The Supreme Court of South Carolina

NOTICE TO ATTORNEYS AND FOREIGN LEGAL CONSULTANTS

REGARDING THE ATTORNEY INFORMATION SYSTEM

This Advance Sheet contains an order amending Rule 410 of the South Carolina Appellate Court Rules to implement the Attorney Information System (AIS). As more fully explained in that order, this system is critical as the South Carolina Judicial Department implements various technology initiatives and prepares for electronic filing.

The AIS was developed to store and manage contact information for all persons admitted to practice law in South Carolina. In addition to providing accurate information regarding members of the Bar, the system allows members to make changes to their contact information using a web-based portal to keep their contact information current. Additionally, this same system will be used to maintain information on those persons licensed in South Carolina as foreign legal consultants.

To facilitate the transition to the AIS, attorneys admitted to practice law in this State (including those holding limited certificates) and foreign legal consultants licensed in this State shall, by November 18, 2011, log-on, verify, and update their contact information on the AIS. Detailed instructions have been sent in a personalized letter from the Chief Justice. This correspondence includes the individual user name and unique password for initial log-on to the AIS. Attorneys and foreign legal consultants who have not logged-on and verified and updated their contact information will not be allowed to renew their license for 2012 until they have done so.

If you are licensed as an attorney or foreign legal consultant and have not received the correspondence from the Chief Justice by Monday, October 24, 2011, you should contact the AIS technical support team by e-mail at aissupport@sccourts.org (please place your SC bar number in the subject line of the e-mail) or by phone at 1-855-235-2500 (toll free). Please review the order and the rule change for additional information.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499

N O T I C E

IN THE MATTER OF JACK L. SCHOER, PETITIONER

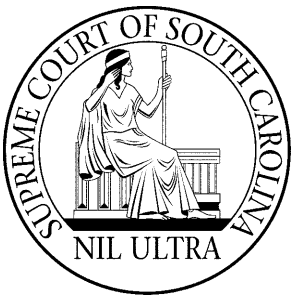
On April 25, 2011, Petitioner was definitely suspended from the practice of law for two (2) years, retroactive to March 22, 2006. In the Matter of Schoer, 387 S.C. 604, 693 S.E.2d 927 (2011). He has now filed a petition to be reinstated.

Pursuant to Rule 33(e)(2) of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR, notice is hereby given that members of the bar and the public may file a notice of their opposition to or concurrence with the Petition for Reinstatement. Comments should be mailed to:

Committee on Character and Fitness
P. O. Box 11330
Columbia, South Carolina 29211

These comments should be received no later than December 12, 2011.

Columbia, South Carolina
October 13, 2011



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 36
October 17, 2011
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

CONTENTS

THE SUPREME COURT OF SOUTH CAROLINA

PUBLISHED OPINIONS AND ORDERS

UNPUBLISHED OPINIONS

None

PETITIONS – UNITED STATES SUPREME COURT

PETITIONS FOR REHEARING

The South Carolina Court of Appeals

PUBLISHED OPINIONS

UNPUBLISHED OPINIONS

2011-UP-440-Brenda R. Babb v. Susan S. Shaw, Cynthia S. Hattersley and Jay Hattersley
(Georgetown, Judge Larry R. Patterson)

2011-UP-441-Brenda R. Babb v. Carey E. Graham et al.
(Horry, Judge J. Michael Baxley)

2011-UP-442-State v. Joseph Leon Zoller
(Lancaster, Judge Brooks P. Goldsmith)

2011-UP-443-State v. Lamont Antwan Delaney
(Charleston, Judge James C. Williams, Jr.)

2011-UP-444-State v. James Clifford Cunningham
(York, Judge John C. Hayes, III)

2011-UP-445-Rene McMasters now known as Rene McMasters Ronaghan v. H. Wayne Charpia a/k/a Howard W. Charpia and Jody E. Charpia
(Dorchester, Judge Edgar W. Dickson)

2011-UP-446-State v. Jaques Jamar Sullivan
(Greenville, Judge Edward W. Miller)

2011-UP-447-Dr. Brad R. Johnson v. Lewis W. Hall et al.
(Horry, Judge J. Michael Baxley)

2011-UP-448-The Estate of Phoebe Weinberg v. Robert Laubshire
(Anderson, Judge R. Lawton McIntosh)

2011-UP-449-Waccamaw Bank v. Myrtle Beach Smokestack Lightning et al.
(Horry, Judge Ralph P. Stroman)

2011-UP-450-Ris'e D. Jackson et al. v. Michael Shawn Thomas et al.
(Greenville, Judge Charles B. Simmons, Jr.)

2011-UP-451-Tamira S. Smith, Claimant, v. GLJ Inc. et al., Employer, and SC Uninsured Employers Fund
(Greenville, Judge Charles B. Simmons, Jr.)

2011-UP-452-Lisa Martin, Employee, v. Michelin North America, Inc., Employer, and Arch Insurance Company, Carrier
(S. C. Worker's Compensation Commission Appellate Panel)

2011-UP-453-State v. Jason Phillips
(Aiken, Judge Doyet A. Early, III)

2011-UP-454-State v. Mitchell Douglas Watts
(Greenville, Judge John C. Few)

2011-UP-455-State v. Johnnie W. Walker
(Aiken, Judge Doyet A. Early, III)

2011-UP-456-Thomas Chad Heaton v. State
(Anderson, Judge John C. Hayes, III)

2011-UP-457-In the matter of the care and treatment of James Carl Miller
(Lexington, Judge R. Knox McMahon)

PETITIONS FOR REHEARING

4768-State v. R. Bixby	Pending
4838-Major v. Penn Community	Denied 10/10/11
4857-Stevens Aviation v. DynCorp	Denied 10/13/11
4858-Pittman v. Pittman	Pending
4862-5 Star v. Ford Motor Company	Pending
4864-Singleton v. Kayla R.	Pending
4872-State v. K. Morris	Pending
4873-MRI at Belfair v. SCDHEC	Pending
4874-Wachovia Bank v. Blackburn	Pending
4875-Powell v. Bank of America	Pending
4876-Crosby v. Prysmian Comm.	Pending
4880-Gordon v. Busbee	Pending
4887-West v. Morehead	Pending

4889-Team 1A v. Lucas	Pending
4890-Potter v. Spartanburg School	Pending
4891-SCDSS v. Carpenter	Pending
4892-Sullivan v. Hawker Beech Craft	Pending
4894-State v. A. Jackson	Pending
2011-UP-385-State v. A. Wilder	Pending
2011-UP-393-State v. Capodanno	Pending
2011-UP-395-Reaves v. Reaves	Denied 10/10/11
2011-UP-400-McKinnedy v. SCDC (3)	Denied 10/10/11
2011-UP-418-F. DeLeon v. State	Pending
2011-UP-419-CCDSS v. Pridgen	Pending
2011-UP-425-State v. V. Ravenel	Pending
2011-UP-427-Port City v. City of Charleston	Pending
2011-UP-428-Murphy v. Bi-Lo, Inc.	Pending

PETITIONS-SOUTH CAROLINA SUPREME COURT

4526-State v. B. Cope	Pending
4529-State v. J. Tapp	Pending
4548-Jones v. Enterprise	Pending
4592-Weston v. Kim's Dollar Store	Pending
4605-Auto-Owners v. Rhodes	Pending
4609-State v. Holland	Pending
4616-Too Tacky v. SCDHEC	Pending

4617-Poch v. Bayshore	Pending
4633-State v. G. Cooper	Pending
4635-State v. C. Liverman	Pending
4637-Shirley's Iron Works v. City of Union	Pending
4659-Nationwide Mut. V. Rhoden	Pending
4670-SCDC v. B. Cartrette	Pending
4675-Middleton v. Eubank	Pending
4680-State v. L. Garner	Pending
4685-Wachovia Bank v. Coffey, A	Pending
4687-State v. Taylor, S.	Pending
4688-State v. Carmack	Pending
4691-State v. C. Brown	Pending
4697-State v. D. Cortez	Pending
4698-State v. M. Baker	Pending
4699-Manios v. Nelson Mullins	Pending
4700-Wallace v. Day	Pending
4705-Hudson v. Lancaster Convalescent	Pending
4706-Pitts v. Fink	Pending
4708-State v. Webb	Pending
4711-Jennings v. Jennings	Pending
4716-Johnson v. Horry County	Pending

4721-Rutland (Est. of Rutland) v. SCDOT	Pending	
4725-Ashenfelder v. City of Georgetown	Pending	
4732-Fletcher v. MUSC	Pending	
4737-Hutson v. SC Ports Authority	Pending	
4738-SC Farm Bureau v. Kennedy	Granted	10/07/11
4742-State v. Theodore Wills	Pending	
4746-Crisp v. SouthCo	Pending	
4747-State v. A. Gibson	Pending	
4750-Cullen v. McNeal	Pending	
4752-Farmer v. Florence Cty.	Pending	
4753-Ware v. Ware	Pending	
4756-Neeltec Enterprises v. Long	Pending	
4760-State v. Geer	Pending	
4761-Coake v. Burt	Pending	
4763-Jenkins v. Few	Pending	
4764-Walterboro Hospital v. Meacher	Pending	
4765-State v. D. Burgess	Pending	
4766-State v. T. Bryant	Pending	
4769-In the interest of Tracy B.	Pending	
4770-Pridgen v. Ward	Pending	
4779-AJG Holdings v. Dunn	Pending	
4781-Banks v. St. Matthews Baptist Church	Pending	

4785-State v. W. Smith	Pending
4787-State v. K. Provet	Pending
4789-Harris v. USC	Pending
4790-Holly Woods Assoc. v. Hiller	Pending
4792-Curtis v. Blake	Pending
4794-Beaufort School v. United National Ins.	Pending
4798-State v. Orozco	Pending
4799-Trask v. Beaufort County	Pending
4805-Limehouse v. Hulsey	Pending
4800-State v. Wallace	Pending
4808-Biggins v. Burdette	Pending
4810-Menezes v. WL Ross & Co.	Pending
4815-Sun Trust v. Bryant	Pending
4820-Hutchinson v. Liberty Life	Pending
4823-State v. L. Burgess	Pending
4824-Lawson v. Hanson Brick	Pending
4826-C-Sculptures, LLC v. G. Brown	Pending
4828-Burke v. Anmed Health	Pending
4830-State v. J. Miller	Pending
4831-Matsell v. Crowfield Plantation	Pending
4832-Crystal Pines v. Phillips	Pending

4842-Grady v. Rider (Estate of Rider)	Pending	
4851-Davis v. KB Home of S.C.	Pending	
2009-UP-322-State v. Kromah	Pending	
2009-UP-564-Hall v. Rodriquez	Granted	10/06/11
2010-UP-090-F. Freeman v. SCDC (4)	Pending	
2010-UP-141-State v. M. Hudson	Pending	
2010-UP-182-SCDHEC v. Przyborowski	Pending	
2010-UP-196-Black v. Black	Pending	
2010-UP-232-Alltel Communications v. SCDOR	Pending	
2010-UP-253-State v. M. Green	Pending	
2010-UP-256-State v. G. Senior	Pending	
2010-UP-287-Kelly, Kathleen v. Rachels, James	Pending	
2010-UP-303-State v. N. Patrick	Pending	
2010-UP-308-State v. W. Jenkins	Pending	
2010-UP-331-State v. Rocquemore	Pending	
2010-UP-339-Goins v. State	Pending	
2010-UP-352-State v. D. McKown	Pending	
2010-UP-355-Nash v. Tara Plantation	Pending	
2010-UP-356-State v. Robinson	Pending	
2010-UP-362-State v. R. Sanders	Granted	10/07/11
2010-UP-369-Island Preservation v. The State & DNR	Pending	

2010-UP-370-State v. J. Black	Pending
2010-UP-378-State v. Parker	Pending
2010-UP-382-Sheep Island Plantation v. Bar-Pen	Pending
2010-UP-406-State v. Larry Brent	Pending
2010-UP-425-Cartee v. Countryman	Pending
2010-UP-427-State v. S. Barnes	Pending
2010-UP-437-State v. T. Johnson	Pending
2010-UP-440-Bon Secours v. Barton Marlow	Pending
2010-UP-437-State v. T. Johnson	Pending
2010-UP-448-State v. Pearlie Mae Sherald	Pending
2010-UP-449-Sherald v. City of Myrtle Beach	Pending
2010-UP-450-Riley v. Osmose Holding	Pending
2010-UP-461-In the interest of Kaleem S.	Pending
2010-UP-464-State v. J. Evans	Pending
2010-UP-494-State v. Nathaniel Noel Bradley	Pending
2010-UP-504-Paul v. SCDOT	Pending
2010-UP-507-Cue-McNeil v. Watt	Pending
2010-UP-523-Amisub of SC v. SCDHEC	Pending
2010-UP-525-Sparks v. Palmetto Hardwood	Pending
2010-UP-547-In the interest of Joelle T.	Pending
2010-UP-552-State v. E. Williams	Pending

2011-UP-005-George v. Wendell	Pending
2011-UP-006-State v. Gallman	Pending
2011-UP-017-Dority v. Westvaco	Pending
2011-UP-024-Michael Coffey v. Lisa Webb	Pending
2011-UP-038-Dunson v. Alex Lee Inc.	Pending
2011-UP-039-Chevrolet v. Azalea Motors	Pending
2011-UP-041-State v. L. Brown	Pending
2011-UP-052-Williamson v. Orangeburg	Pending
2011-UP-059-State v. R. Campbell	Pending
2011-UP-071-Walter Mtg. Co. v. Green	Pending
2011-UP-076-Johnson v. Town of Iva	Pending
2011-UP-084-Greenwood Beach v. Charleston	Pending
2011-UP-091-State v. R. Watkins	Pending
2011-UP-095-State v. E. Gamble	Pending
2011-UP-108-Dippel v. Horry County	Pending
2011-UP-109-Dippel v. Fowler	Pending
2011-UP-110-S. Jackson v. F. Jackson	Pending
2011-UP-112-Myles v. Main-Waters Enter.	Pending
2011-UP-115-State v. B. Johnson	Pending
2011-UP-121-In the matter of Simmons	Pending
2011-UP-125-Groce v. Horry County	Pending

2011-UP-127-State v. B. Butler	Pending
2011-UP-130-SCDMV v. Brown	Pending
2011-UP-131-Burton v. Hardaway	Pending
2011-UP-132-Cantrell v. Carolinas Recycling	Pending
2011-UP-136-SC Farm Bureau v. Jenkins	Pending
2011-UP-137-State v. I. Romero	Pending
2011-UP-138-State v. R. Rivera	Pending
2011-UP-140-State v. P. Avery	Pending
2011-UP-145-State v. S. Grier	Pending
2011-UP-147-State v. B. Evans	Pending
2011-UP-148-Mullen v. Beaufort County School	Pending
2011-UP-152-Ritter v. Hurst	Pending
2011-UP-161-State v. Hercheck	Pending
2011-UP-162-Bolds v. UTI Integrated	Pending
2011-UP-173-Fisher v. Huckabee	Pending
2011-UP-174-Doering v. Woodman	Pending
2011-UP-175-Carter v. Standard Fire Ins.	Pending
2011-UP-185-State v. D. Brown	Pending
2011-UP-199-Davidson v. City of Beaufort	Pending
2011-UP-205-State v. D. Sams	Pending
2011-UP-208-State v. L. Bennett	Pending

2011-UP-218-Squires v. SLED	Pending	
2011-UP-225-SunTrust v. Smith	Pending	
2011-UP-229-Zepeda-Cepeda v. Priority	Pending	
2011-UP-242-Bell v. Progressive Direct	Pending	
2011-UP-255-State v. K. Walton	Dismissed	09/15/11
2011-UP-268-In the matter of Vincent Way	Pending	
2011-UP-291-Woodson v. DLI Prop.	Pending	
2011-UP-305-Southcoast Community Bank v. Low-Country	Pending	
2011-UP-333-State v. W. Henry	Pending	
2011-UP-359-Price v. Investors Title Ins.	Pending	

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Deborah W. Spence,
Individually, and on Behalf of
the Estate of Floyd D. Spence, Respondent,

v.

Kenneth B. Wingate; Sweeny,
Wingate & Barrow, P.A.; and
Robert P. Wilkins, Jr., Defendants,

of whom Kenneth B. Wingate
and Sweeny, Wingate &
Barrow, P.A. are Petitioners.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 27055
Heard May 3, 2011 – Filed October 17, 2011

AFFIRMED AS MODIFIED

Pope D. Johnson, III, of Johnson & Barnett, L.L.P.,
of Columbia, for Petitioners.

A. Camden Lewis, of Lewis & Babcock, L.L.P., of Columbia, for Respondent.

ACTING CHIEF JUSTICE BEATTY: In this action, Deborah W. Spence ("Mrs. Spence") alleges attorney Kenneth Wingate and his law firm ("Wingate")[1] breached a fiduciary duty to her as a former client regarding the handling of her late husband's congressional life insurance policy. The circuit court granted partial summary judgment to Wingate, finding as a matter of law that Wingate did not owe any fiduciary duties in this regard. The Court of Appeals reversed and remanded the matter for trial, holding summary judgment was inappropriate because a genuine issue of material fact existed as to what, if any, fiduciary duties were owed by Wingate to Mrs. Spence and whether those duties were breached. Spence v. Wingate, 385 S.C. 316, 684 S.E.2d 188 (Ct. App. 2009) (Spence III). This Court granted Wingate's petition for a writ of certiorari. We affirm as modified.

I. FACTUAL/PROCEDURAL BACKGROUND

This case has a complex history and has been before the appellate courts on three prior occasions. The current dispute concerns the handling of a $500,000 Federal Group Life Insurance Policy held by Congressman Floyd D. Spence[2] ("Mr. Spence"), Mrs. Spence's late husband. The facts, viewed in the light most favorable to Mrs. Spence as required by our standard of review, are as follows.

Mr. Spence was a member of United States House of Representatives, and he held a life insurance policy of $500,000 as a member of Congress. On

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[1] "Wingate" shall refer to Wingate individually and also his law firm, where appropriate.

[2] Mr. Spence's name appears as Floyd W. Spence in the prior appeals, but it has been corrected here to Floyd D. Spence.

October 12, 1988, Mr. Spence executed a Designation of Beneficiary form that named Mrs. Spence and his four sons from a prior marriage as the beneficiaries of the congressional life insurance policy, with all five to receive equal shares of the proceeds.

On March 15, 1990, Mr. Spence executed a codicil to a 1987 will he had made before his marriage. In the codicil Mr. Spence bequeathed to Mrs. Spence all of his interest and shares of stock in Spence Plantation, Inc., as well as 22 acres of real estate that was subject to a development agreement. The property was located at Lake Murray, South Carolina. According to Mrs. Spence, in 1994 her husband also named her the sole beneficiary of all federal and congressional benefits, including the life insurance policy.[3]

In August 2001, Mr. Spence was hospitalized in Mississippi. He suffered a subdural hematoma while in the hospital and thereafter underwent surgery. On or about August 9, 2001, Mrs. Spence was informed that her husband had suffered brain damage from the subdural hematoma, was in a coma, and was not expected to survive.

Mrs. Spence sought legal counsel and on August 13, 2001, Wingate undertook representation of Mrs. Spence with regards to the assets of her husband, her inheritance rights, and her rights in his estate. Wingate advised Mrs. Spence that she was entitled to nothing from her husband's estate and that she was barred from receiving an elective share by a prenuptial agreement.[4] During the course of this representation, Mrs. Spence consulted

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[3] Mrs. Spence's attorney explained at the summary judgment hearing that Mr. Spence executed and submitted the necessary forms to make the change, but the congressional benefits office apparently had the prior form on file at the time of Mr. Spence's death.

[4] On July 1, 1988, just a few days before their marriage, the parties signed a prenuptial agreement, but the agreement did not contain financial disclosures and Mrs. Spence did not have independent counsel, so Mrs. Spence and Wingate ultimately came to believe the prenuptial agreement was probably unenforceable.

with Wingate about her husband's life insurance policy and "informed Wingate that [her] husband had named [her] as beneficiary."

To resolve any disputes about the effect of the 1987 will and 1990 codicil and her elective share rights, Wingate advised Mrs. Spence to enter into an agreement with the four adult sons of Mr. Spence to create a trust for her benefit. The trust was to provide Mrs. Spence with a lifetime income stream, and it was to be created and funded from one-third of the value of Mr. Spence's probate estate applying a pecuniary formula. Wingate negotiated the agreement concerning the division of Mr. Spence's probate estate, and the parties formally entered into an "Agreement Among Successors to Floyd Davidson Spence, Sr." on or around August 15, 2001.

Mr. Spence died on August 16, 2001. Sometime between August 23, 2001 and the first week of September 2001, Wingate and attorney Robert P. Wilkins, Jr.[5] visited Mrs. Spence and informed her that Wingate had agreed to represent the estate. Wingate also advised her that she no longer needed an attorney. Wingate never informed Mrs. Spence of any potential conflict of interest that he had in representing the estate, nor did he seek her consent to, or a waiver of, any conflict of interest.

Mrs. Spence thereafter came to believe that the amount she received under the agreement negotiated by Wingate was much less than what she was entitled to under the will and codicil or if she had opted for an elective share as provided by South Carolina law. Mrs. Spence met with Wingate, Wilkins, Mr. Spence's four sons, and others in a family meeting. The estate and the life insurance policy were discussed by the parties. According to Mrs. Spence, "Wingate suggested that the boys receive the insurance in what he termed an effort for me to make the boys 'whole again.'" However, Mrs. Spence objected to the insurance proceeds being divided five ways, in contravention of what she stated were her husband's wishes.

[5] Wilkins was the developer for the 22 acres procured by Mr. Spence and reportedly recommended Wingate as the attorney for Mrs. Spence.

Mrs. Spence called Ken Wingate after the meeting and asked him to put his hat back on as her attorney and he refused. Mrs. Spence stated Wingate never advised her that she needed to take any action to protect her rights with regard to the insurance benefits or that she needed to hire a different lawyer to represent her regarding the insurance benefits.[6]

Mrs. Spence thereafter brought a lawsuit to set aside the agreement creating the trust. Wingate withdrew as counsel for the estate in August 2002, around the time of the lawsuit. The agreement was eventually set aside.

Mrs. Spence, individually and on behalf of her late husband's estate, filed the current action against Wingate.[7] She alleged several causes of action; however, the focus here concerns her claim for breach of fiduciary duty. Mrs. Spence alleged Wingate failed to disclose any potential conflict of interest created by him representing her and then the estate, and that he failed to either obtain her waiver of this conflict or to protect her interests, breaching his fiduciary duty.[8] Mrs. Spence further alleged Wingate failed to

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[6] The Members Services Office of the United State House of Representatives ultimately paid the proceeds of the life insurance policy in equal shares to Mrs. Spence and each of the four sons.

[7] Mrs. Spence also named attorney Wilkins as a defendant. However, Wilkins is not a party to this appeal.

[8] Mrs. Spence's attorney stated at the hearing in this matter that a conflict arose because Wingate negotiated an agreement using a pecuniary formula as opposed to providing for a one-third share of the estate to be set aside as a trust for life for Mrs. Spence. The pecuniary formula was based on arriving at a value for each of the assets in the estate, and then the trust was to be funded using a one-third share based on what that number was. A conflict arose due to the competing interests of the estate (which wanted a lower value on the estate assets because it would lower the estate taxes and the charge to the estate) and Mrs. Spence (who had an interest in obtaining a

protect her interests regarding the proceeds of the $500,000 life insurance policy, for which she was the sole beneficiary. Mrs. Spence asserted Wingate owed her a fiduciary duty because Wingate had served as her lawyer and he had discussed the insurance policy issue with her during the course of this representation.

Wingate moved for partial summary judgment requesting a ruling that he was not liable to Mrs. Spence (individually or on behalf of the estate) in connection with the congressional life insurance policy. Wingate asserted the life insurance policy was paid based upon a contract, it was a non-probate asset, and the manner in which it was paid was not controlled by the personal representative of the estate or by himself. Additionally, any claims related to the manner in which the benefits were to be paid belonged to any potential beneficiaries of the policy, not the estate.[9]

At the summary judgment hearing, Wingate further argued no duty was owed to Mrs. Spence individually because at the time the dispute arose concerning the insurance he was acting solely as attorney for the estate and, thus, section 62-1-109 of the South Carolina Code prevented any duty from being owed to Mrs. Spence as a beneficiary of the estate. In contrast, Mrs. Spence asserted that when a former client comes to a lawyer and asks for legal advice on an issue related to the former representation, the lawyer has a fiduciary duty to that client. Thus, Wingate breached his fiduciary duty to her by failing to either take action to properly advise her in the matter of the insurance policy or to advise her that she needed to consult a different attorney to protect her interests. She noted that Wingate opened a file purporting to represent the estate on August 15, 2001, merely two days after he undertook to represent her, and that his representation of her and then the estate's interests created a conflict of interest that she was not advised of and did not approve.

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higher value on the estate assets because her share was to be funded using the pecuniary formula).

[9] Wingate made additional motions for summary judgment that were also addressed in the circuit court's order. These rulings are not at issue here.

The circuit court granted partial summary judgment in favor of Wingate and found that, "[b]y statute, [Wingate] owed no duty or obligation to [Mrs. Spence] in connection with the congressional life insurance policy or the manner in which it was paid." The circuit court relied upon section 62-1-109 of the South Carolina Code and found Wingate owed no fiduciary duty to Mrs. Spence as a mere beneficiary of the estate.

Mrs. Spence appealed, arguing a genuine issue of material fact existed regarding whether Wingate breached a fiduciary duty owed to her arising from his earlier representation of her in a related matter. The Court of Appeals reversed the grant of summary judgment to Wingate and remanded the matter for trial in Spence III.[10]

Citing Hotz v. Minyard, 304 S.C. 225, 403 S.E.2d 634 (1991) and Rule 1.9(a), RPC, Rule 407, SCACR, the Court of Appeals explained: "Duties to a former client on a related matter are separate and distinct from any duties arising from Wingate's representation of the estate; therefore, the circuit court erred in finding section 62-1-109 of the South Carolina Code [ ] absolved Wingate of any duty he owed to [Mrs. Spence]." Spence III, 385 S.C. at 320, 684 S.E.2d at 191. The Court of Appeals concluded a factual issue exists regarding what if any fiduciary duties were owed to Mrs. Spence, and whether these duties were breached. Id. at 319, 684 S.E.2d at 190. This Court granted Wingate's petition for a writ of certiorari to review the Spence III decision.

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[10] In the first appeal, the Court of Appeals affirmed in a split decision (2-1) on error preservation grounds, finding Mrs. Spence should have made a Rule 59(e), SCRCP motion. Spence v. Wingate, 378 S.C. 486, 663 S.E.2d 70 (Ct. App. 2008) (Spence I). This Court granted certiorari on Spence I and reversed and remanded the matter to the Court of Appeals for a ruling on the merits. Spence v. Wingate, 381 S.C. 487, 674 S.E.2d 169 (2009) (Spence II). Upon remand, the Court of Appeals reversed the circuit court's order granting summary judgment to Wingate and remanded the matter for trial. Spence III, 385 S.C. at 320, 684 S.E.2d at 191.

II. STANDARD OF REVIEW

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing the motion. Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (2009). An appellate court applies the same standard used by the trial court under Rule 56(c) when reviewing the grant of a motion for summary judgment. Id. Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

III. LAW/ANALYSIS

We granted certiorari to review the Court of Appeals's conclusion that the existence of a fiduciary duty is a question of fact and to evaluate its treatment of Hotz v. Minyard, 304 S.C. 225, 403 S.E.2d 634 (1991) in reaching that conclusion. Wingate argues the Court of Appeals erred in reversing the grant of summary judgment because, as a matter of law, he owed no fiduciary duty to Mrs. Spence. Mrs. Spence asserts she was owed a fiduciary duty based on their former attorney-client relationship. Our review is limited to the determination of the existence a fiduciary duty, not its breach.

Initially, we note that section 62-1-109 of the South Carolina Code is not applicable to the issue of the congressional insurance policy. This section provides:

> Unless expressly provided otherwise in a written employment agreement, the creation of an attorney-client relationship between a lawyer and a person serving as a fiduciary shall not impose upon the lawyer any duties or obligations to other persons interested in the estate, trust estate, or other fiduciary property, even though fiduciary funds may be used to compensate the lawyer for legal services rendered to the fiduciary. This section is intended to be declaratory of the common law and governs relationships in existence between lawyers and persons serving as fiduciaries as well as such relationships hereafter created.

S.C. Code Ann. § 62-1-109 (2009) (emphasis added). A "fiduciary" as used here includes a personal representative, guardian, conservator, or trustee. Id. § 62-1-201(13).

The circuit court concluded Wingate, as the attorney for the estate, owed no duty or obligation to Mrs. Spence based on section 62-1-109 and her status as merely a "person[] interested in the estate." However, it is undisputed that the congressional life insurance policy in question was a non-probate asset[11] and the manner in which it was paid was not controlled by the personal representative. The circuit court specifically made this finding and neither party took exception; therefore, it is the law of the case.

On its face, section 62-1-109 limits duties only to third parties "interested in the estate, trust estate, or other fiduciary property." Thus, section 62-1-109 negates any duty owed by an attorney to persons other than the estate's representative in matters concerning estate assets or assets controlled in some manner by the personal representative.[12] Although

[11] "[P]robate estate means the decedent's property passing under the decedent's will plus the decedent's property passing by intestacy, reduced by funeral and administration expenses and enforceable claims." S.C. Code Ann. § 62-2-202 (2009).

Wingate represented the estate, the property in question was not a part of the estate and was not controlled by the personal representative; therefore, the protection provided by section 62-1-109 does not attach to Wingate on the issue of the congressional life insurance. The circuit court erred in granting summary judgment on the basis of section 62-1-109.

Turning to the question of the determination of the existence of a fiduciary duty, this Court has said "[a] fiduciary relationship exists when one reposes special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one reposing confidence." O'Shea v. Lesser, 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992).

Our courts have long recognized that an attorney-client relationship is, by its very nature, a fiduciary relationship. Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003); Hotz v. Minyard, 304 S.C. 225, 403 S.E.2d 634 (1991); In re Green, 291 S.C. 523, 354 S.E.2d 557 (1987); Royal Crown Bottling Co. v. Chandler, 226 S.C. 94, 83 S.E.2d 745 (1954); Wise v. Hardin, 5 S.C. 325 (1874); Weatherford v. Price, 340 S.C. 572, 532 S.E.2d 310 (Ct. App. 2000).

"The relationship of an attorney with his or her client is 'highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring a high degree of fidelity and good faith.'" Weatherford, 340 S.C. at 582, 532 S.E.2d at 315 (quoting 7 Am. Jur. 2d Attorneys at Law § 137 (1997)).

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[12] See generally Douglass ex rel. Louthian v. Boyce, 344 S.C. 5, 10, 542 S.E.2d 715, 718 (2001) (finding section 62-1-109's application to "other fiduciary property" refers to property controlled by the fiduciary; the Court held an attorney representing the personal representative in a wrongful death action does not have a duty to the statutory beneficiaries because section 62-1-109 "expressly negates any duty to persons interested in 'other fiduciary property,' which includes the proceeds of a wrongful death action since such an action is brought by a fiduciary").

In finding summary judgment was inappropriate the Court of Appeals, citing Hotz v. Minyard, concluded a factual issue exists regarding what if any fiduciary duties were owed to Wife and whether these duties were breached.

In Hotz, the circuit court granted summary judgment in favor of attorney Robert A. Dobson III on Judy Hotz's claim for breach of fiduciary duty. Hotz, 304 S.C. at 229-30, 403 S.E.2d at 636-37. Dodson and Hotz had a long standing attorney-client relationship. Id. at 230, 403 S.E.2d at 637. Whenever she had legal questions she sought Dodson's counsel. Id. Hotz had met with Dobson to request a copy of her father's will of a certain date that had been prepared by Dobson; the will was favorable to Hotz. Dobson discussed the will with Hotz without telling her it had been revoked by a second will that he had also prepared. Id. at 227-28, 403 S.E.2d at 635-36. According to Dobson, his client (Hotz's father) had instructed him not to disclose the existence of the second will. Id. Hotz "claimed she trusted Dobson because of her dealings with him over the years as her lawyer and accountant." Id. at 230, 403 S.E.2d at 637. The circuit court ruled Dobson owed no fiduciary duty to Hotz because he was acting as her father's attorney and not as Hotz's attorney in connection with the will. Id. at 230, 403 S.E.2d at 637.

This Court reversed the grant of summary judgment, finding "the evidence indicates a factual issue [exists] whether Dobson breached a fiduciary duty to Judy [Hotz] when she went to his office seeking legal advice about the effect of her father's will." Id. (emphasis added). The Court stated although Dobson represented Hotz's father, not Hotz, regarding the will, "Dobson did have an ongoing attorney/client relationship with [Hotz] and there is evidence she had 'a special confidence' in him." Id. The Court further stated that, while Dobson had no duty to disclose the existence of a second will against the wishes of his client (Hotz's father), he owed Hotz a duty to deal with her in good faith and to not actively misrepresent the first will. Id. The Court then reiterated that a question of fact existed as to "whether Dobson breached a fiduciary duty" to Hotz and "conclude[d]

summary judgment was improperly granted to Dobson on this cause of action." Id.

Hotz did not state that whether a fiduciary duty is owed is a question of fact. However, the West headnotes indicate otherwise, which might have led to some confusion in later cases that have relied upon Hotz and cited it for this proposition. However, this Court has since expressly clarified any resulting mischaracterization of the Hotz case and held: "The determination of the existence of a duty is solely the responsibility of the court. Whether the law recognizes a particular duty is an issue of law to be decided by the Court." Hendricks v. Clemson Univ., 353 S.C. 449, 456, 578 S.E.2d 711, 714 (2003) (citations omitted).

In Hendricks, this Court rejected the party's argument that whether a fiduciary duty was owed between a college advisor and a student created a question of fact:

> Although whether a fiduciary relationship has been breached can be a question for the jury, the question of whether one should be imposed between two classes of people is a question for the court. The Court of Appeals cites *Hotz v. Minyard* for the proposition that the existence of a fiduciary duty may be a factual question for the jury. 304 S.C. 225, 403 S.E.2d 634 (1991). In our opinion, they have misapprehended *Hotz*. . . . The Court sent the issue of breach, not the existence of the relationship, to the jury.

Id. at 459, 578 S.E.2d at 715-16 (emphasis added).

Thus, to the extent the Court of Appeals states in Spence III that a question of fact exists as to whether a fiduciary duty is owed in the current matter, this was error. However, we find the Court of Appeals was correct in determining summary judgment should be reversed because a question of fact exists as to whether Wingate breached a fiduciary duty to Mrs. Spence.

It is undisputed that attorneys owe fiduciary duties to existing clients. In addition, fiduciary duties created by an attorney-client relationship may be breached even though the formal representation has ended. See, e.g., Burnett v. Sharp, 328 S.W.3d 594 (Tex. App. 2010) (holding the plaintiff's claim against a former attorney for breach of fiduciary duty for failure to return the unearned portion of a retainer fee constituted a viable claim even though the attorney's representation had ended).

The Court of Appeals cited Rule 1.9(a) of the Rules of Professional Conduct in support of its conclusion that duties to a former client on related matters are separate and distinct from any duties arising out of Wingate's representation of the estate. Wingate, in turn, argues that an attorney's duty to a former client is limited to the requirements of Rule 1.9. We disagree. In Hendricks, we observed that "[a]n affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance." Hendricks, 353 S.C. at 456, 578 S.E.2d at 714 (emphasis added).

We note that, although the Rules of Professional Conduct do not, in themselves, create a cause of action or establish evidence of negligence per se, they are relevant in assessing the legal duty of an attorney in a malpractice action. Smith v. Haynsworth, Marion, McKay & Geurard, 322 S.C. 433, 472 S.E.2d 612 (1996). "In order to relate to the standard of care in a particular case, . . . a Bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm." Id. at 437, 472 S.E.2d at 614 (citation omitted). It is the breach of a duty, not the breach of a rule, that is of determinative import. Id. at 436 n.5, 472 S.E.2d at 614 n.5. Duties owed to a former client are not controlled by the Rules of Professional Conduct. A review of the Scope of Rule 407, SCACR clearly indicates that the rules are intended for guidance and disciplinary purposes, not to form the basis for civil litigation.

We further agree with the Court of Appeals that "[d]uties to a former client on a related matter are separate and distinct from any duties arising from Wingate's representation of the estate; therefore, the circuit court erred

in finding section 62-1-109 . . . absolved Wingate of any duty he owed to" Mrs. Spence. Spence III, 385 S.C. at 319-20, 684 S.E.2d at 190. Section 62-1-109 simply provides that an attorney acting as a fiduciary in a probate matter has no obligation, without more, to other parties with interests in the fiduciary property. This statute does not purport to eliminate all obligations or duties the attorney might have to parties arising by other means. Thus, although Mrs. Spence is not owed a fiduciary duty based on her status as a beneficiary of the estate, she alleged Wingate's fiduciary duty arose based on their prior attorney-client relationship. Wingate himself concedes in his brief that an attorney owes a fiduciary duty to former clients. Contrary to the circuit court's conclusion, section 62-1-109 is not determinative of whether Mrs. Spence is owed a fiduciary duty as a former client.

IV. CONCLUSION

We conclude Wingate owed a fiduciary duty to his former client, Mrs. Spence. This duty included, among other obligations, the obligation not to act in a manner adverse to her interests in matters substantially related to the prior representation. We agree with the Court of Appeals that whether Wingate breached a duty regarding the congressional life insurance policy is a question of fact for a jury to determine. Thus, we uphold the decision of the Court of Appeals to reverse the grant of summary judgment and remand this matter for trial. To the extent the Court of Appeals indicated whether a duty was owed was a question of fact for the jury, the decision is modified to recognize that whether a fiduciary relationship exists between two classes of persons is a matter to be determined by a court. Consequently, the decision of the Court of Appeals is affirmed as modified.

AFFIRMED AS MODIFIED.

Acting Justices James E. Moore and John H. Waller, Jr., concur. Acting Justice Alexander Macaulay concurring in part and dissenting in part in a separate opinion in which KITTREDGE, J., concurs.

ACTING JUSTICE MACAULAY: I concur in part and respectfully dissent in part. I concur with the majority opinion that "the determination of the existence [of a] fiduciary duty is for the court" and not the jury. Nevertheless, under the allegations and undisputed facts of this particular case, the Circuit Court's grant of summary judgment to Petitioners, "that they are not liable to Deborah W. Spence, individually, or the Estate of Floyd D. Spence, Sr. in connection with the congressional life insurance policy or the manner it was paid," should be affirmed and the Court of Appeals respectfully reversed.

The Respondent/Plaintiff's "SECOND CAUSE OF ACTION (Breach of Fiduciary Duty as to all Defendants)" merely asserts that the "Plaintiff and Defendants . . . were in a fiduciary relationship as . . . Defendants were counsel for Plaintiff," from whom, with the Defendant Wilkins, "she sought advice and counsel regarding the estate of her dying husband." As found by the majority, "Mrs. Spence sought legal counsel and on August 13, 2001, Wingate undertook the representation of Mrs. Spence with regards to the assets of her husband, her inheritance rights, and her rights in his estate." As noted by the majority, "it is undisputed that the congressional life insurance policy in question was a non-probate asset," and, further, "[a]lthough Wingate represented the estate, the property in question was not a part of the estate." The matters of the policy and the estate, *ergo*, are not related. Rule 407, 1.9(a), SCACR.

Moreover, as regards "the congressional life insurance policy in question,'' there was no "prior attorney-client relationship," until "Mrs. Spence sought legal counsel and on August 13, 2001, *Wingate undertook the representation of Mrs. Spence with regards to the assets of her husband, her inheritance rights, and her rights in his estate.*" (Emphasis supplied). It was only after and "[d]uring the course of this representation, Mrs. Spence consulted with Wingate about her husband's life insurance policy and 'informed Wingate that [her] husband had named [her] as beneficiary.'" Not only was there no confidential prior or "ongoing attorney/client relationship" regarding her husband's life insurance policy, but there is no allegation that Wingate "actively misrepresented" anything, *cf. Holtz v. Minyard*, 304 S.C.

225, 230, 403 S.E.2d 634, 637 (1991), "in connection with the congressional life insurance policy or the manner it was paid" — as the Circuit Court concluded in granting summary judgment. In fact, when "the estate and the life insurance were discussed by the parties" and others in a family meeting in October 2001, Mrs. Spence acknowledged that there was no ongoing attorney/client relationship with regard to the subject policy and she called Wingate "after the meeting and asked him to put his hat back on as her attorney and he refused."

Mrs. Spence did retain counsel, who advised the representatives of "The Estate of Congressman Floyd David Spence" that their firm was asking the federal government for a review of the payments that were made pursuant to the policy and that they "[did] not expect this [will] have any impact on the estate." Accordingly, I would affirm the Circuit Court.

KITTREDGE, J., concurs

The Supreme Court of South Carolina

RE: Attorney Information System Amendments and Requirements

ORDER

The South Carolina Judicial Department has completed the deployment of the statewide case management system at the circuit court and magistrate court levels in all 46 counties. Development of a case management system for the family court is currently in progress. Additionally, the Department is developing a new appellate court case management system to be used at the Supreme Court of South Carolina and the South Carolina Court of Appeals, and has begun preparing for the electronic filing of court documents in the future. As these technology initiatives have progressed, the need for accurate and up-to-date information about lawyers has become more and more critical for the day to day operations of the courts at all levels.

To meet this need, the South Carolina Judicial Department has developed the Attorney Information System (AIS) to store and manage contact information for all persons admitted to practice law in South Carolina. In addition to providing accurate information regarding members of the Bar, the

system allows members to make changes to their contact information using a web-based portal, thereby ensuring that their contact information is always current. Additionally, this same system will be used to maintain information on those persons licensed in South Carolina as foreign legal consultants.

Rule 410 of the South Carolina Appellate Court Rules is hereby amended to read as shown in the attachment to this order. These changes are effective immediately.

Under the amended rule, lawyers and foreign legal consultants are responsible for verifying and updating their contact information on the AIS. This must occur at least once a year prior to paying the annual license fee, or within five (5) days of a change in any of the information shown on the AIS. Further, as persons are admitted or licensed as lawyers or foreign legal consultants, their information will be added to the AIS, and these new admittees or licensees must verify and update their AIS information within five (5) days of being admitted or licensed.

Each attorney and foreign legal consultant must, at a minimum, have a mailing address, an e-mail address and a phone number listed on the AIS. The mailing and e-mail address shown in the AIS shall be used for all purposes of notifying and serving the attorney or foreign legal consultant.

To facilitate the transition to the AIS, attorneys admitted to practice law in this State (including those holding limited certificates) and foreign legal consultants licensed in this State shall, by November 18, 2011, log-on, verify, and update their contact information on the AIS. Instructions for doing so will be sent out by separate correspondence, and this correspondence will include the individual account name and unique password for initial log-on to the AIS. At a minimum, the attorney or foreign legal consultant shall ensure that his or her contact information in the AIS includes a mailing address, an e-mail address, and a telephone or cell phone number, and that this information is current and accurate. Attorneys and foreign legal consultants who have not logged-on and verified and updated their contact information will not be allowed to pay their license fee for 2012 until they have done so.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

Columbia, South Carolina
October 17, 2011

RULE 410

SOUTH CAROLINA BAR

(a) Name. There is hereby created and established an organization to be known as the South Carolina Bar.

(b) Purposes. The purposes of the organization shall be to uphold and defend the Constitution of the United States and the Constitution of the State of South Carolina; to protect, and maintain respect for, representative government; to continually improve the administration of justice throughout the State; to require the highest standards of ethical and professional conduct, and uphold the integrity and honor of the legal profession; to advance the science of jurisprudence; to promote consistent high quality of legal education and legal services to the public; to apply the knowledge, experience and ability of the legal profession to the promotion of the public good; to encourage goodwill and respect for integrity and excellence in public service among the members of the legal profession and the public; to perform any additional purposes and duties assigned to it by the Supreme Court of South Carolina; and to promote and correlate such policies and activities of the Bar as fall within these purposes in the interest of the legal profession and the public.

(c) Duties and Powers.

(1) The duties of the South Carolina Bar shall be to faithfully carry out its stated purposes as set forth in this rule as may be amended from time to time, with the powers as shall be reasonably necessary and proper for the carrying out of these purposes, including the power to adopt, and amend as necessary, the Bylaws by which it shall be governed, to establish classification of memberships, to recommend amendments or additions to this rule and to the Constitution approved by this Court to be effective upon formation of the South Carolina Bar, and to recommend changes in the license fees to be charged the members thereof.

(2) The annual license fee for active members who have been admitted to practice law in this State or any other jurisdiction for three years or more shall be $245.00 plus the amount specified in (3) below. The license fee for all other members shall be in lesser amounts as may be provided for in the Bylaws

of the South Carolina Bar plus the amount specified in (3) below. The license fee shall be payable on or before January 1st of each year. All income and assets shall be handled separately by the South Carolina Bar, as prescribed in its Constitution and Bylaws.

(3) For each of the listed classes of membership, the following additional license fee shall be paid:

(A) Active Members (less than three years) - $20.00

(B) Active Members (three years or more) - $50.00

(C) Judicial Members - $50.00

(D) Inactive Members - $20.00

(E) Military Members - $20.00

(F) Limited Certificates - $20.00

The funds generated from this additional fee shall be placed in a separate account by the South Carolina Bar and shall be disbursed as directed by the Supreme Court to help defray the costs of operating the Commission on Judicial Conduct, the Commission on Lawyer Conduct and the Office of Disciplinary Counsel.

(d) Membership Required. No person shall engage in the practice of law in the State of South Carolina who is not licensed by this Court and a member in good standing of the South Carolina Bar except as otherwise provided in the rules of this Court.

(e) Attorney Information System (AIS). The AIS is a web-based system developed by the South Carolina Judicial Department to maintain and update information regarding members of the South Carolina Bar. Members use this system, which is accessed using a user name and password, to verify and update their individual contact information. The mailing and e-mail address shown in the AIS shall be used for all purposes of notifying and serving the member.

(f) Enrollment of Members and Duties Upon Enrollment. Every person admitted to the practice of law in South Carolina shall be added to the AIS immediately upon their admission. The Clerk of the Supreme Court is authorized to release information from the admissions/application records as necessary to populate the data fields in the AIS. Each new member shall verify and update his or her information in the AIS within five (5) days of being admitted or licensed. Additionally, the South Carolina Bar may require a new member to provide additional information on a form provided by the South Carolina Bar.

(g) Duty of Members to Verify and Update the AIS. Persons admitted to practice law in South Carolina shall have a continuing duty to verify and update their information contained in the AIS, and must ensure that the AIS information is current and accurate at all times. At a minimum, the contact information listed on the AIS must include a mailing address, an e-mail address and a telephone number. Members must update their contact information on the AIS within five (5) days of any change. Additionally, members must verify and update all of their information prior to paying their bar license fees every year. For those fields that the member cannot correct or update using the AIS, the member will make and submit a discrepancy report on the AIS so that the matter can be resolved. Members who have resigned, been disbarred or suspended, or whose admission or license has otherwise been terminated, and who do not intend to ever seek reinstatement or readmission, are not required to update their information.

(h) Foreign Legal Consultants.

(1) Duty to Verify and Update the AIS. While not members of the South Carolina Bar, persons who are licensed as foreign legal consultants under Rule 424, SCACR, shall be added to the AIS immediately upon their licensing, and the Clerk of the Supreme Court is authorized to release information from the admissions/application records as necessary to populate the data fields in the AIS. Foreign legal consultants shall have the same duty to update and verify their information on the AIS as specified for members under (f) and (g) above.

(2) License Fees. Foreign Legal Consultants shall pay a license fee of $295 to the South Carolina Bar by January 1st. Fifty dollars of this fee shall be placed in the separate account referenced in (c)(3) above to be disbursed as directed by the Supreme Court to help defray the costs of operating the

Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Office of Disciplinary Counsel.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Johnnie Major, Personal Representative of the Estate of Ed Major a/k/a Edward Major a/k/a Edward Major, Sr., Appellant,

v.

Penn Community Services, Inc., a South Carolina Not-For-Profit Corporation, Respondent.

Appeal From Beaufort County
The Hon. Marvin H. Dukes, III, Master-in-Equity

Opinion No. 4838
Submitted March 1, 2011 – Filed June 8, 2011
Withdrawn, Substituted and Refiled October 10, 2011

AFFIRMED

Ray A. Lord, of Irmo, for Appellant.

Louis O. Dore, of Beaufort, for Respondent.

WILLIAMS, J.: On appeal, Johnnie Major, as personal representative for the estate of Edward Major (the Estate), contests the master-in-equity's finding that Penn Community Services, Inc. (Penn) is the fee simple owner of 6.2 acres of real estate in Beaufort County (the Property). The Estate first claims the master lacked subject matter jurisdiction because the master's decision to quiet title to the Property required a determination of intestate heirs, which is exclusively within the probate court's jurisdiction. The Estate also argues the master erred in concluding a certain deed conveyed the Property to Penn because the master's decision was based upon an erroneous determination of intestate succession. We affirm.

FACTS/PROCEDURAL HISTORY

Sub Lot 8,[1] bordered in part by Johnson River, is located on Saint Helena's Island in Beaufort County, South Carolina. Sub Lot 8 comprises 14.13 acres of real estate, and of the 14.13 acres, the Estate undisputedly owns 7.93 acres. At issue in this appeal is whether the Estate or Penn possesses title to an additional 6.2 acres located in the southern portion of Sub Lot 8 (the Property).

In 1866, Edward Philbrick deeded "[] Lot No. (8) . . . containing eighteen acres more or less" to Scipio Josiah. Scipio Josiah later died intestate, leaving his only child, William Josiah, as his sole heir. On January 5, 1932, William Josiah conveyed Lot 8 to F.R. Ford for payment of delinquent taxes. The 1932 deed described Lot 8 as "eighteen acres, more or less, being bounded . . . on the North by the marshes of Johnson River, East by lands of Penn School, South by lands of Penn School, [and on the] West by [m]arshes of Johnson River." On June 17, 1936, F.R. Ford conveyed the

[1] For ease of reference, this court refers to "Lot 8" as the original eighteen acres, "Sub Lot 8" as the 14.13 acres, and "the Property" as the disputed 6.2 acres that is in the southern portion of Sub Lot 8.

same parcel to brothers Edward and James Major. The 1936 deed described Lot 8 with the identical language stated in the 1932 deed.

On September 23, 1950, the brothers partitioned the eighteen acres in Lot 8, with the northern ten acres deeded to James Major and the southern eight[2] acres deeded to Edward Major. After Edward Major passed away in 1997, the Estate brought an action to quiet and confirm title to Sub Lot 8 as well as to confirm the southern boundary line of Sub Lot 8. In its complaint, the Estate asserted it was the rightful owner of "the southern portion of Sub Lot 8," which, in addition to its ownership of 7.93 acres, totaled 14.13 acres. The Estate averred it never conveyed away any portion of Sub Lot 8, and Penn's only rightful claim of ownership was to 3.11 acres undisputedly owned by Penn. In response, Penn asserted it had obtained lawful title of the Property from R.R. Legare in 1916,[3] which was duly recorded at the Beaufort County Register of Deeds office. Penn claimed it immediately entered into possession of the Property after this conveyance.

The parties introduced various plats at trial in an attempt to accurately document the master chain of title. Penn first submitted the Simons-Myrant Plat, which was prepared and recorded in 1905 before Penn purportedly purchased the Property. The Simons-Myrant plat illustrated Penn's northernmost boundary including land only up to the disputed 6.2 acres. Penn also submitted the Palmer and Malone Plat, which was prepared and recorded in 1967. This plat included the disputed 6.2 acres, which was consistent with Penn's claim that it acquired the Property in 1916. Last, the Estate submitted the Gasque plat, which was prepared by a local surveyor, David Gasque, for trial and was not recorded. The Gasque plat depicted Sub Lot 8 as consisting of 14.13 acres, which included the disputed 6.2 acres and

[2] The record reflects the Estate owns exactly 7.93 acres.

[3] Penn initially asserted in its Answer and Counterclaim that it obtained title from Jane Chisolm in 1959. Penn orally amended its Answer and Counterclaim, without objection, at trial to allege a conveyance from R.R. Legare to Penn by deed dated October 12, 1916.

the 7.93 acres originally deeded to Edward Major in 1950. Besides the Gasque plat, the Estate presented no other evidence to show it ever surveyed, platted, or recorded Sub Lot 8.

In support of its claim that the Estate was the rightful owner of the Property, several family members testified they used the Property to graze animals for a number of years and had, at some point in time, planted a small garden on the Property. The Major family also stated they, along with other citizens in the community, frequently used the "Penn dock" on the eastern end of the Property for swimming, boating, and crabbing.

In support of its claim of ownership, Penn's acting executive director and two past executive directors testified Penn had been in possession of the Property for thirty-five years without any claims of adverse ownership by the Major family. The directors noted various Major family members lived adjacent to the Property; however, they claimed none of the Major heirs ever questioned Penn's ownership, despite Penn's establishment of a nature trail and construction of a dock on the eastern end of the Property.

Additionally, Penn presented, without objection, the 1916 deed from R.R. Legare to Penn, which was duly recorded. The 1916 deed stated R.R. Legare was conveying "the same land inherited by Florence Major from her grandfather, Scipio Josiah, containing 6 acres, and portion described as being bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." Penn also presented, without objection, a property record card prepared by Arthur Christensen, a surveyor in Beaufort County during the relevant time period. The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah." The card subsequently noted a conveyance from William Josiah to F.R. Ford on January 5, 1932.

Because the R.R. Legare deed to Penn did not contain a metes and bounds description but was only defined by adjacent landowners' property lines, the master resorted to the various plats and deeds as well as witnesses' testimony to determine whether the Property was located in Sub Lot 8. In his

final order, the master found Penn was the fee simple owner of the Property, free and clear of any claims of ownership by the Estate. This appeal followed.

STANDARD OF REVIEW

Generally, an action to quiet title is one in equity. Fox v. Moultrie, 379 S.C. 609, 613, 666 S.E.2d 915, 917 (2008). However, when the defendant's answer raises an issue of paramount title to land, such as would, if established, defeat plaintiff's action, the issue of title is legal. Dargan v. Tankersley, 380 S.C. 480, 483, 671 S.E.2d 73, 74 (2008). Therefore, in a case tried without a jury, the factual findings of a judge regarding title will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge's findings. Townes Assoc., Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976). This scope of review is equally applicable to the factual determinations of a master when, as in the present case, he enters final judgment. May v. Hopkinson, 289 S.C. 549, 554-55, 347 S.E.2d 508, 511 (Ct. App. 1986).

LAW/ANALYSIS

The Estate first claims the master did not have subject matter jurisdiction to quiet title to the Property because his ruling necessarily involved a determination of intestate heirs, which can only be decided by the probate court. We disagree.

The Estate filed an action in circuit court "for the purposes of quieting and confirming title to the [P]roperty . . . and confirming the southern boundary line thereto . . . ."[4] An action to quiet title is governed by section 15-67-10 of the South Carolina Code (2005). Pursuant to section 15-67-10,

[4] A review of the Estate's complaint and the parties' briefs establish the main purpose of this suit was to determine title to the disputed 6.2 acres. We find the boundary line question is incident to the action to quiet title. See Knox v. Bogan, 322 S.C. 64, 67, 472 S.E.2d 43, 45 (Ct. App. 1996) (finding disputed

> Any person in possession of real property . . . or any person having or claiming title to vacant or unoccupied real property may bring an action against any person who claims or who may or could claim an estate or interest therein or a lien thereon adverse to him for the purpose of determining such adverse claim and the rights of the parties, respectively.

Once the Estate filed this action, the circuit court was required to refer the action to a master-in-equity to first determine rightful ownership of the Property and then to enter final judgment. See S.C. Code Ann. § 15-67-60 (2005) ("In all actions brought under this article the court, or a judge thereof, shall refer the action to a master or special referee to take the testimony as to the plaintiff's claim or title and as to all the facts and circumstances unless the testimony shall be taken in open court and carefully inquire as to the existence of claim by and residence of all nonresidents."); see also S.C. Code Ann. § 14-11-85 (Supp. 2010) ("When some or all of the causes of action in a case are referred to a master-in-equity or special referee, the master or referee shall enter final judgment as to those causes of action and an appeal from an order or judgment of the master or referee must be to the Supreme Court or the court of appeals . . . .").

While the Estate claims the master improperly asserted subject matter jurisdiction in contravention of section 62-1-302(a)(1) of the South Carolina Code (2009)[5] when the master found "Florence Major acquired an intestate share in the Scipio Josiah estate," we find this argument unpersuasive.

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boundary lines may either be directly or indirectly judicially settled in actions to quiet title).

[5] Section 62-1-302(a)(1) grants "the probate court . . . exclusive original jurisdiction over all subject matter related to . . . [the] determination of heirs and successors of decedents . . . ."

The master was not required to make a determination of heirs to establish rightful ownership of the Property. In order to identify the subject matter of the grant, and as such, whether Penn had paramount title to the disputed land, the master had to determine whether the R.R. Legare deed was in the chain of title and constituted a conveyance out of Sub Lot 8. See Powers v. Rawles, 119 S.C. 134, 156, 112 S.E. 78, 86 (1922) ("The sole purpose of a description of land as contained in a deed is to identify the subject-matter of the grant."). Accordingly, the master recited certain lineage that was already documented in the R.R. Legare deed and the property record card in an effort to identify the exact location of the Property. See Richardson v. Register, 227 S.C. 81, 88, 87 S.E.2d 40, 43 (1955) (parol evidence is admissible to elucidate latent ambiguities in written instruments).

Specifically, the R.R. Legare deed conveyed roughly six acres to Penn, described as "the same land inherited by Florence Major from her grandfather, Scipio Josiah . . . and . . . bounded by Penn School lands, by the 'Corner' by land of Rachel Simmons and by land of William Josiah." The property record card for William Josiah stated, "left daughter, Florence, who married Tom Major . . . Lot 8 Corner from [William's] father, Scipio Josiah" and later noted a conveyance "to F.R. Ford on January 5, 1932." While the deed and property record card appear to conflict on whether Florence acquired her share of the estate directly from her grandfather, Scipio, or directly from her father, William, this discrepancy is immaterial for purposes of determining whether Penn or the Estate possessed paramount title. Moreover, we note the Estate never contested the validity, accuracy, or recordation of the 1916 deed at trial. The Estate's attempt to bootstrap its subject matter jurisdiction claim to evidence that it never contested prior to this appeal is unpersuasive, particularly when the deed and the property record card establish Florence Major had ownership rights to approximately six acres that were described in both documents as the "Corner" of Lot 8. Because the R.R. Legare deed expressly conveyed six acres in Lot 8 owned by Florence Major to Penn, it was reasonable for the master to conclude the disputed 6.2 acres is the same six acres conveyed to Penn in 1916.

Other evidence supports this conclusion as well. Each deed in the Estate's chain of title conveyed a total of eighteen acres. The partition deed between Edward and James Major divided eighteen acres, which indicates the 6.2 acres of disputed land was not a part of the Estate's chain of title. If F.R. Ford had received title to the Property, which he then conveyed to Edward and James Major, we conclude it would be reasonable for the specified acreage in the deed to be greater than eighteen acres. See Von Elbrecht v. Jacobs, 286 S.C. 240, 243, 332 S.E.2d 568, 570 (Ct. App. 1985). ("[A] grantor of real property generally can transfer no greater interest than he himself has in the property."). Moreover, both the 1932 and 1936 deeds expressly described the eighteen acres as being bound on both the east and the south by "the lands of Penn School." This description is consistent with the master's finding that R.R. Legare conveyed these southern six acres in Sub Lot 8 to Penn in 1916, prior to the 1932 and 1936 deeds to the Majors. In addition, Penn's recorded plats all support the master's conclusions. The 1905 plat illustrated Penn's northernmost boundary as land bordering, but not including, the disputed 6.2 acres. The 1967 plat, on the other hand, included the disputed 6.2 acres, which is consistent with Penn's claim that it acquired the Property in 1916. See King v. Hawkins, 282 S.C. 508, 510, 319 S.E.2d 361, 362 (Ct. App. 1984) (finding party was record owner of property when deed matched recorded plats indicating disputed property was owned by the party and party's predecessors in interest). Last, Penn had been in possession of this land for over thirty-five years without any adverse claims of ownership by the Estate, which lends support for the master's conclusion that Penn was the rightful owner of the Property. Because the foregoing evidence reasonably supports the master's finding that Penn possessed fee simple title to the Property, we affirm the master's decision.

CONCLUSION

Based on the foregoing, the master-in-equity's order is

AFFIRMED.

GEATHERS and LOCKEMY, JJ., concur.