. It was asking JR questions that JR had the answers to and answered them. JR could have asked questions based on this Court's questions but chose not to do so. This Court was not testifying against JR and this allegation is without merit.

2. JR's Allegation that this Court Failed to Act When Put on Notice of Mr. Alford's Malfeasance, but Admonished JR in Court for Harmless Error; and that this Court Refused to Hear a Motion to Disqualify Mr. Alford on the Sole Basis of Public Presence is Without Merit

JR has made it known to the Court in his pleadings that he has filed a *Bar Complaint* against Mr. Alford. He filed said *Bar Complaint* prior to filing his *Motion to Disqualify Mr. Alford*. As illustrated above in the *Transcript* from the May 9, 2023 hearing, this Court addressed that *Motion* and stated it was premature for this Court to rule on it. JR's basis for his *Motion* was that, feeling aggrieved, he filed a *Bar Complaint* against Mr. Alford and laid out his alleged issues with Mr. Alford.

This Court is not going to hear the *Bar Complaint*. It is before the Bar and this Court would not want to consider it as this Court may have a different ruling from what the Bar tribunal would do. The Bar Complaint was filed first with the Bar, so it is proper for the Bar to take it up first. This Court ruled that JR's grievances are before the Bar and his present *Motion to Disqualify Mr. Alford* would be dismissed without prejudice as it is premature. This Court stated that ruling on it now would be inappropriate as the Bar investigation and proceeding was still pending. This Court further stated that if the Bar made a decision in favor of JR, he could reset his *Motion to Disqualify Mr. Alford*. This Court is not showing favoritism or bias as accused of doing by JR. Instead, it is remaining impartial and unbiased and ruling on *Motions* as prescribed by law. This Court does not favor Mr. Alford and this argument is without merit.

JR alleges that this Court has accused him, in open court, for something he did in harmless error. JR is referring to a *Proposed Order* that he filed without this Court's signature. JR would assert that this was harmless error. As laid out above in the *Transcript* from January 12, 2023, this Court addressed this matter because the Clerk made a notation in the Court file that states: "Proposed Order – Defendant wanted it filed not signed". That notation shows that Defendant intended on it being filed without this Court's signature. That was not harmless error.

This Court addressed it in open court because that is the only opportunity it has to discuss matters with parties. JR is representing himself *pro se*, and he is held to the same standards and rules as a lawyer. Unsigned orders, whether proposed or not, do not get filed. Only signed ones do. JR would assert that he was trying to get the *Proposed Order* in the *Record* and he thought that is how he was to go about it. This Court explained the process for that to JR, as well as how to get his *Proposed Order* in the *Record* should this Court set aside the clerk's entry of default, which it did. This Court explained that JR could offer it as an *Exhibit* to his testimony. JR still did not do what this Court told him to do regarding his *Proposed Order* after the conclusion of the hearing. This Court had to address this issue at this time and has moved on from it. This Court has not penalized JR for his alleged harmless error and this allegation is without merit.

Again, JR uses strong accusations that Mr. Alford has misappropriated client funds and that this Court has not admonished him for it. This was thoroughly addressed in the January 12, 2023 hearing. JR brought up his concern about money that was supposed to be kept in Mr. Alford's trust account but was deposited instead in an interest-bearing account by agreement of Mr. Alford and Mr. Golmon (who represented JR at the time). Some of the money was mistakenly spent but was all put back upon Mr. Alford being made aware of the spending. Mr. Alford explained how and why this happened and took responsibility for any confusion as to

why and how it happened. It has been dealt with, although JR does not like how it has been handled. Since, there has been an *Agreed Order* entered freezing the account. This Court does not find that Mr. Alford misappropriated any client funds and this allegation is without merit.

3. JR's Allegation that this Court Demonstrated Overt Bias in Favor of Mr. Alford by Either Willfully or Negligently Misinterpreting the Law in the Plaintiff's Favor is Without Merit

JR is under the mistaken belief that this Court has already decided the entire case, which is very far from the truth. This case has been pending since October 25, 2021. The first time the parties got in front of this Court for a hearing was January 12, 2023, on a *Motion to Set Aside Clerk's Entry of Certificate of Default.*

A lot of time has passed since the commencement of this action to January 12, 2023 as outlined above. There have been several lawyers involved, extensive discovery conducted, and depositions taken. Some issues have been resolved by *Agreed Order* as indicated above. Some issues are still outstanding and highly contested.

This is a difficult and emotional case for the litigants as it involves a lawsuit between a father and a son. For whatever reasons, JR now represents himself *pro se* and feels aggrieved by Mr. Alford and this Court. JR feels that this Court was condescending towards him when it asked him if he knew what a joint account is. This Court was not condescending. It was asking him a question, that he answered. JR is offended that the Court is not taking his *Affidavits* as "conclusive proof" and that this Court argues on behalf of Plaintiff. This is simply not true. The personal attacks by JR on Mr. Alford and this Court are highly inflammatory and stem from the emotional nature of the case. JR argues that he has no chance at a fair trial in front of this Court, but again, this argument is without merit.

Further, JR continues to allege that this Court favors Mr. Alford over JR when it stated that it may not have been available for scheduling a hearing and why it could have taken longer than usual to set. There was discussion that Mr. Driskell (attorney for JR at the time) had availability in July of 2022 and Mr. Alford would not agree to a setting then. This Court stated, "I may not have been available", only because the month of July has a holiday and the annual Mississippi Bar Convention that is an entire week long. That eats up 6 days of this Court's already busy calendar. Plus, this Court's schedule is not the only deciding factor in setting a case for hearing/trial. The lawyers and the parties also have schedules, thus making a total of 5 different schedules to negotiate (the Court, Mr. Golmon, JR, Mr. Alford, and SR's schedules). As Mr. Alford also stated above, this is not his only case either. Lawyers and this Court have hundreds of cases that are all a priority. Unfortunately, there is only so much time in a day to schedule cases, and to find a day that 5 separate schedules can agree on is the hard truth of the matter. Mr. Alford has not delayed JR's attempts to get a Court date. There are many factors, as described above, in obtaining a Court date. This Court has not favored Mr. Alford and this argument is without merit.

5. JR's Allegation that this Court and Mr. Alford Have Engaged in Prejudicial Ex-Parte Communications

JR's example of this stems from the line of questioning about the PIN on the Ameritrade account in question in the hearing from January 25, 2023. The Ameritrade account was discussed thoroughly in *Plaintiff's Response in Opposition to Defendant's Motion for Summary Judgment*, which this Court read in great detail in preparation for the hearing. Said *Response* also included voluminous *Exhibits* including correspondence between Mr. Golmon and Mr. Alford. *Exhibit 16* of *Plaintiff's Response* shows the "credentials" that JR set up for SR's

Ameritrade account that SR was unable to access even though it is SR's account. ***See, Exhibit "1".*** JR set up the account for SR using JR's own username and password, or "credentials", as JR refers to them. ***Id.*** *Exhibit 13* of *Plaintiff's Response* is SR's *Affidavit* that shows he could not access the named account herein. ***See, Exhibit "2".*** *Exhibit 14* of *Plaintiff's Response* is an email exchange between Mr. Golmon and Mr. Alford about SR's inability to access the said account. ***See, Exhibit "3".*** *Exhibit 15* of *Plaintiff's Response* is a text message exchange between Ms. Ware (Mr. Alford's associate) and Mr. Golmon regarding SR being locked out of his Ameritrade account. ***See, Exhibit "4".***

Albeit, the *Response* and *Exhibits* do not mention the acronym "PIN", but that is the term this Court used. This Court used the term "PIN" where JR and Mr. Golmon used the term "credentials". All were using their own terms to describe the "Username" and "Password" that was set up by JR for SR's account. The bottom line still remains, that JR set up the "credentials" for SR's account and SR was locked out of his account because he did not know the "credentials" to get into it. Only after the lawsuit was filed did JR give SR the "credentials" for SR to be able to access his own account as provided in the pleadings.

This Court does very little business online and what little business it does do online it is familiar with using a PIN. This Court mistakenly used the acronym "PIN" for the terms, "Username" and "Password"; akin to Mr. Golmon and JR using the word "credentials". *Ex parte* communication between a judge and a party is barred by **Canon 3B(7)**. This Court takes the **Code of Judicial Conduct** very seriously and understands the consequences of violating such **Code**. This Court has not had *ex parte* communication with Mr. Alford, or anyone for that matter, in regards to this case or any other case before this Court. This Court obtained the information it questioned JR about from the pleadings on file with this Court.

It is disturbing to this Court that JR continues with very flagrant and inflammatory attacks on this Court by stating that there is no mention of SR being locked out of his Ameritrade account by JR. As stated above, that is not true. Further, JR contends that the only way this Court could have come up with the term "PIN" is from *ex parte* communication with Mr. Alford and again, as explained above that is not true. Further, it is *suspicious* to him and the switch for "credentials" to "PIN" must be from ex-parte communication. **(Emphasis added).** This Court is concerned with the egregious accusations by JR without any proof of them. He only stated that because he *thinks* it is true then it *must* be true. **(Emphasis added).** Mere suspicion is not clear and convincing proof. These dots do not connect and JR is accusing this Court of a very serious allegation with a mere hunch and total disregard for common sense. For these reasons, this Court finds that this argument is without merit.

6. JR's Allegation that this Court Would Not Allow a Proper Cross-Examination of Dr. Frank Perkins and Allowed His Testimony With No Notice to JR is Without Merit

JR next contends that it was improper for Mr. Alford to call Dr. Perkins as a witness at the hearing on May 9, 2023 to support *Plaintiff's Request for Permission to Execute Will.* He alleges that Mr. Alford gave him no notice of calling Dr. Perkins as a witness and that Dr. Perkins is a Court appointed expert witness. First of all, Dr. Perkins was appointed to conduct and Independent Medical Exam by *Agreed Order*. He was not a court appointed expert witness. Instead, he was the doctor who performed a medical exam, by agreement of the parties, in order to establish a conservatorship, or not, over SR.

JR and SR were provided copies of Dr. Perkins report. Both parties had equal access to the information provided by Dr. Perkins. Dr. Perkins report was admitted into evidence over no objection. Dr. Perkins was also admitted as an expert witness over no objection. JR made his

claim that he was not prepared to ask Dr. Perkins questions and was "surprised" by his testimony, although the Court held that JR had been provided the report and had access to the information in it. It was obvious JR had not read the report previously to the hearing and SR had. His report addressed the issue of testamentary capacity which was the subject of *Plaintiff's Request for Permission to Execute Will*.

JR is attempting to use inflammatory accusations for his own negligence. JR also asserted that it was improper for Mr. Alford to call his own client as a witness. This argument is just absurd as Mr. Alford's client is a party and parties traditionally testify on his/her own behalf. That is what SR did. He testified on his own behalf that he has testamentary capacity. JR never objected at the hearing to Dr. Perkins or SR testifying. He continued to state that he was "surprised" and "I haven't really had a chance to prepare to cross-examine [Dr. Perkins], I did have some questions I did want to ask him." JR went on to ask Dr. Perkins a series of question unrelated to the issue of the *Motion* before the Court, which was: Is SR competent to execute a *Will*? Mr. Alford was not acting in bad faith by calling Dr. Perkins and SR as witnesses and this Court does not favor Mr. Alford. This argument lacks merit.

JR also states that he lost every *Motion* this day, which is not true. He won his *Motion to Amend* that was not even properly set before the Court but the Court considered and GRANTED it anyway. This allegation is without merit.

Again, JR alleges that this Court favors Mr. Alford by allowing Dr. Perkins to evade JR's attempts to contact Dr. Perkins. Admittedly, Dr. Perkins stated that Mr. Alford had asked him to testify regarding his finding that SR has testamentary capacity. JR stated that he was having difficulty getting in contact with Dr. Perkins and that Dr. Perkins was avoiding him. Dr. Perkins stated that he did not feel comfortable talking with JR because he knows that SR and JR have a

lawsuit against one another. Dr. Perkins also stated his policy regarding meeting with parties and such.

The Court noted that Dr. Perkins had a policy regarding meeting with parties. JR keeps referring to Dr. Perkins as the Court appointed expert but as explained earlier, he was not. JR argued that Dr. Perkins is biased towards Mr. Alford and the Court facilitated this bias. This, again, is highly inflammatory and ridiculous. Dr. Perkins was appointed, by agreement, to conduct a medical examination of SR, which he did. He made a report and both parties had access to the report. The report addressed testamentary capacity. Mr. Alford had Dr. Perkins come to Court to explain why his report addressed testamentary capacity. It was a hearing on whether or not the Court allow SR to execute a will. It is only reasonable that one would have a witness to testify regarding testamentary capacity and one would have to cross-examine that witness. Again, JR is upset about something that he did not understand or know what to do as a *pro se* litigant and instead points his finger at everyone else to blame.

JR knew Dr. Perkins was appointed, examined SR, knew he made a report, and had access to the report. He could use this information and prepare questions, but he did not. He kept exclaiming that he was "surprised" by this witness but never asked for a continuance or even a break to have time to prepare for this witness. He never "objected" to Dr. Perkins being called as a witness as he was charged with doing if he did indeed object. He allowed him to be admitted as an expert witness and have his report entered into evidence that day. Again, JR is acting *pro se* and held to the same standards and rules as a lawyer. There are rules in a court proceeding and JR either does not know what they are or chooses to not follow them. JR also forgets his part in why Dr. Perkins may not want to talk with him. JR's own actions and pleadings speak for themselves, and Dr. Perkins was aware of the animosity between the parties.

This Court has not nurtured and allowed Dr. Perkins to have an overt and undeniable bias in favor of Mr. Alford, and this argument is without merit.

JR alleges that this Court would not allow a proper cross-examination of Dr. Frank Perkins, and allowed his testimony with no notice to JR. This has been thoroughly analyzed and explained above. This accusation is without merit

7. JR's Allegation that the "Appearance of Impropriety" is Clearly Present, and a Reasonable Person Might Harbor Doubts About this Court's Impartiality is Without Merit

Again, as stated above, it is apparent to this Court that JR is trying to do his best to represent himself *pro se* but he is also emotionally vested in the subject matter. His lack of understanding the **Rules** has impeded his own representation.

There is an old saying that a lawyer who represents himself has a fool for a client and an idiot for a lawyer. This Court is in no way calling JR a fool or an idiot, but that saying illustrates the extreme difficulty a lawyer has when trying to represent himself. This Court has at all times adhered to the strictures of the **Canons** in the **Judicial Code of Conduct**. This Court takes those very seriously as stated above. These personal attacks on the Court by JR are an illustration of him needing to hire counsel to fully represent him. Counsel is a third-party advocate that would be emotional detached from the proceedings, which is what is needed here. JR is very smart and probably a great accountant, but he is not a lawyer. He of course has the right to represent himself, but he would be better equipped with hiring a lawyer to help guide him through this complicated lawsuit. This allegation against the Court is without merit.

8. JR's *ore tenus Motion* objecting to SR's *Response* to his *Motion for Recusal* was DENIED by Order of this Court dated July 7, 2023 and filed on July 10, 2023.

This issue is *res judicata* but this Court will address it again out of abundance of caution. At the opening of the hearing on JR's *Motion for Recusal* set for July 7, 2023, JR made an *ore tenus Motion* that he objected to SR's *Response* and cited the **Mississippi Rules of Civil Procedure Rule 6(d)**, specifically, that JR did not have 5 days notice of SR's *Response* and wanted to continue the hearing or have the *Response* barred. The Court considered JR's *ore tenus Motion* and finds and orders as follows:

The Court has jurisdiction over the parties and subject matter herein, and venue is proper.

The **Mississippi Rules of Civil Procedure Rule 6(d)** states:

> **Motions.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than five days before the time fixed for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

JR's basis for having a continuance or the *Response* barred is due to SR filing the *Response* the day before the hearing on JR's *Motion for Recusal.* JR stated that he did not have time to prepare for SR's *Response* and it was out of line since it did not comport with the **Mississippi Rules of Civil Procedure**.

SR's argument for the Court not to grant JR a continuance or have the *Response* barred is that **Rule 6(d)** applies to *Motions*. SR did not file the *Motion*, JR did. SR filed a *Response* and there is no requirement under the **Rules** for SR to file a *Response*. SR could have argued against the *Motion for Recusal* without filing anything, but out of abundance of caution, SR filed his *Response* the day before the hearing on JR's *Motion for Recusal.* Further, SR stated that the 5-day notice requirement of **Rule 6(d)** applies to *Motions* and not *Responses*.

The Court agreed with SR that **Rule 6(d)** does not apply to a *Response* and did not allow a continuance or the *Response* barred. However, the Court, *sua sponte*, allowed the *Record* to be left open and took the matter of the recusal issue under advisement after the hearing on the *Motion for Recusal* in order for JR to have time to review and respond to the *Response* and file something, if needed. The Court allowed 5 days from the date of the hearing on *Motion for Recusal*. JR filed a 51-page *Rebuttal to Plaintiff's Answer and Opposition to JR's Motion for Recusal*, which this Court considered. This Court has addressed JR's *Motion to Recuse* above and has considered his *Rebuttal to Plaintiff's Answer and Opposition to JR's Motion for Recusal*, where he only raises a few additional issues analyzed below.

9. JR's Allegation that No Hearing Was Held on Appointing a Conservator Over SR is Without Merit

JR complained at the hearing on his *Motion for Recusal* that this Court did not hold a hearing on appointment of a conservator over SR. Again, that is anything but the truth. A hearing was held on May 9, 2023.

On April 14, 2023, SR filed a *Motion for Trial Setting* and included in that motion is language that states: "That undersigned counsel for Plaintiff has sent several possible trial dates to Defendant but has been unsuccessful in setting a trial date. The Plaintiff is desirous of a trial to conclude this matter and respectfully requests this Court set this case for trial at the earliest available trial date."

On April 20, 2023, JR filed a *Motion to Disqualify Attorney Swayze Alford as Counsel for SR* and an *Affidavit of JR in Support of His Motion to Disqualify Attorney Swayze Alford as Counsel for SR*.

On April 21, 2023, SR filed a *Request for Permission for SR to Execute Will* and a *Motion for Partial Disbursement.*

SR filed a *Notice of Hearing* on April 25, 2023, setting a hearing on May 9, 2023 on a *Motion for Trial Setting*; *Motion for Partial Disbursement*; *Plaintiff's Motion to Appoint Conservator*; and *Request for Permission for SR to Execute Will.* An *Order of Setting Cause* for Hearing was signed and filed on April 25, 2023, setting the following motions for hearing on May 9, 2023, which were: (1) *Plaintiff's Motion to Appoint Conservator* and (2) *Plaintiff's Request for Permission for SR to Execute a Will.*

On April 26, 2023, JR filed *Defendant's Objection to Plaintiff's Request for Setting with Cross-Motion to Continue Trial.* An *Agreed Order of Setting* was signed on April 26, 2023 and filed on April 27, 2023, setting the following motions for May 9, 2023, which were: (1) *Defendant's Objection to Plaintiff's Request for Setting with Cross-Motion to Continue Trial* and (2) *Motion to Disqualify Attorney Swayze Alford as Counsel for Plaintiff.*

On April 28, 2023, JR filed *Defendant's Notice of Motion for Leave to Amend Counterclaims* and *Memorandum in Support of Defendant's Motion to Disqualify Counsel.* JR never noticed or set the *Motion for Leave to Amend Counterclaims* but the Court heard it anyway and granted it.

On May 1, 2023, SR filed *Plaintiff's Response in Opposition to Defendant's Motion to Disqualify Counsel.*

On May 5, 2023, JR *filed Defendant's Rebuttal to Plaintiff's Response to Motion to Disqualify Counsel.*

And finally, on April 20, 2023, JR filed in a separate cause a *Petition for Emergency Appointment of Conservator of Robert Sullivant SR* (Cause Number 2023-214(W)). JR filed an

Order of Setting on April 27, 2023, for this separate cause, setting it for May 9, 2023; and on April 27, 2023 JR issued a *Rule 81 Summons* to SR for a hearing on May 9, 2023. JR never executed this summons on SR as indicated in the Court file.

On May 8, 2023, SR filed a *Response to Petition for Emergency Appointment of Conservator*. This Court took up JR's *Emergency Petition for Conservatorship*, as well as SR.'s *Petition for Appointment of Conservator* on May 9, 2023. During this hearing, this Court explained to JR that his *Emergency Petition* was not proper for several reasons: (1) SR and JR are involved in a lawsuit against one another and it would not serve SR's interests for JR to be appointed Conservator over SR; (2) SR had not been served on JR's *Emergency Petition* as no emergency existed since a *Petition to Appoint Conservator* was already pending with all of the supporting medical exams and documentation in the 2021 cause; and (3) this Court further explained to SR that it appoints an uninterested third-party (usually the chancery clerk) to be the Conservator when the parties cannot agree on who will serve (that is exactly what this Court did that day).

JR may not think a hearing occurred that day because those matters were addressed quickly and promptly by this Court, but it is evident from the *Record* and the *Transcript* that a hearing occurred and JR's argument lacks merit.

10. JR's Attempting to Have a Second Bite at the Apple

In JR's *Rebuttal* he is attempting to go over issues that have already been addressed by the Supreme Court of Mississippi by *Order* dated March 31, 2023, where it DENIED his *Interlocutory Appeal from Summary Judgment*. Anything stemming from the hearing on JR's *Motion for Summary Judgment* is *res judicata*. JR does not get another attempt at bringing up

issues from that hearing, hence the reference to attempting to have a second bite at the apple. Any of JR's allegations as it relates to that hearing are without merit.

11. JR is Angry with this Court, Mr. Alford, and Dr. Perkins for SR Wanting to Execute a Will

For the reasons stated in the pleadings in this matter, JR and SR are at odds with one another. It appears to this Court that the biggest concern is for SR. He has reached a stage in his life where he is unable to care for himself both physically and financially. He has also fallen victim to scams. He was in need of a conservatorship/guardianship and was appointed both. However, these frailties do not impact his ability to execute a will as stated by Dr. Perkins. SR still has testamentary capacity.

A conservatorship/guardianship has been established over him to protect and care for him. He is in good hands with Ms. Wall as his conservator/guardian. As the Chancery Clerk, she is appointed to serve as conservator/guardian all of the time in this Court's cases and does an exceptional job at it. SR is being well taken care of and all of his needs are being met. He is currently living and thriving at Elison, an assisted living place located in Oxford, Mississippi. Ms. Wall is over his money so that he is no longer a target for scammers.

With all of that said, this would be a good time for JR and SR to work on their relationship. However, it is apparent to this Court with the multiple filings and inflammatory accusations that JR blames this Court, Mr. Alford, and Dr. Perkins for SR's request to execute a will. SR is electing to make that choice. That is SR's choice to make. He has made it. Dr. Perkins stated that SR has testamentary capacity and based on his expert testimony this Court agreed. SR is allowed to execute his will. That is SR's business to do so as he has been deemed competent. The "why" and the "who" receives from SR under his will is for SR to decide.

This Court recommends that JR and SR try and repair their relationship and move forward from this. This Court understands JR's frustration with SR and SR's ultimate decision to execute a will and leave his wealth to a church of his choice but that is not this Court, Mr. Alford, or Dr. Perkins' fault. This Court would like the parties to discuss how to repair their relationship and move forward in order to reach a possible resolution in this matter. This Court is troubled by an only child and his father being at such odds with one another. Family is important and with time and grace this relationship could be mended. This Court is not ordering a mediation, only recommending one as the family unit is precious and it should do everything in its power to maintain that bond. If the parties are unable to reach any resolution in this matter, this Court is capable of hearing the case through its conclusion.

For the reasons stated above, *Defendant's Motion for Recusal* is **BARRED** and/or **DENIED.**

SO ORDERED this the 17th day of July, 2023.

ROBERT Q. WHITWELL, SENIOR CHANCELLOR

HOLCOMB DUNBAR

ATTORNEYS

OXFORD • JACKSON

12/10/21

Credentials for Sr's TDAmeritrade accts.

rsullivantsr
H@nrY_V2

HOLCOMB, DUNBAR, WATTS, BEST, MASTERS & GOLMON, P.A.
400 Enterprise Drive / Post Office Drawer 707 / Oxford, Mississippi 38655-0707
662-234-8775 / Fax: 662-238-7552 / holcombdunbar.com

EXHIBIT
"I"

IN THE CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. **PLAINTIFF**

VS. **CAUSE NO.: 2021-612 (W)**

ROBERT SULLIVANT, JR. **DEFENDANT**

AFFIDAVIT OF ROBERT SULLIVANT SR.

STATE OF MISSISSIPPI

COUNTY OF LAFAYETTE

Comes now, Plaintiff, Robert Sullivant, Sr., and who states on his oath as follows:

1. I am an adult resident of Lafayette County, MS and competent to testify herein.
2. On July 12, 2017, I executed a general Durable Power of Attorney appointing my son, Robert Sullivant Jr. as my lawful agent and attorney in fact.
3. On May 19, 2021, I opened a money market account with Regions Bank that was solely in my name. That same day, I transferred $230,000 from a Regions account that was an account jointly held with Sullivant, Jr.
4. On May 20, 2021, I executed a Cancelation of Durable Power of Attorney which I filed with the Panola County Chancery Clerk and provided a copy to Regions Bank in Batesville, MS.
5. Despite my intention that Sullivant Jr. no longer had my power of attorney, Sullivant Jr. used the power of attorney to withdraw $230,000.00 from my Regions Bank Money Market account. Sullivant Jr. did not discuss with me that he was withdrawing the

EXHIBIT
"2"

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money, nor did he inform me where he was depositing the money. The withdrawal of this money by Sullivant Jr. was without my permission, without my knowledge, and without my consent. I knew that Sullivant Jr. had taken my money and he had not discussed it with me nor told me where the money was after the withdrawal.

6. I hired Swayze Alford to get my money back for me. I filed a Complaint against Sullivant Jr. for the return of the money that he had taken from my account.
7. It was only after the Complaint was filed and served on Sullivant Jr. that his attorney Brad Golmon informed Mr. Alford that Sullivant Jr. had deposited $50.000 into a TD Ameritrade account in my name. I was not aware of the TD Ameritrade account and I was not told by Sullivant Jr. that he had made a deposit into the account. I never had access to the account and even after the money was deposited, I was not able to access the account. Sullivant Jr. set up the account and the access to the account was set up by Sullivant Jr. It was only after the Complaint was filed that the information was provided by Mr. Golmon to my attorney for access to the account.
8. After the Complaint was filed, pursuant to a court order, Sullivant Jr. provided an accounting of bills that he purportedly paid for me. I was not aware of the payment of the bills until after the Complaint was filed. These bills were paid without my permission, knowledge or consent.
9. Sullivant Jr. used the Costco credit card so I dispute that all of the charges listed in the accounting belonged to me.
10. Sullivant Jr. took a credit for paying half of the mortgage and utilities for me during a time that I did not live in the home. I dispute the credit taken by Sullivant Jr. for payment

of these expenses for me. I did not agree that I would pay half of the expenses when I did not live there.

11. Even after taking the offsets for money returned to me and the expenses paid for me, Sullivant Jr. admitted that he still held over $50,000.00 that belonged to me.

12. After the filing of the Complaint and the accounting ordered by the court, Sullivant, Jr. returned over $50,000 to my T.D. Ameritrade account.

This the 3 day of January, 2023.

Robert Sullivant Sr.
ROBERT SULLIVANT SR.

STATE OF MISSISSIPPI

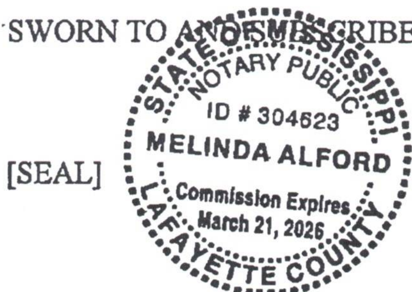
COUNTY OF LAFAYETTE

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid jurisdiction, the within named ROBERT SULLIVANT SR. , who being first duly sworn, stated on his oath, that all of the facts, matters and allegations contained in the foregoing affidavit are true and correct as therein stated, to the best of his knowledge.

WITNESS MY SIGNATURE, this the 3 day of January, 2023.

Robert Sullivant Sr.
ROBERT SULLIVANT SR.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 3 day of January, 2023.



[SEAL]

Melinda Alford
NOTARY PUBLIC

My Commission Expires: ____________

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Kayla Ware

From: Swayze Alford
Sent: Tuesday, December 28, 2021 4:43 PM
To: Brad Golmon
Cc: Carson Lancaster
Subject: RE: Sullivant - the pending sale (HD File No. 121197)

Brad,
As we discussed on the phone, my client is at the stage of life that he prefers to have the money from the sale in his hands rather than tied up in another piece of investment property. I don't see how that is an indication of a dangerous financial decision. Seems perfectly rational that he would rather enjoy the money than potentially die while owning some investment property. AT any rate, that decision is up to him. As I indicated to you, my client is willing to close on the sale of the property after the first of the year to accommodate your client as long as the buyers have no objection. I have tried to inform Matt Moore but did not get him this afternoon.

Also, you sent the credentials for Mr. Sullivant to access his TD Ameritrade account. However, when the access information is put into the login, your client's cell phone number comes up to verify the account. SO my client still does not have access to the account. Please have your client change the phone number on the account. I look forward to hearing from you.

Sincerely,

Swayze Alford, Esq.
Swayze Alford Attorney At Law
Post Office Box 1820
1221 Madison Avenue
Oxford, Mississippi 38655
(662) 234-2025 phone
(662) 234-2198 fax
swayzealford.com

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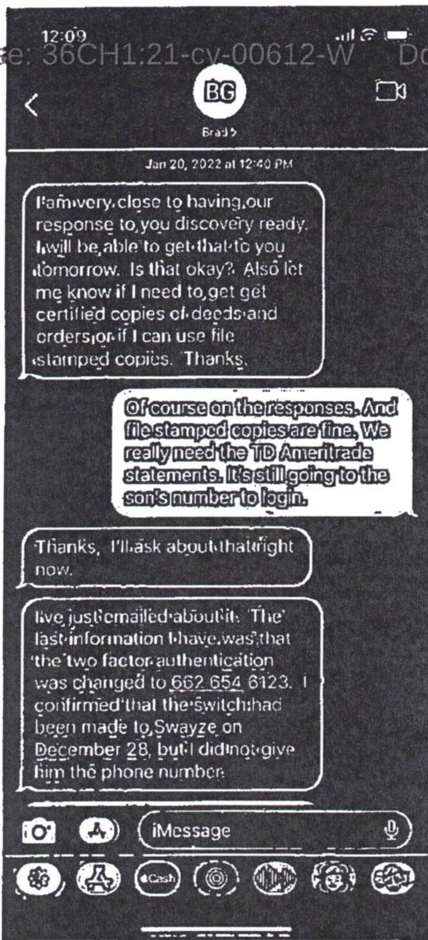
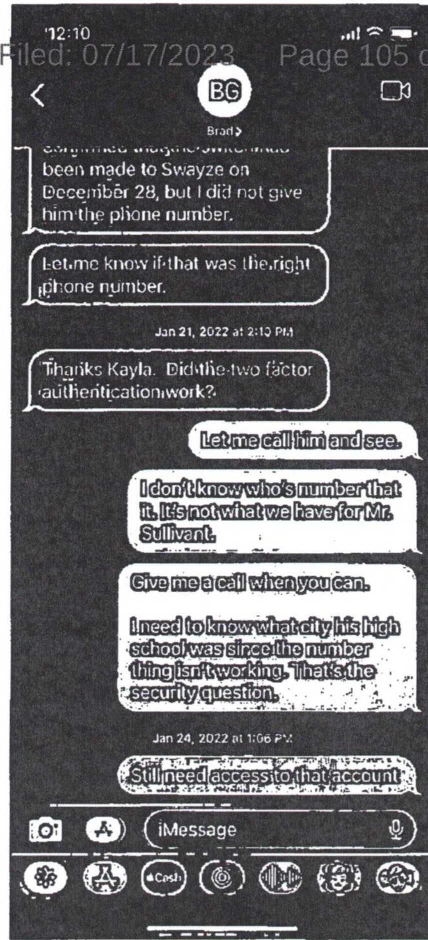
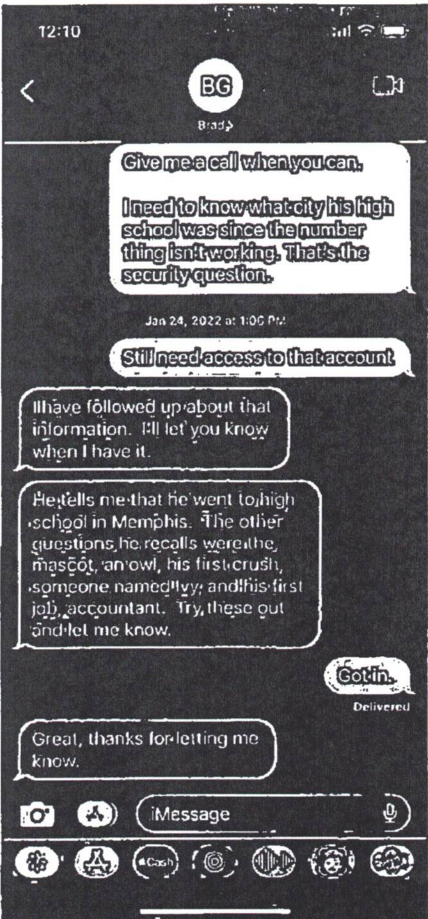
From: Brad Golmon [mailto:bgolmon@holcombdunbar.com]
Sent: Tuesday, December 28, 2021 3:32 PM
To: Swayze Alford <salford@swayzealfordlaw.com>
Cc: Melinda Stricklin <mstricklin@holcombdunbar.com>
Subject: Sullivant - the pending sale (HD File No. 121197)

EXHIBIT
"3"







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