IN THE CHANCERY COURT OF LAFAYETTE COUNTY MISSISSIPPI

Robert Sullivant Sr.,
Plaintiff

v.

Robert Sullivant Jr.,
Defendant.

Case No. 2021-612(W)

Robert Sullivant Jr.,
Third-Party Plaintiff,

REBUTTAL TO PLAINTIFF'S OPPOSITION TO ROBERT SULLIVANT JR'S MOTION TO RECUSE

v.

Robert Sullivant Sr. and
Evelyn Stevens,
Third-Party Defendants

Defendant and Third-Party Plaintiff Robert Sullivant Jr., ("Defendant") or ("JR"), comes now, and hereby submits the following rebuttal to Plaintiff Robert Sullivant Sr's ("Plaintiff") or ("SR"), opposition to his Motion to Recuse.

First and foremost, the response submitted by Mr. Alford at 4pm the day prior to the hearing was inappropriate, untimely, unprofessional, and JR maintains his objection made on the record in court. Mr. Alford should not be allowed to file eleventh hour responses to motions the day before the hearing is set and the reasons for this should be obvious.

First, if this type of motion practice is now allowed, then what is to stop any party to this action from engaging in this exact same behavior with any motion that is filed? The precedent has now been set that any party to this action can now hold their response to any motion until the very last minute absent a clear statutory mandate regarding response times, and then spring it on the opposing party just before a hearing, foreclosing the other side's ability to orally argue against the response or to timely rebut it. This type of gamesmanship is exactly what is being

allowed here. It violates JR's due process, and this court has a duty to maintain decorum and procedure.. "The presiding trial judge is entrusted with maintaining decorum in his or her courtroom. The trial judge is in the best position to recognize the impact or disruption to the proceedings in his or her courtroom." *Re WLBT, Inc.*, 905 So. 2d 1196, 1204 (Miss. 2005).

Second, to argue as Mr. Alford does that there should be no court rules in place for when a response to a motion in the Chancery Court is due, is not based in any logic. Surely, the Chancery Court does not operate under conditions where attorneys make up the rules as they go along.

While JR is unable to locate a specific UCCR that determines motion response times, our County and Circuit Courts do have such an overt rule, as it states the following in relevant part.

> "The provisions of this rule shall apply to **all written motions** (not just summary judgement)....
> **2.** In circuit court a memorandum of authorities in support of any motion to dismiss or for summary judgment shall be mailed to the judge presiding over the action at the time that the motion is filed. Respondent shall reply **within ten (10) days** after service of movant's memorandum. A rebuttal memorandum may be submitted within five (5) days of service of the reply memorandum." *Miss. R. Cir. & Cnty. Ct.* 4.02.

It certainly stands to reason if the Mississippi County and Circuit Courts have an explicit rule that provides for 10 days to respond to a motion after service, that the rules of the Chancery Court would not be so far removed from this statute so as to allow litigants to file responses whenever they please, as Mr. Alford asserts.

Finally, to this point, Mr. Alford claims that in filing his response to the Motion to recuse, that he was actually filing an "affidavit", and so therefore he had until one day prior to the hearing to file it. However, Mr. Alford did not file an "affidavit", and as a licensed attorney, he surely knows what an affidavit is. "An affidavit is '[a] written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation. ' " *Wilcher v. State,* 863 So.2d 776, 834 (¶ 209) (Miss.2003) (quoting Black's Law Dictionary 58 (6th ed.1990)).

What Mr. Alford filed is **not** a declaration of facts, it is a legal memorandum. It was not an affidavit by any definition; if anything, it was a Motion... "A motion is a *written application for an order addressed to the court or to a judge* in vacation by any party to a suit or proceeding, or by anyone interested therein." Black's Law Dictionary 58 (6th ed.1990). What Mr. Alford

filed was a "written application for an order addressed to the court…" asking the court to deny JR's Motion to Recuse, which sounds much more like a "Motion" than an "affidavit", from a definitional standpoint. This is especially true since legal conclusions have no place in an affidavit, and what Mr. Alford filed contains numerous legal arguments and conclusions, closing the door on any possibility that it could be defined as an "affidavit". If the court does conclude that it is an affidavit, then it should be stricken as containing numerous improper legal conclusions.

At the hearing on July 7th, 2023, Mr. Alford takes some time to try and explain away his incredibly late filing (*Exhibit 1*, pg. 119-124). While doing so, Mr. Alford suggests that there is nothing stopping him from filing responses to motions whenever he pleases, (*Id.* *124), and then he then instructs the court to not allow a continuance, not to allow a rebuttal, and to go forward with the hearing, which is the same thing as asking the court to remove JR's procedural safeguards and allow Mr. Alford's ambush to stand. In sum, first Mr. Alford files a response to a motion literally hours before the hearing, then tells the court, under no authority, that JR's legal right to a rebuttal should not be considered.

Mr. Alford struggles to keep his false arguments in line. First, he says multiple times that Rule 6(d) is not relevant because it does not "require a response"(*Id.* *119). Incredibly, after arguing the *irrelevancy* of Rule 6, Mr. Alford than *relies on it* to justify his filing in his very next words to the court by stating that Rule 6(d) is what prompted him to file the response in the first place…

> "*So that's why I decided to file a response*, Your Honor, **because Rule 6 later in the paragraph, you know, says**, when a motion is supported by an affidavit, the affidavit will be served with the motion, which Mr. Sullivant filed an affidavit with his motion. **It says**, 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 another time. **So under the rule** -- I said, well, this may be an opposing affidavit. I can file it one day before the hearing. (*Id.* *118).

This statement is nothing more than Mr. Alford being completely incapable of explaining his actions and this type of gaslighting should not be well taken. It is unclear how Mr. Alford is allowed to argue that a rule is relevant, but *only for his purposes*. Mr. Alford asks the court to apply the portion of Rule 6 that favors him to the proceeding, and dismiss the part that favors JR. In yet another act that adds to the "appearance of impropriety", Your Honor sustained this

frivolous and self-contradictory argument, essentially ruling that Rule 6(d) will applied for Mr. Alford, but not for JR when it comes to computing a reasonable time to file a response.

This appearance of impropriety is even further evidenced by Your Honor's explanation for allowing such a late response, which was that JR filed his recusal motion "out of time", and that [the motion to recuse] "should have been filed 30 days way back." (*Id.* *132)

First, there was no "time" attached to the filing of JR's motion and the court seems to understand this because no actual date when JR should have filed was named, just that it "should have been filed 30 days way back." There is a massive difference related to prejudice to a party, between whether JR's motion to recuse contains sufficient facts to show that he has not waived his right to seek recusal, and Mr. Alford being able to file responses whenever he chooses, including the night before the hearing, over the objections of JR who was given no time to prepare to rebut Mr. Alford's response prior to the hearing.

Second, JR could not have possibly filed his motion "late" as a procedural matter. Whether the motion to recuse was timely filed is a question of fact within the motion itself, it is not mandated by statute, and is in no way comparable to allowing a party to file eleventh hour written responses to motions. The glaring difference is that all parties know *exactly* when Mr. Alford received the Motion to Recuse, and he had *over three weeks* to respond. The fact that Your Honor opened the hearing by declaring that JR's motion was untimely, means that the court had decided in favor of Mr. Alford and the argument raised in his midnight filing before JR had a chance to even begin arguing to rebut it. This is perhaps one reason why filing responses to motions in a timely manner is important.

As a second initial matter, JR is not required to show "beyond a reasonable doubt" that the Judge is biased or unqualified, as the plaintiff attempts to suggest in his motion by quoting the case of *Upton v. McKenzie*, 761 So. 2d 167 (Miss. 2000). This "reasonable doubt" standard was clarified by the court in *Copeland v. Copeland* 904 So. 2d 1066 (Miss. 2004), explaining that:

> "Surely, it could not have been intended that the standard for recusal be so stringent as to warrant the criminal law "beyond a reasonable doubt" burden of proof. Quoting *Turner*, we stated in *Collins* that "[t]o overcome the presumption, the evidence must produce a `reasonable doubt' (about the validity of the presumption)." 611 So.2d at 901. However, in the very next paragraph we stated, "This presumption may only be overcome by evidence showing beyond a reasonable doubt that the judge was biased or not qualified." Id. (emphasis

added). In *Norton*, we quoted *Collins* in applying the "beyond a reasonable doubt" burden. 742 So.2d at 131. Also, in *Upton*, we cited *Bredemeier* and *Turner* as the sources of the beyond a reasonable doubt burden when both of those cases **clearly applied the "produces a reasonable doubt" burden**. *Upton*, 761 So.2d at 172. See Bredemeier, 689 So.2d at 774 (quoting Turner); Turner, 573 So.2d at 678 (applying "must produce a reasonable doubt" burden).

The stringent "beyond a reasonable doubt" burden is, in our opinion, incompatible with the standard of a hypothetical "reasonable person knowing all the circumstances." **The proper standard is that recusal is required when the evidence produces a reasonable doubt as to the judge's impartiality**. The misapplication of the "beyond a reasonable doubt" burden in the above-discussed cases was nothing more than a minor oversight and would have led to the same conclusion. We now clarify the burden of proof from what was previously stated in *Upton*, *Norton*, and *Collins*."

This clear attempt by the plaintiff to increase JR's burden regarding this motion beyond the actual legal standard and into one of "beyond a reasonable doubt" can and should be disregarded by the court. The standard for recusal is clear and concise, "recusal is required when the evidence produces a reasonable doubt as to the judge's impartiality". (*Id.*)

Timeliness of JR's Motion

The plaintiff expressly accuses JR, without any evidence, of "blatantly violating the UCRCCC," and of engaging in an illicit "wait and see approach", where JR apparently and allegedly had all available information regarding his intent to seek recusal, but that he chose instead to gamble and see if he could still win motions before deciding to submit his request to the court. (*Opposition* p.2).

Assuming that the plaintiff is referring to UCCR (*Uniform Chancery Court Rules*) and not UCRCCC (*Uniform Civil Rules of Circuit and County Court*), there is absolutely nothing to suggest that JR "blatantly violated the UCCR", by not filing his motion when the plaintiff thought he should have.

Plaintiff provides three dates to the court where he **believes** that JR had all the information he needed to file a legitimate motion to recuse but did not. The Plaintiff does not provide any information as to what knowledge he has concerning when JR came into possession of *all of the* information that would ultimately lead a reasonable person to question the impartiality of Your Honor. The courts have stated numerous times that judicial recusal is decided upon "a totality of circumstances which compel the conclusion that `a reasonable person

might harbor doubts' about the judge's impartiality.'" *Washington Mut. Finance Group v. Blackmon,* 2001 CA 1911 (Miss. 2004).

Applying the "totality of circumstances" standard, JR's motion was timely filed. The plaintiff's argument that he has waived his right to motion for recusal is inaccurate, and it also takes for granted the totality of circumstances standard which the court in *Ryals v. Pigott*, 580 So. 2d 1140 (Miss. 1991).

The plaintiff utilizes the foregoing case in his opposition to support the notion that JR was using an illicit "wait and see" approach before seeking recusal. However, as the plaintiff knows, the court in *Ryals* clarified that this principle of waiver "will **not** be applied inflexibly" and "must be resolved on an *ad hoc* basis... That is, the **totality of circumstances** attendant each case must be perused, and determinations must be made." *Ryals* *1175 fn.1.

The plaintiff than proceeds to cite as reference the case of *Yarborough v. Singing River Health Sy.*, in support of his untimeliness argument. As the plaintiff here notes, in *Yarborough*, "the motion for recusal was not filed until 78 days after trial and well after judgement was entered." (*Opposition* p.3); and this does comport with the court in *Ryals* stating, "[O]nce the trial is completed with the entry of a verdict, a party is deemed to have waived his right to have a judge disqualified, and if he has waived that issue, he cannot be heard to complain following an unfavorable result." *Ryals* *1176.

The problem with this argument for the plaintiff, is that this case is nowhere close to being "78-days after trial"; a trial date has yet to even be set in this matter. JR did not become apprised to, and in possession of, the facts leading him to motion for recusal, until around June 10th, 2023, when a review of the hearing transcripts combined with legal research led him to conclude that recusal was appropriate, and that a "reasonable person" would suspect impartiality and bias.

Considering the "totality of circumstances", and the plaintiffs own case references, JR's motion was not at all untimely.

Ex-Parte Communications

Mr. Alford does nothing to help his assertion that no ex-parte communications have taken place when he explains on behalf of Your Honor that "It is apparent that Judge Whitwell was referring to the 'login' and 'password' for SR's TD AmeriTrade account…" Mr. Alford does not explain how this is so "apparent", when a "login and password" and a "PIN", are not at all the

same things. To clear up this issue, the following is exactly what took place as it relates to the plaintiff's access to the accounts.

There was never any PIN placed on any account and there is no evidence in the record suggesting there was. This issue was raised by *Your Honor*, not one of the parties.

Your Honor's explanation for this comment at the June 7th hearing raises more questions than it answers. The first mention of a "PIN' on the record at any time in this matter was at the hearing on Summary Judgement on January 25th, 2023, and it comes from Your Honor, stating that:

> 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? (*Ex. 1*, pgs. 101-102)

Noting that word PIN is utilized at least three times by Your Honor at this hearing, at the hearing on June 7th, 2023, Your Honor states that:

- "I call it a PIN because that's what I do. I do a PIN to get in my phone or a PIN code or whatever. I don't know anything about credentials." (*Id.* *126)

- "I don't know the difference in them. I'm telling you that right here." (*Id.* *127)

- **"I really don't know what PIN numbers are**. I have never heard the word *Credentials* until I saw it in the affidavit." (*Id.*)

Respectfully, if Your Honor "does not know what PIN numbers are" and has literally "never heard the word 'credentials'" (which is honestly and respectfully somewhat unbelievable, that a Judge has no knowledge of this very common word), how could he have possibly raised the issue *sua sponte*, using that exact term three times at the MSJ hearing. Your Honor also expressly refers to it as "*your* PIN", meaning JR's. It does not follow logically that Your Honor accuses JR multiple times in multiple different ways of having a PIN on the account, and then states that he does not know what a PIN even is and has never heard of the term "credentials". If this is true, where did this line of questioning originate, if Your Honor does not know the definitions of the terms upon which it was premised?

The reason that this explanation from Your Honor fortifies JR's accusation of ex-parte communications rather than weakens it, is that if Your Honor truly does not know what a PIN

number or credentials even are, then somebody (namely Mr. Alford), must have explained it in order for Your Honor to be able to coherently raise the issue on his own accord at the summary judgement hearing. The question of how Your Honor raised the issue of a PIN number while admitting to not knowing, (and still not knowing), what a PIN number is, still remains. Of course, when JR, a retired CPA of 25 years, tried to explain what a PIN was and how it never existed in this case, his explanation was dismissed by Your Honor.

In sum, Your Honor states that he does not know what a PIN is, but that it was mentioned in Mr. Alford's affidavit (it was not, and Your Honor has pointed to anywhere on the record where this language exists). He then goes on to accuse JR of utilizing a PIN in this case, which he did not, all while again admitting that he "doesn't know what PIN numbers are." No explanation is provided for how Your Honor could've accused JR of weaponizing a PIN number without even knowing what one is or being to cite where within the record he even found this term.

Your Honor's Comments Toward JR and Improper Testimony

First, Mr. Alford's opposition does not even address the comments at issue in JR's Motion. The Plaintiff creates an entire section that is supposedly responding to improper character testimony but does not actually address any of JR's allegations in relation thereto. In a return to his strategy throughout this litigation, Mr. Alford simply cites case law that has nothing to do with the issues at hand.

First, Mr. Alford cites to *Bumpus v. State*, a case where the court decided that Judges have a right to express their opinions on rulings, and do not have to stay silent during proceedings. *Bumpus v. State*, 166 Miss. 276 (Miss. 1932).

Then, Mr. Alford cites to MRE 614(b), which allows a Judge to interrogate a witness, and is also not relevant.

After these two irrelevant references, Mr. Alford cites *Oliver v. Oliver*, where the Judge was ruled not to have demonstrated bias when he warned a litigant to "be careful", and to "appeal it" in reference to a ruling he issued. *Oliver v. Oliver* (In re Estate of Oliver), No. 2016-CP-01757-COA (Miss. Ct. App. Apr. 16, 2019). Mr. Alford even emphasizes the phrase from the court in *Oliver* "***particularly when read in context***" (pg.4), as if there is a proper context for calling a litigant a "sandbag hooligan" and essentially a liar and perjurer, as is the case here. Mr. Alford does not explain what context this would be appropriate in, and needless to say, the case

of *Oliver* is not parallel to the allegations here. The allegations related to improper comments and testimony made here are significantly more serious and indicative of prejudice, for example:

- At the hearing on May 9th, 2023, Your Honor commented on what he allegedly witnessed at a prior hearing between JR and SR. Stating that he was present at the Summary Judgement hearing in Holly Springs, You Honor then says that the two parties never hugged or spoke to one another after the hearing was over. (*Motion to Recuse* p.3).

- Your Honor refers to JR as being a "hooligan sandbag". (*Id.* p.4)

- Your Honor testifies that the Defendant lied, when stating he did not go to Batesville to withdraw monies. Also, just earlier, Your Honor implies the Defendant is lying by stating "You're under oath Mr. Sullivant," after the Defendant testified that he did not go to Batesville. (*Id.*)

Such multiple allegations related to improper character testimony and testimony to disputed facts are found nowhere in *Oliver v. Oliver, Bumpus v. State*, or in any case cited by Mr. Alford. The allegations made towards the Judge in those cases were far less prejudicial and bias in nature than those made here. Just because a case mentions the term "judicial recusal", does not make it parallel to, or worthy of consideration in this matter.

Your Honor shows indicates a strong bias in favor of Mr. Alford when he accuses JR of taking money from SR, and then says that it is not sufficient to simply pay the money back. Noting the following statement from the MSJ hearing.

> "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. **The fact that you paid the money after the fact doesn't fly."** (*Ex. 1* *107)

To be clear, Mr. Alford admittedly misappropriated client funds, allowed third-party access to an account that was court ordered to be held in trust, allowed SR to write checks to scammers, and allowed SR and Ms. Stevens to purchase a $41,000 truck. He then "paid the money back" and the court accepted all of his actions and moved on because of this. However, when JR is accused is misappropriating funds, "the fact that [he] paid the money after the fact "**does not fly**." (*Id.*)

Finally, Your Honor explains his character testimony about what he allegedly observed in Holly Springs between JR and SR by stating that he "made an observation as a Judge, I have the right to do that, I'm not testifying." (*Ex. 1* *129). Respectfully, this analysis is legally incorrect.

Canon 3 of the Mississippi Code of Judicial Conduct governs recusal. Specifically, Canons 3E(1)(a) and 3E(1)(d)(iv) "require a judge to disqualify himself when the judge has **'personal knowledge of disputed evidentiary facts concerning the proceeding'** or if 'to the judge's knowledge [he is] likely to be a material witness in the proceeding,' respectively." *Batiste v. State*, 337 So. 3d 1013 (Miss. 2022).

What took place at the hearing in Holly Springs is no doubt a "disputed fact", as the parties (including Your Honor) argued this point at length during the July 7th hearing. As it relates to the testimony of a Judge, the courts have found that:

> "When a judge makes statements into the record to be taken as evidence for one side or the other, he immediately becomes incompetent to preside as judge. A judge may not testify before himself. Any evidence that the prosecution offers must be the prosecution's evidence from a competent witness subject to strenuous cross-examination. That is not the case when the trial judge testifies." *Winder v. State*, 640 So. 2d 893, 904 (Miss. 1994)

Furthermore, there is no reason for Your Honor to conclude that JR does not love his father simply because JR may or may not have attempted to give him a hug after the hearing. This conclusion takes for granted that SR is currently suing JR, and that two opposing parties in a lawsuit may not have an immediate desire to physically manifest their love for each other in the courtroom. It also fails to consider that at the hearing, SR was surrounded by Mr. Alford and Ms. Stevens, both of whom are adversaries to JR in this matter.

It is completely unreasonable to disregard the parties *89-year*, lifelong, loving father and son relationship, that only began to experience adversity when Mr. Alford entered the picture, in favor of a single moment happening in an adversarial setting, where SR is surrounded by those who wish JR harm. JR loves his father, and SR loves his son. The parties *to this very day* spend leisurely time together, whenever SR is separated from the pernicious influence of Mr. Alford and Ms. Stevens.

Your Honor's version of events as to what took place at Holly Springs are vehemently disputed by JR, as are his conclusions based on this incorrect premise. However, Your Honor does not seem to care that "Canon 3(E)(1)(a) instructs that judges should disqualify themselves if they have "**personal knowledge of disputed evidentiary facts** concerning the proceeding." *Patton v. State*, 109 So. 3d 66, 77 (Miss. 2013).

There is just no other way to frame this issue as something other than Your Honor "having personal knowledge as to disputed evidentiary facts", and accordingly, recusal is **required.** *Doe v. Adams Cnty. Dep't of Child Prot. Servs.,* No. 2022-CA-00240-SCT (Miss. June 1, 2023)

Finally, in reference to accusing JR of "telling half-truths", and inferring that he is lying about never having gone to Batesville by constantly reminding him that he is under oath, Your Honor reasons that "[I] am the Judge of what statements are credible and whether or not I believe them or the credibility of them, and that is my job and responsibility."

When JR responded by stating that he felt offended by the court inferring that he is lying, Your Honor condescendingly and without justification or explanation replied by saying "You have a lot of feelings that are not proper in this case." JR immediately objected to this highly prejudicial statement.

The fact of this matter is, Your Honor is accepting the pure speculation of an 89-year-old man with dementia as truth, while completely dismissing the numerous occasions where JR has testified under oath that he never went to the Region's Bank in Batesville. Much to the dismay of the plaintiff, this means that JR was absolutely never alerted as to the revocation of the power of attorney, and per Mississippi Code Title 87, Ch.3; §87-3-113, this is "**conclusive proof** of the non-revocation of the power of attorney." This **statutory mandate** has been ignored by the court throughout this entire litigation in order to keep the plaintiff's entire case alive.

While Your Honor is absolutely correct when stating that he has the right and responsibility to make credibility determinations, this is not a license to ignore State law and statutory mandates, nor does permit Your Honor to repeatedly infer on the record that JR is lying to the court by relying entirely on the aforementioned speculation of an elderly man who suffers from multiple degenerative neurological illnesses, including dementia. In fact, even the report of Dr. Perkins, attached hereto, states in unambiguous fashion that SR's memory is "confused", and "**impaired in both the short and long-term**."

It is nothing short of an abuse of discretion to ignore all of JR's affidavits and his testimony under oath while being interrogated by Your Honor, to ignore statutory mandates and Mississippi law, and to ignore SR's foregoing medical diagnosis, all in favor of the speculation of an elderly man who has been medically determined to have a memory that can only be described as *one-hundred-percent unreliable*.

Allowing Surprise Witnesses/Failing to Hear Motion to Disqualify

Mr. Alford attempts to explain the situation of the court refusing to hear JR's motion to disqualify in the following way… "Judge Whitwell simply stated to Jr. that he was "not going to get into it in front of all this crowd, your allegations against Mr. Alford", and that "if the bar rules in some way that would make it important for me to hear that, then you can bring it back to my attention." (*Opposition* p.5).

Mr. Alford fails to explain how the statement "not going to get into **it in front of all this crowd,** your allegation against Mr. Alford", means something other than Your Honor will not hear the motion because of public presence. That is the only thing it could possibly mean, and Mr. Alford does not provide any reasonable alternative interpretation.

Mr. Alford also fails to explain how premising whether or not the court will hear a motion on some unrelated and hypothetical action from the State Bar, who is not a party to this case and has no jurisdiction over the court's rulings, does not amount to prejudice. JR's motion is in no way contingent on any action from the bar association, and their time to investigate does not coordinate with the court's schedule. These are entirely separate issues. Mr. Alford also does not further his argument by quoting Your Honor as stating that he will not hear a disqualification motion against Mr. Alford "in front of this crowd." To try and construe this as anything other than trying to protect Mr. Alford in the presence of the public and his colleagues is simply dishonest.

As a side note to this portion of the plaintiff's opposition and in response to JR's allegation that Your Honor defends and makes excuses for him, Mr. Alford just flat out lies and then remarkably tries to prove it by pointing out exact location in the transcript of his lie for everybody to confirm. Mr. Alford alleges that:

> "JR stated Judge Whitwell defended Mr. Alford when discussing the delay of a hearing by saying "I", meaning Judge Whitwell, may not have been available. Judge Whitwell actually said "he", meaning Mr. Alford may not have been available." (*Opposition* pg.5)

Either Mr. Alford consistently does not read what he cites, or he deliberately misquotes it. That is not what was said. As he references, *Bates No. 177* attached to JR's Motion to Recuse, shows the following exchange:

> **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. (See *Ex. 1**106).

At the May 9th, 2023, hearing, Dr. Pekins was allowed to testify with no notice to JR. Mr. Alford attempts to justify calling a last-minute surprise witness by accusing JR of "not objecting one-time". This is again dishonest. JR immediately expressed his concern with Dr. Perkins being called, declared his surprise, and stated that he was not prepared to examine him. Remarkably, Mr. Alford argues that "being unprepared and objecting are not the same thing".

This type of semantics and gaslighting is not surprising from Mr. Alford, who cannot provide a single reason why he contacted Dr. Perkins, instructed him to drive 2.5 hours to a hearing, do an examination on SR in the courthouse, then testify to his findings, and on top of all that, to **tell nobody about it.**

JR clearly objected to the testimony of Dr. Perkins. Even if he did not stand up animatedly and declare "I object", it was abundantly clear that Dr. Perkins' surprise testimony was improper and prejudicial, yet it was allowed to proceed. To add to this malfeasance, Dr. Perkins proceeded to testify to the court that the "testamentary capacity" of SR was in his IME report, strictly to convince the court to allow him to testify with no notice. This was a blatant lie clearly perpetuated by Mr. Alford. (*See* "Perkins Report")

Despite all of this, Mr. Alford would actually have the court believe that all of the illicit and secretive actions that took place prior to the hearing were legally and procedurally justified. If this is true, then it must be somehow declared under what rule or case precedent calling a witness at a hearing without any notice to the opposing party is allowed. Particularly, when the testimony is related entirely to a medical exam that took place just *minutes prior* and without the opposing parties' knowledge. Any rule that allowed such a move would create nothing but chaos and encourage gamesmanship by attorneys, which is exactly what Mr. Alford is doing now.

At the July 7th hearing, Mr. Alford doubles down on not providing any notice to JR of calling Dr. Perkins by unbelievably stating that JR "should have known" that Dr. Perkins was going to testify because it was a conservatorship hearing, and that Mr. Alford is not required to notice witnesses he intends to call. (*Ex. 1* *123). To assert that JR should be able to guess what witnesses Mr. Alford is going to call and that Mr. Alford is under no obligation to disclose them, is to say that rules regarding calling witnesses and notice to the other party need not exist, because which witnesses will be called should just be obvious, and so therefore notice is

unnecessary. It is not clear where Mr. Alford and the court are drawing this standard from, but needless to say, this is not the prevailing attitude on how procedure should be guided.

It is not obvious at all that Dr. Perkins would be called to testify. If, as Mr. Alford argues, it is so obvious that at a conservatorship hearing, the IME doctors would be called as witnesses, then JR, had he had this same mentality, would have "*obviously*" had to prepare for Dr. Thomas to testify as well. Except for the fact Mr. Alford did not call Dr. Thomas, despite arguing that his presence at the hearing as an IME doctor should have been "obvious" to JR.

The glaring lack of logic that is littered throughout Mr. Alford's opposition is astounding, and his gaslighting is even more impressive.

Mr. Alford's argument that Dr. Perkins was called to testify as to the conservatorship matter, is yet another lie that is easily provable from the transcript. Dr. Perkins never testified about the conservatorship matter because Your Honor decided that issue *before Dr. Perkins was called to testify*, (*Id.* *109), and after Your Honor commented that JR does not love his father and that he had already made up his mind about the conservatorship. All of this was prior to Dr. Perkins answering a single question.

Mr. Alford just shows his true intent here, which was to call Dr. Perkins under the guise of the conservatorship, while really calling him to testify as to SR's "testamentary capacity" from a "report" that does not exist, so that SR can change his will and hand all of his money to a church that he has never attended. The court obliged every step of this illicit plan, culminating in Dr. Perkins improper and untruthful testimony.

Dr. Perkins was never appointed to testify as to "testamentary capacity", this testimony was outside the scope of his appointment by the court, and this is proven by his own IME report which states the reasons for the exam and his "findings", none of which mention testamentary capacity. Dr. Perkins' testimony should have never been allowed.

Incredibly, Mr. Alford states in his opposition, after all of this prejudice faced by JR, that "JR than went on to ask a series of questions unrelated to the issue of the Motion before the court which was SR competent to execute a will." (*Opposition* pg.5). This is interesting statement, considering that at the July 7th hearing, Mr. Alford stated that the purpose of the hearing was to decide the matter of conservatorship (*Ex. 1* *124).

It is unbelievable how Mr. Alford is allowed to get away with such blatant contradictory arguments time and time again. Mr. Alford even states at the hearing, knowing the falsity of the

statement, that testamentary capacity is in Dr. Perkins report. (*Id.* *113) Mr. Alford tricked this court into allowing Dr. Perkins to testify by dishonestly telling Your Honor that this information was in the IME report, and this type of behavior from Mr. Alford also comes with zero consequences.

As to the comment that JR was probing Dr. Perkins about "questions unrelated to the motion at issue", Mr. Alford seems to have a tentative at best grasp on the Mississippi Rules of Civil Procedure and Evidence in making this statement. Mississippi Rule of Evidence 611(b) explicitly states that "the court ***may not limit cross-examination to the subject matter of the direct examination*** and matters affecting the witness's credibility." (*MRE 611(b)*). Further, the "subject" of Dr. Perkins' testimony was supposedly a report on the "testamentary capacity" of SR, when no such report actually exists, and such testimony is outside the scope of Dr. Perkins appointment in the first place. (*See* "*Perkins Report*" attached hereto).

The scope of the appointment of Dr. Perkins, as memorialized by the court in the attached "Agreed Order for Independent Medical Exam", is that "the examinations will address whether plaintiff is "unable to manage property of financial affairs because of a limitation in the adult's ability to receive and evaluate information or make or communicate decision even with the use of appropriate supportive services or technological assistance", and whether appointment is necessary to avoid harm to the adult or significant dissipation of the property of the adult." (*See attached* IME Order ¶ 4).

Dr. Perkins was never appointed to examine SR for testamentary capacity, which is likely why himself and Mr. Alford setup and conducted this pseudo medical exam for testamentary capacity on the fly, in the courthouse, without letting anybody know, and just minutes before Dr. Perkins was called to testify by Mr. Alford, who kept the planned testimony a secret from JR.

The Plaintiff Fails to Even Address Numerous Allegations

It is extremely noteworthy that the plaintiff's opposition concedes multiple allegations by way of not even mentioning them. It seems that when Mr. Alford states in his opposition (p.3) that "due to the redundancy of some of JR's arguments, SR will address and respond to some issues presented together"; what he really means is that there are issues he has no defense to and will therefore ignore them. This is glaringly true as it relates to the allegation of "negligently misrepresenting the law". Mr. Alford has no retort to this allegation, and he never has.

There is quite clearly nothing "redundant" about JR's motion and Mr. Alford of course cannot identify any "redundant" issues, and he does not even attempt to. JR lays out six numbered, concise, and completely separate arguments. There is absolutely no redundancy, and this statement is a transparent attempt by Mr. Alford to avoid having to address issues he has no answer to, such as:

- Your Honor testifying as to disputed facts.
- Your Honor inferring on the record that JR does not love his father.
- Your Honor Referring to JR as a "Hooligan Sandbag".
- What the public being present, or the Mississippi Bar Association has to do with the Motion to Disqualify.
- Failing to admonish Mr. Alford for serious violations but then admonishing JR on the record for a completely harmless error.
- The willful ignorance of Mississippi Code Title 87, Ch.3; §87-3-113 throughout this litigation, which immunizes JR from just about every claim made against him

In his Opposition, the plaintiff's sole argument against the appearance of impropriety is that Judge Whitwell has denied two motions against JR, and that there has not even been a trial yet. (*Opposition* p.7). It is unclear what Mr. Alford's point here is exactly but is does not come close to addressing the appearance of impropriety. He seems to be inferring that the Motion is premature because "there has not even been a trial." However, this contradicts his very first argument that JR's motion was untimely, by now suggesting that he should have waited until after the trial to file it. At no point in his opposition does the plaintiff find any legal ground to stand on, and it is apparent throughout the response.

As previously explained, the plaintiff's opposition fails to address any of the improper character testimony, the insulting comments made by Your Honor, and the court refusing to hear a motion to disqualify Mr. Alford because members of the public were present. He also fails to address the allegation that the court is misinterpreting the law in his favor, that JR is being harshly admonished for harmless error while Mr. Alford is allowed to openly flout the rules of procedure, rules of evidence, misappropriate client funds, violate court orders, and act in an unprofessional and discourteous manner throughout litigation. Not a single one of these acts was addressed by the court.

The most egregious example of this, is Mr. Alford allowing funds, ordered by the court to be held by him in trust, to be made available to both SR, and co-defendant Evelyn Stevens.

During this time, SR was writing checks to scammers, and himself and Ms. Stevens purchased a $41,000 truck. To be clear, *Mr. Alford never voluntarily reconciled these accounts*. He only did so after multiple demands from JR that he follow the court orders and do so. Mr. Alford only removed Ms. Stevens from the accounts and paid back the funds *after* he was threatened with a TRO. (*Ex. 1* *103-104).

After Mr. Alford spent considerable time explaining all of this illicit behavior to the court (*Id*), Your Honor's response when he was finished was "alright, let's see if there is anything else", completely dismissing the issue. (*Id* *105)

Mr. Alford also fails to address the allegation that Mississippi Code Title 87, Ch.3; §87-3-113, is not being properly applied to this case and the fact that "Your Honor continues to ignore this law and the language that said affidavits are "***conclusive proof***"; by arguing on behalf of the Plaintiff in a way that misapplies the law in a manner favorable to Mr. Alford." (*Motion to Recuse* p.7).

Conclusion

In addition to the numerous allegations that Mr. Alford has no answer to, his opposition also includes numerous citing's of caselaw which are irrelevant to this matter, and he completely misconstrues facts in his favor. Mr. Alford's game of cherry-picking non-parallel cases and trying to assert their relevance into a matter that they are unrelated to is transparent, amateurish, and quite frankly at this point, repetitive and exhausting. Mr. Alford's failure to address the majority of JR's allegations cannot go noticed, and his opposition to the defendant's motion to recuse, on top of being extremely untimely filed and served, explains nothing and does nothing to remove the appearance of impropriety and impartiality in this matter.

Accordingly, judicial recusal remains the appropriate action in this matter and at this time.

July 12 2023

/s/ 
Robert Sullivant Jr.
Defendant and Third-Party Plaintiff (Pro Se)

CERTIFICATION

I, Robert Sullivant Jr, hereby certify that on July__, 2023, I served a copy of the foregoing Motion and all attachments referenced therein to the below counsel of record:

Swayze Alford, Esq. (MSB #8642)
Kayla Ware, Esq. (MSB #104241)
Post Office Drawer 1820
Oxford, Mississippi 38655
(662) 234-2025 phone
(662) 234-2198 facsimile

Attorneys For Plaintiff and
Third-Party Defendant
Robert Sullivant Sr.

James B. Justice, PLLC
996 Tyler Avenue
Post Office Box 1550 Oxford, MS 38655
Phone: (662) 202-7740
Fax: (877) 680-3234
jamesbjustice@gmail.com

Attorney for Third-Party Defendant
Mary H. "Evelyn" Stevens

Dated: July 12 2023.

/s/ _____

Robert Sullivant Jr.
1062 Crawford Cir.
Oxford, MS 98366
robert@steelandbarn.com
(512) 739-9915

CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. PLAINTIFF

VS. CAUSE NO. CV-2021-612

ROBERT SULLIVANT, JR. DEFENDANT

****

TRANSCRIPT OF THE MOTION HAD AND DONE IN THE ABOVE-STYLED AND NUMBERED CAUSE, NOT FOR APPEAL PURPOSES, BEFORE THE HONORABLE ROBERT Q. WHITWELL, CHANCELLOR, ON THE 25TH DAY OF JANUARY, 2023, IN LAFAYETTE COUNTY, MISSISSIPPI, TAKEN BY CECILY BOONE FAULKNER, RPR, CSR, OFFICIAL COURT REPORTER FOR THE EIGHTEENTH CHANCERY COURT DISTRICT OF MISSISSIPPI.

****

APPEARANCES:

Present and Representing the Plaintiff:

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

Present and Pro Se:

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

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

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 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. Mr. Golman's 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 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

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.

CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. PLAINTIFF

VS. CAUSE NO. CV-2021-612

ROBERT SULLIVANT, JR. DEFENDANT

****

TRANSCRIPT OF THE MOTIONS HAD AND DONE IN THE ABOVE-STYLED AND NUMBERED CAUSE, NOT FOR APPEAL PURPOSES, BEFORE THE HONORABLE ROBERT Q. WHITWELL, CHANCELLOR, ON THE 9TH DAY OF MAY, 2023, IN LAFAYETTE COUNTY, MISSISSIPPI, TAKEN BY CECILY BOONE FAULKNER, RPR, CSR, OFFICIAL COURT REPORTER FOR THE EIGHTEENTH CHANCERY COURT DISTRICT OF MISSISSIPPI.

****

APPEARANCES:

Present and Representing the Plaintiff:

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

Present and Pro Se:

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

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

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

CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. PLAINTIFF

VS. CAUSE NO. CV-2021-612

ROBERT SULLIVANT, JR. DEFENDANT

****

EXPEDITED TRANSCRIPT OF THE MOTION HAD AND DONE IN THE ABOVE-STYLED AND NUMBERED CAUSE, NOT FOR APPEAL PURPOSES, BEFORE THE HONORABLE ROBERT Q. WHITWELL, CHANCELLOR, ON THE 7TH DAY OF JULY, 2023, IN CALHOUN COUNTY, MISSISSIPPI, TAKEN BY CECILY BOONE FAULKNER, RPR, CSR, OFFICIAL COURT REPORTER FOR THE EIGHTEENTH CHANCERY COURT DISTRICT OF MISSISSIPPI.

****

APPEARANCES:

Present and Representing the Plaintiff:

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

Present and Representing the Conservator:

HONORABLE WALTER DAVIS
Attorney at Law
Dunbar Davis PLLC
324 Jackson Avenue East, Suite A
Oxford, Mississippi 38655

Present and Pro Se:

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

about motions for recusal of judges. All it talks about is what the motion filed by Mr. Sullivant is required to contain, the affidavit that is required. Such motion, you know, should be filed with the judge, which is you.

It talks about the time that Your Honor has to rule on the motion. It says being 30 days with hearing, if necessary. If it's held, it will be in open court.

It doesn't even mention a response, Your Honor. There is nothing under the rules that requires a response to any motion filed.

Mr. Sullivant, he cites Rule 6(d), and says you've got to file a response within five days. That is not the rule.

The rule is, if you're filing a motion, then you've got to file a motion within five days of a hearing. It says nothing about having five days as a response, Your Honor.

My intention, frankly, Your Honor, was not to file a response. I was going to show up. He asked for oral argument. That's why we're here today. I was going to show up and just make my argument.

In looking at his motion and looking at the cases that talk about one of the

allegations that he made was ex parte communications, the cases that talk about that in a lot of places refer to an affidavit of the attorney, me, who is accused. I thought, well, maybe I need to file an affidavit.

So that's why I decided to file a response, Your Honor, because Rule 6 later in the paragraph, you know, says, *When a motion is supported by an affidavit, the affidavit will be served with the motion,* which Mr. Sullivant filed an affidavit with his motion.

It says, *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 another time.*

So under the rule -- I said, well, this may be an opposing affidavit. I can file it one day before the hearing. I attached it to my response and thought, you know, rather than having completely an oral argument, this is part of the oral argument I will make today, it's not prohibited. It's not required. I filed the affidavit one day prior to court as the rule requests.

The rule he cites for five days has no application to a response. It's his motion that has to be filed five days before a hearing.

HONORABLE ROBERT Q. WHITWELL: Well, if we were technical, Mr. Sullivant, your motion for recusal is out of time. It should have been filed within 30 days way back.

And you filed it, and I'm going to hear it because I'm going to give you the opportunity to be heard, like I have in every case you've been before me.

There's been objections to things that you've tried to introduce, and I have said, *Mr. Sullivant, it is overruled. You make your record and do whatever you can to present your case.* And that's what we're going to do today.

You can make your argument, and Mr. Swayze can make his argument. Unless you want additional time to continue this matter for another time to respond to that, that's up to you.

You didn't ask for the additional time. You just said you wanted him to be disqualified and dismiss his response.

I don't think a response is required in five days. I think he is right under

Both reports were there.

Dr. Perkins's report specifically said that the conservator needed to be independent. That was in the record.

In addition to that, it's obvious from the record that Junior had sued his father for money, and that's an ongoing litigation where he is trying to recover money from his dad.

So based on all of those things in the record, Your Honor followed the recommendation of Dr. Perkins and appointed Sherry Wall as an independent conservator.

As to the allegations, you know, having to do with me, which he addressed briefly here, Your Honor, on December 12th, Mr. Sullivant, Jr., he filed an emergency ex parte motion for temporary restraining order and preliminary injunction to freeze accounts. That's what he filed. He filed it on December 12th.

On December the 13th --

HONORABLE ROBERT Q. WHITWELL: 2022?

MR. SWAYZE ALFORD: 2022, yes, sir. On December the 13th, the next day, he and I entered an agreed order freezing the accounts. The issue was never brought

was the end of it.

And yet then we get all of these allegations about Perkins won't do this, will do this, you know, somehow I'm involved and I'm being a problem. I tried to facilitate it, and it never was responded to by Sullivant Jr., Your Honor.

So I think he complains about the fact that he wasn't aware that Dr. Perkins was going to be in court that day on the hearing, which seems and accuses me of doing something underhanded because I didn't tell him he was coming.

Well, it seems odd to me that one of the things pending that day was Mr. Sullivant, Jr.'s emergency petition for a conservatorship to be appointed.

I would think if he's trying to get a conservator appointed, then he would consider that potentially the doctors who did the IME would have to be at the hearing to talk about that potentially.

I had a motion before the Court that day for a conservatorship. So, again, the idea that we would have two matters set for hearing to appoint a conservatorship, it shouldn't be a shock that one of the doctors that examined his father was there to testify about the conservatorship, if

need be.

And, certainly, he was there to testify about the authority to execute a will because he had examined him.

So, Your Honor, we --

HONORABLE ROBERT Q. WHITWELL: And there was a motion pending for him to be allowed to make a will?

MR. SWAYZE ALFORD: Yes, sir.

So it seems obvious to me that anybody that knew those motions were pending would have understood that the doctor may be there, but it certainly -- there was nothing requiring me to disclose that, well, Dr. Perkins is going to be there. He is an expert. His report in the file.

Mr. Sullivant, Jr. had the report, and so there was no surprise about him being, you know, an expert in the case, or the fact that his father, who had asked the Court, you know, for authority to execute the will, will be there to testify on his own behalf.

Your Honor, we addressed the other issues raised by Mr. Sullivant, Jr., the ex parte communication. He did mention that in his argument, you know, and at best it's pure speculation on his part.

don't think it really pertains to much of what is going on today.

And, also, there is -- Mr. Alford stated that my allegations of ex parte communication was speculation at best. I think there is clear and convincing evidence of that.

As I stated in my motion, when you stated, *Where you put your PIN number on his account*, there is no mention of that anywhere in the record.

And for another thing, I did not put my PIN number on his account. I have no idea where that came from, but that was very specific. You accused me of something very specific that has never been mentioned before, and, frankly, was not true. So that is my clear and convincing evidence.

We have to find out where you got that information and entered it into the record to get to the bottom of that. And I think that is clear and convincing evidence --

HONORABLE ROBERT Q. WHITWELL: I said the word *PIN* because in the record, it's about four times, that you set up an account, didn't give the telephone number to your dad. You didn't give the

credentials to him. You set up the account in your own name.

Later, there was a text from Mr. Golmon where, I think, you gave dad the credentials.

I don't know the difference between a credential and a PIN, but I'm telling you right now Mr. Alford never told me anything about a PIN. And that's what I called it.

I call it a PIN because that's what I do. I do a PIN to get in my phone or a PIN code or whatever. I don't know anything about credentials.

MR. ROBERT SULLIVANT, JR.: Well, a PIN --

HONORABLE ROBERT Q. WHITWELL: I will be honest, I'm not very savey in Ameritrade or any other accounts, so --

MR. ROBERT SULLIVANT, JR.: All right. Well, just to be clear --

HONORABLE ROBERT Q. WHITWELL: -- made up and trying to be some --

MR. ROBERT SULLIVANT, JR.: There is a difference between a PIN number and credentials. And PIN number has never been mentioned in the record before --

HONORABLE ROBERT Q. WHITWELL: I mentioned it, because that's what I

thought it was.

MR. ROBERT SULLIVANT, JR.: I don't know where you would have gotten that.

HONORABLE ROBERT Q. WHITWELL: Well, that's what I'm telling you. I don't know the difference in them. I'm telling you that right here.

MR. ROBERT SULLIVANT, JR.: I am surprised to hear that, Your Honor.

HONORABLE ROBERT Q. WHITWELL: Well, you can be surprised. I know very little about telephones, computers. I have people to do all of that.

I don't know anything about -- I really don't know what PIN numbers are.

I have never heard the word *credentials* until I saw it in the affidavit.

MR. ROBERT SULLIVANT, JR.: To be factual, I did not have my credentials on his account. Per instructions from Mr. Golmon, I put -- I set up -- the accounts were all tied together with my accounts.

I broke them apart. Gave my father his own credentials, which he had credentials before. He just never used them. And I gave them to Mr. Golmon to give to Mr. Alford.

And there was no mention of PIN -- I

just don't follow that connection between credentials and accusing me of putting my PIN number on his account so he cannot access it, which is what you stated in the record.

HONORABLE ROBERT Q. WHITWELL: It's pretty clear that you put it in your name --

MR. ROBERT SULLIVANT, JR.: Well --

HONORABLE ROBERT Q. WHITWELL: -- in the record.

MR. ROBERT SULLIVANT, JR.: -- I disagree with that.

HONORABLE ROBERT Q. WHITWELL: That's what I --

MR. ROBERT SULLIVANT, JR.: That's all I have. I appreciate it. Thank you, Your Honor.

HONORABLE ROBERT Q. WHITWELL: I want to clear up a couple of things.

Number one, the Court is -- has the right to be a silent observer for all of the things that go on in the courtroom. I completely disagree with you on what took place in Holly Springs.

I watched as your dad was sitting at the table right there and you were right here. You weren't five feet from him. He is sitting there alone by himself. He

wasn't blocked by anybody at that time.

I saw him -- maybe Mr. Alford got in front of him, but you never spoke to him or anything.

The reason I made that comment was, is because in your motion, in your emergency motion, you said, *My dad and I have a loving relationship between us.* And I didn't see any loving relationship that day.

I didn't see you try to make an attempt to speak to him or hug him or anything else.

I was hoping somewhere along the line, Mr. Sullivant, that you and your dad might speak and come back together some kind of way.

I made an observance as a judge, and I have a right to do that. I'm not testifying. I'm making a finding of what I saw and what I observed, and that's what that was.

That's why I made that comment, so you can take it for what it's worth.

I also have a right under Rule 614(b) to interrogate witnesses, call witnesses, whatever I need to do to ferret out the facts in a case.

And just because I ask you questions

during the hearing, it's not testimony of the judge. It's an interrogation of you as to ask you questions and make statements about what I observed. That is totally proper as a judge.

So in response to any of those comments, that's my response to that.

I will take this matter under advisement.

Anything else you want to say, Mr. Alford?

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

HONORABLE ROBERT Q. WHITWELL: Mr. Davis, I didn't give you an opportunity. Do you want to say anything?

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

HONORABLE ROBERT Q. WHITWELL: All right. That will conclude this hearing. I will file a written response, as I'm required to under the rules, to this motion that Mr. Sullivant, Jr. has filed.

So that will conclude this hearing.

MR. SWAYZE ALFORD: Thank you, Your Honor.

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

(PROCEEDINGS CONCLUDED.)

CHANCERY COURT OF LAFAYETTE COUNTY, MISSISSIPPI

ROBERT SULLIVANT, SR. PLAINTIFF

VS. CAUSE NO. CV-2021-612

ROBERT SULLIVANT, JR. DEFENDANT

Expedited Transcript of 7/7/23

Original Transcript: $200.00

Deposit Paid: $250.00

REIMBURSEMENT OF $50.00 VIA PERSONAL CHECK

Thank you,

Cecily

The rule he cites for five days has no application to a response. It's his motion that has to be filed five days before a hearing.

HONORABLE ROBERT Q. WHITWELL: Well, if we were technical, Mr. Sullivant, your motion for recusal is out of time. It should have been filed within 30 days way back.

And you filed it, and I'm going to hear it because I'm going to give you the opportunity to be heard, like I have in every case you've been before me.

There's been objections to things that you've tried to introduce, and I have said, *Mr. Sullivant, it is overruled. You make your record and do whatever you can to present your case.* And that's what we're going to do today.

You can make your argument, and Mr. Swayze can make his argument. Unless you want additional time to continue this matter for another time to respond to that, that's up to you.

You didn't ask for the additional time. You just said you wanted him to be disqualified and dismiss his response.

I don't think a response is required in five days. I think he is right under