

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION 02-CP-40-4698

William L. Pope, as Conservator for
George M. Heyward,)
)
Plaintiff,)

vs.)

Stephen R. Kern, Larry T. Williams,)
Jerry Verdino, Luthi Mortgage Company,)
Eastern Savings Bank, FSB,)
and Don McLemore,)
)
Defendants.)

ORDER

FILED
MAY 17 AM 9:04
BARBARA A. SCOTT
C.C.C. & G.S.

This is a declaratory judgment action to determine the validity of a mortgage. This matter came before the court for a trial without a jury from January 25, 2005, through January 28, 2005, and resumed to hear the testimony of a witness on March 11, 2005.

On August 2, 2002, Eastern Savings Bank, FSB ("ESB") refinanced a mortgage on a house for Stephen R. Kern. Mr. Kern had obtained two deeds to the house from George M. Heyward.

On September 17, 2002, the Richland County, South Carolina, Probate Court declared Mr. Heyward mentally incompetent. The primary issue in this case is whether Mr. Heyward was mentally incompetent in 2001 when Mr. Kern obtained a quitclaim deed and then a general warranty deed to Mr. Heyward's home in the Spring Valley subdivision of Columbia, South Carolina, for five dollars.

An additional issue is whether the two deeds Mr. Kern obtained from Mr. Heyward were void due to defects in their probating and witnessing.

Mr. Heyward's conservator, William L. Pope, Esquire ("Conservator"), initiated this action on behalf of Mr. Heyward. A related action had been initiated on behalf of Mr. Heyward to recover a yacht from Mr. Kern, Civil Action 2002-CP-40-965. After these actions were brought, Mr. Kern deeded the house and the yacht back to Mr. Heyward.

Mr. Heyward lives in an assisted living facility. By agreement of the Conservator and ESB, the house was sold and the proceeds held in trust pending resolution of this action. While other defendants were named, the sole determination remaining in this case is whether ESB's mortgage is valid.

As ESB conceded in its opening statement, the law is clear that if Mr. Heyward did not have the mental capacity to execute the two deeds, then ESB does not have a mortgage on the property. (Tr. p. 11, line 25 - p. 12, line 4).

After taking testimony, receiving documentary evidence, receiving proposed orders from counsel, and after due consideration, the court makes the below findings of fact and conclusions of law.

The primary issue in this case is whether Mr. Heyward was mentally competent when he executed a quitclaim deed to his home in July 2001 and a general warranty deed to it in December 2001, each for five dollars in favor of Stephen R. Kern. The record contains direct evidence that Mr. Heyward was incompetent in summer 2002 when he was so found by the Richland County Probate Court. There is also direct evidence that Mr. Heyward was incompetent earlier, in spring 2002, when he was diagnosed with dementia at Baptist Medical Center.

There was no previous psychological evaluation of Mr. Heyward. Therefore, this court must weigh the testimony of the twenty-two witnesses in this case. Those witnesses who benefited financially from Mr. Heyward tended to view his mental competency differently from those who did not. Thus, it is important to note the source of the evidence.

For these reasons, Part I of this Order is an extensive and comprehensive account of the testimony of the witnesses as follows:

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Part II of this Order, starting at Page 58, is an analysis of factual arguments, expert arguments, and the chronology of events. Part III of this Order, starting at Page 63, is a discussion of the applicable law.

Findings of Fact

Part I: Testimony by Witness

Guardian ad Litem Franchelle Millender, Esquire

1. Franchelle Millender, Esquire, a member of the South Carolina Bar, was appointed by the Richland County, South Carolina, Probate Court as counsel and *Guardian ad Litem* for Mr. Heyward on August 8, 2002. (Tr. p. 24, lines 17 – 25).¹ The Richland County Probate Court also appointed Dr. James Bouknight and Dr. Kevin Krebs as the examiners in Mr. Heyward's conservatorship action. (Tr. p. 25, lines 3 – 8).
2. After Ms. Millender was appointed as *Guardian ad Litem*, she met with Mr. Heyward while he was at Baptist Medical Center, on two occasions, once in late August and once in early September 2002. (Tr. p. 25, lines 13 – 24). Both times Mr. Heyward was somewhat communicative but, "did not make a whole lot of sense." Ms. Millender tried to go over some of the evidence about the house deed and the boat. Mr. Heyward was unaware or professed to be unaware of transfers he had made, was not cooperative, and was not able to make decisions for himself. (Tr. p. 25, line 24 – p. 26, line 9).
3. To the best of Ms. Millender's recollection, Drs. Bouknight and Krebs' reports both said that Mr. Heyward was unable to manage his own affairs at that time. (Tr. p. 26, lines 14 – 18).
4. Ms. Millender agreed with the Probate Court's finding in its Order Appointing Conservator that Mr. Heyward lacked the capacity to make decisions concerning management or disposal of real property and its other findings and conclusions regarding his lack of mental capacity. (Tr. p. 26, lines 19 – p. 24, line 8).

Banker, Millie Allison

5. At the time of trial, Millie Allison worked for Wachovia Bank as a financial center manager. In 2001, she worked at the Dentsville Branch of Wachovia Bank as a personal banker. (Tr. p. 28, lines 6 – 23).
6. Ms. Allison got to know Mr. Heyward at the Dentsville branch. When she started at that branch in 1997, Mr. Heyward would come in periodically and make transactions in the teller line. The bank employees knew he was coming because of his outbursts. Eventually, instead of Mr. Heyward having to wait in line, either Ms. Allison or a teller would take him to the side and try to help him, which seemed to calm him down. (Tr. p. 29, lines 1 – 7).
7. Usually Mr. Heyward would make withdrawals from his checking account or his stock brokerage account. (Tr. p. 29, lines 8 – 14). Ms. Allison noticed that "every time he turned around," Mr. Heyward was making car purchases. That was a big concern for her, because, she thought, "How could one man be driving all these cars?" Mr. Heyward frequently wanted bank employees to get cashiers checks for different car dealerships throughout Columbia. (Tr. p. 29, lines 17 – 23).
8. What really started concerning Ms. Allison about Mr. Heyward was that he would come into the bank unkempt. His hair was not combed. He was unshaven, and he smelled awful. In the heat of summer, at ninety to one-hundred degrees, Mr.

¹ Prior to Ms. Millender's testimony, the court disclosed on the record that Ms. Millender had done work unrelated to this case for the court's family. No one had an objection to the court's presiding over this case because of this witness. (Tr. p. 23, line 20 – p. 24, line 5).

Heyward would wear corduroy pants and a flannel shirt. The customers noticed him. His face was "really scaly looking." Mr. Heyward's appearance made it clear that he was not taking care of himself, nor was anyone else. This occurred in the Summer of 2001 and coincided with the decline in Mr. Heyward's bank balances. (Tr. p. 30, lines 6-23).

9. Randy Harbeson and Dusty Harbeson came into the bank with Mr. Heyward during that time period. They claimed to be taking care of Mr. Heyward, but, by Mr. Heyward's appearance, clearly they were not. The Harbesons were doing all of the talking and telling Ms. Allison what Mr. Heyward wanted. They were trying to get large checks cashed. On one occasion they were attempting to cash a \$400,000 check. Ms. Allison was trying to find out what Mr. Heyward wanted. She finally had to escort the two men across the hall and close the door so that she could talk to Mr. Heyward by herself. (Tr. p. 31, lines 15-21; p. 32, lines 10-24; p. 40, lines 14-18). After Mr. Heyward gave Mr. Harbeson the \$400,000 check, there was not much money left in his account. (Tr. p. 33, lines 7-23).
10. When Mr. Heyward left the branch office, the bank employees would get Lysol to spray down the office, because it was an awful smell, like Mr. Heyward had soiled himself. (Tr. p. 31, lines 4-12).
11. Ms. Allison contacted the legal department at Wachovia Bank and told it that she was concerned that Mr. Heyward was being taken advantage of by people he thought were his friends. The legal department told Ms. Allison that she had to follow Mr. Heyward's requests. She also placed an anonymous call to the Department of Social Services. (Tr. p. 34, lines 2-14; p. 46, lines 12-17).
12. In previous years, Mr. Heyward had large stock and checking account balances. By the Summer of 2001, they were totally depleted with regard to Wachovia. (Tr. p. 34, lines 17-21).
13. After there was a zero balance in both the stock account and the checking account, Mr. Heyward still returned to get more money to purchase cars and help friends. Ms. Allison had to keep telling him, "Mr. Heyward, you have no more money with Wachovia, Sir. It's not here anymore." (Tr. p. 35, lines 5-9). Mr. Heyward did not understand what she was saying at all. (Tr. p. 35, lines 10-12). Mr. Heyward got a little agitated, because he felt like the money was still there. (Tr. p. 36, lines 13-19). Mr. Heyward did not realize that he had been spending this money or where it had gone. (Tr. p. 36, lines 16-19). Ms. Allison told Mr. Heyward that he had purchased several automobiles and given thousands of dollars to the gentlemen who accompanied him on several occasions, but, "It's like he didn't get it." (Tr. p. 36, line 21-24).
14. After Ms. Allison told Mr. Heyward that his accounts were depleted, he nonetheless returned seeking more money for approximately six months. He came in about five times within this six-month period. (Tr. p. 35, lines 17-24; p. 35, line 25 - p. 36, line 12). The tellers at Wachovia were familiar with Mr. Heyward, and they would say, "Here comes Mr. Heyward again looking for money that he [doesn't] have." People would always comment about Mr. Heyward's appearance. (Tr. p. 37, lines 8-13). Some people were looking at him with concern that someone should be helping him. (Tr. p. 37, lines 22-25).
15. There had been a deposit of \$474,776.52 into Mr. Heyward's checking account from his brokerage account, which required Mr. Heyward to direct his broker to sell his stock. (Tr. p. 41, line 23 - p. 43, line 3).

16. Mr. Heyward did not clearly understand the transactions. Ms. Allison thought that he was doing what someone else told him to do. (Tr. p. 38, lines 3 – 9). Mr. Heyward was not in his right mind, and Ms. Allison believed that he was not making the right decisions. (Tr. p. 38, lines 10 – 22).

Trooper, Dennis Reeder

17. Dennis Reeder was a Lance Corporal with the South Carolina Highway Patrol. (Tr. p. 47, line 16 – p. 48, line 1). He conducted a traffic stop involving Mr. Heyward on November 1, 2001. The offenses charged were Driving Under Suspension Third, Improper Lane Change, and Violation of Seat Belt Law. (Tr. p. 48, lines 13 – 18). Trooper Reeder was traveling west bound on I-20 in an unmarked blue Camaro. Mr. Heyward was in a tan Cadillac and was swerving and weaving in and out of traffic. Trooper Reeder followed Mr. Heyward with his blue lights for some time, but Mr. Heyward would not stop. Finally Mr. Heyward pulled over at the Broad River Exit off of I-20. (Tr. p. 49, lines 3 – 10). At the time of the stop, Mr. Heyward was not licensed to drive. (Tr. p. 52, lines 9 – 11).

18. When Trooper Reeder approached the car, Mr. Heyward was completely uncooperative. Trooper Reeder did not smell alcohol, and Mr. Heyward did not appear to be drugged, but he was screaming and yelling. (Tr. p. 49, lines 13 – 15). Although he did not feel threatened, Trooper Reeder called backup because Mr. Heyward was “completely uncontrollable.” (Tr. p. 49, lines 16 – 18). He was babbling and did not make any sense. (Tr. p. 49, lines 18 – 19). Trooper Reeder believed that Mr. Heyward thought he was in Charleston, South Carolina. (Tr. p. 49, line 19).

19. The two highway patrolmen tried to get Mr. Heyward out of the car. He was kicking, screaming, and yelling. Both troopers were trying to talk to Mr. Heyward, but he just would not comply. (Tr. p. 49, lines 20 – 23).

20. The two troopers tried contacting Mr. Heyward’s family, but could not find anyone to get his car. (Tr. p. 49, line 24 – p. 50, line 2).

21. When Mr. Heyward got out of the car, Trooper Reeder noticed that he had pants on from Belks Department Store that still had stickers and price tags on them, cling-type stickers that are easily removed. (Tr. p. 50, lines 3 – 7; p. 50, lines 16 – 24).

22. The two troopers put Mr. Heyward in handcuffs. He was kicking and screaming. Mr. Heyward did not understand that it was police policy to use handcuffs in this type of situation. He was kicking inside Trooper Reeder’s car. (Tr. p. 50, lines 8 – 11). On the way to the jail, Mr. Heyward was babbling and did not make sense. (Tr. p. 50, lines 12 – 15; p. 51, lines 19 - 21).

23. Trooper Reeder took Mr. Heyward to the Richland County Detention Center. (Tr. p. 53, lines 19 – 22). Mr. Heyward was released on a personal recognizance (“PR”) bond on November 2, 2001. (Tr. p. 55, line 25 – p. 56, line 1). Trooper Reeder testified that most people who are arrested for Driving Under Suspension are released on a PR bond. (Tr. p. 56, lines 5 – 6).

24. Trooper Reeder testified that he stops a lot of people and makes a lot of charges, but this incident is something he will never forget. He testified that Mr. Heyward “was screaming this scream, it was so shrill it was like a child in a horror movie screaming, that’s how shrill it was, to the point where it almost hurt our ears.” (Tr. p. 51, lines 3 – 7). Mr. Heyward was screaming like he was scared and confused. (Tr. p. 51, lines 14 – 17).

25. Mr. Heyward was clearly confused about the situation, although Trooper Reeder had done his best to try to explain it to him. (Tr. p. 51, lines 7 – 10).
26. Trooper Reeder believed that Mr. Heyward failed to appear for court. When Mr. Heyward's attorney approached Trooper Reeder about the case, Trooper Reeder dismissed the charges because he felt sorry for Mr. Heyward and requested that an order against Mr. Heyward be rescinded. (Tr. p. 51, lines 23 – 25; p. 57, lines 15 - 24).

DSS Case Worker, Judy Smith-Irvin

27. At the time of trial, Judy Smith-Irvin was the Adult Protective Services Supervisor for the Richland County Department of Social Services. (Tr. p. 59, lines 6 – 8). She had been in that capacity since the year 2000. (Tr. p. 73, lines 1 – 4). Ms. Smith-Irvin was the case manager and principal investigator for first DSS investigation involving Mr. Heyward in 1999 and supervised caseworker Desmond Rice in the second DSS investigation of Mr. Heyward in 2001. (Tr. p. 59, line 22 – p. 60, line 5; p. 75, line 20 – 23; p. 76, lines 2 - 11).
28. Ms. Smith-Irvin had worked with DSS since 1985. She investigates abuse, neglect, and protection of persons over eighteen, the developmentally disabled, and those advanced in age. (Tr. p. 73, lines 5 – 8). Ms. Smith-Irvin had a bachelor's degree in social work from Benedict College and a graduate certificate in Gerontology from the University of South Carolina. (Tr. p. 73, lines, 5 – 12; p. 73 lines 16 -22). She had basic training in adult services with DSS and had taken classes on exploitation with the police academy on many occasions. (Tr. p. 74, lines 4 – 9). She had been a licensed social worker for over ten years. (Tr. p. 74, lines 10 – 12).
29. Ms. Smith-Irvin reached the conclusion that, based on his behavior, Mr. Heyward may not have been in control of his faculties. (Tr. p. 60, lines 21 – 24). She found that that the allegation of exploitation of Mr. Heyward was substantiated and found "actual exploitation." (Tr. p. 61, line 3 – p. 62, line 10).
30. Ms. Smith-Irvin assessed Mr. Heyward's risk as "medium." A "high" assessment would apply, for example, if Mr. Heyward were unconscious and required twenty-four hour intervention and removal. A "medium" assessment is still serious. (Tr. p. 62, lines 21 – 25). Ms. Smith-Irvin had concerns about Mr. Heyward's mental status. (Tr. p. 62, line 25 – p. 63, line 3). She noted in her file that Mr. Heyward, "seems to be in the early stages of dementia." (Tr. p. 63, lines 13 – 14). Ms. Smith-Irvin contacted collateral sources and determined that Mr. Heyward was giving away large sums of money. (Tr. p. 63, line 23 – p. 64, line 9).
31. Ms. Smith-Irvin noted in her file that the only "strength" decreasing the risk for Mr. Heyward was Richland County DSS's involvement. (Tr. p. 65, lines 5 – 20). She wrote, "Everyone currently involved seems not to have Mr. Heyward's best interest at heart." (Tr. p. 65, lines 18 – 23).
32. Ms. Smith-Irvin learned that Mr. Heyward had given away cars, a twenty-acre property, and a boat. (Tr. p. 66, lines 1 – 5). She found "insurmountable exploitation," people who were getting \$400,000 and \$500,000. (Tr. p. 66, lines 14 – 19). She rated the risk to Mr. Heyward's financial situation as "high." (Tr. p. 66, lines 20 – 24). Ms. Smith-Irvin noted, "Mr. Heyward is however giving his funds away and may be jeopardizing his life savings."

33. Mr. Heyward had no control over giving money away. (Tr. p. 67, lines 23 – 25). When she talked to him about it, Mr. Heyward seemed intoxicated or confused. Mr. Heyward was not coherent enough to be in control of such a large amount of money. (Tr. p. 68, lines 1 – 4). He did not understand what Ms. Smith-Irvin was saying when she was talking to him. (Tr. p. 68, lines 5 – 7). He was erratic in the way he was acting. (Tr. p. 68, lines 7 – 10). Ms. Smith-Irvin sensed that there may have been some type of dementia. (Tr. p. 68, lines 11 – 12).

34. Ms. Smith-Irvin described the allegations of Mr. Heyward “throwing money away” as “founded.” (Tr. p. 69, lines 14 – 25). She noted the situation in her file as follows: (Tr. p. 70, lines 2 – 9).

Mr. Heyward is seemingly being exploited by every person that calls himself his friend. Mr. Heyward has lent over a million dollars out to so called friends who have not paid him back. The friends seem to think it is acceptable that they don't pay Mr. Heyward back. In one instance an individual borrowed five hundred thousand (\$500,000) dollars. He stated he was to repay the loan but he can't, another over one hundred thousand (\$100,000), and another four hundred thousand (\$400,000).

35. Ms. Smith-Irvin had concerns about Mr. Heyward's abilities to make decisions regarding giving money away. (Tr. p. 78, lines 14 – 18). She felt that DSS needed to obtain a court order to get a psychological evaluation of Mr. Heyward, but the DSS attorneys said that the case did not meet the necessary criteria to obtain an order from the Probate Court. (Tr. p. 70, lines 13 – 23).

36. Ms. Smith-Irvin testified that because a DSS client with dementia is not the best source of information, DSS focuses on collateral sources of information, such as family and doctors. (Tr. p. 71, lines 11 – 18).

37. Based on Ms. Smith-Irvin's interaction with Mr. Heyward, he was in the early stages dementia. (Tr. p. 72, lines 10 – 16).

38. During Ms. Smith-Irvin's interview with Mr. Heyward, he was able to answer questions but seemed a little distant at times. (Tr. p. 79, line 24 – p. 80, line 13). She detected that at the time of the interview that Mr. Heyward had been drinking, but she did not note alcohol use in her report. (Tr. p. 80, line 14 – p. 81, line 8). Although Ms. Smith-Irvin did not record it in her notes, at the time of the interview, Mr. Heyward was confused and incoherent. (Tr. p. 81, lines 13 – 24).

39. Mr. Heyward told Ms. Smith-Irvin that he purchased thirty to forty cars per year. (Tr. p. 82, lines 6 – 9).

40. Ms. Smith-Irvin received a letter from Mr. Heyward's treating physician, Dr. Harmon Patrick, dated August 25, 1999, stating:

I have not seen Mr. Heyward since January 1999 and have no real knowledge about his current medical state. But given his personality and social habits, I certainly would not be surprised if he has become less than rational as far as the decisions he might be making. Mr. Heyward might also just be doing what he feels is appropriate, and even though this might not be reasonable to the majority of people, I certainly could not say that he was not making rational decisions from his standpoint.

I would think if there is a significant concern about how Mr. Heyward is handling his money that a competency hearing would be in order.

(Tr. p. 84, lines 2 – 10; p. 97, lines 13 - 16).

41. Ms. Smith-Irvin testified that at the time of her visit, Mr. Heyward had a housekeeper, Ginger Kern, and that the living areas in the house were clean and fairly well organized but the back rooms were cluttered and the sheets on the bed were not clean. (Tr. p. 86, lines 10 – 14). She testified that when she visited Mr. Heyward, Ms. Kern pulled Ms. Smith-Irvin aside to

discuss Mr. Heyward's situation. Ms. Smith-Irvin read the allegations submitted to DSS because she wanted Ms. Kern to be aware of the potential criminal penalties for exploiting someone. (Tr. p. 95, lines 13 – 18).

42. Ms. Smith-Irvin talked to attorney John McLeod who said that he would attempt to prove that Mr. Heyward was competent if there was a competency hearing. (Tr. p. 87, lines 13 – 17). She talked to Mr. Heyward's sister-in-law, Florida Heyward, who said that she had spoken to Mr. Heyward the week before and that he "seemed fine." (Tr. p. 87, line 25 – p. 88, line 3).
43. The first DSS investigation, in 1999, conducted by Ms. Smith-Irvin, was "substantiated" for exploitation. The second DSS investigation, in 2001, conducted by Mr. Desmond Rice, was "substantiated" for possible self-neglect but "unsubstantiated" for exploitation because, according to Ms. Smith-Irvin, Mr. Rice could not get all of the information he needed. (Tr. p. 88, line 24 – p. 90, line 5).
44. In the 1999 investigation, Ms. Smith-Irvin's largest concern was that Mr. Heyward was not always rational and that, "A millionaire could go broke spending money the way he did." (Tr. p. 93, lines 2 – 5). She was concerned that Mr. Heyward would not have funds to provide for his own care. (Tr. p. 93, lines 2 – 8).
45. In the 2001 investigation, Ms. Smith-Irvin testified that she had concerns about Mr. Heyward, that Mr. Rice would do what he could to bring it to the surface, but, without the needed support from DSS, there was only so much that could be done. (Tr. p. 93, lines 18 – 22).

Former Richland County Sheriff's Department Investigator, Howard Foy

46. Mr. Howard Foy was unavailable for trial, and his testimony was presented by deposition. (Tr. p. 99, lines 5 - 12). Plaintiff's counsel represented that Mr. Foy lived in Arkansas was unable to obtain connecting flights due to a snow storm. ESB's counsel stated that for purposes of the record, the representation that Mr. Foy was unavailable for trial was accepted. (Tr. p. 99, lines 5 – 11).
47. In 2001, Mr. Foy conducted an investigation as a criminal investigator involving Mr. Heyward for the Richland County, South Carolina, Sheriff's Department. (Tr. p. 102, line 24 – p. 104, line 2). On September 19, 2001, Mr. Foy visited Mr. Heyward's home with a uniformed deputy. (Tr. p. 105, lines 20 – 25).
48. At the time of the investigation, Mr. Foy had worked for the Richland County Sheriff's Department for three years. (Tr. p. 103, lines 2 – 6). Previously he served for twelve years in the Army in its Criminal Investigation Division and six years as a police officer in Arkansas. (Tr. p. 103, lines 7 - 11).
49. The following portion of Mr. Foy's investigation report regarding his September 19, 2001, visit to Mr. George Heyward's home was published in the record: (Tr. p. 100, line 3 – p. 102, line 16); Exhibit 34, starting at p. 100).

Investigating officer and Deputy Southern and Lieutenant Byrd with Sizemore Security, Spring Valley Patrol, went to George's home. Upon arrival I noticed a lady coming out of the front door. I asked her if she was a relative, and she stated, no, that here name was Beth Dyer, the wife of Dick Dyer, the owners of Dick Dyer Toyota. Investigating officer advised her that we were there concerned about George's welfare. She stated that George was ill and had mental deterioration problems. The investigating officer asked if theirs was primarily a business relationship. She answered in the affirmative. She answered that her

68. From the outside, the house was gorgeous. (Tr. p. 126, line 21). It was a big house. (Tr. p. 126, line 22). It had a canal, or a creek, that ran around the house. (Tr. p. 126, line 23). There were beer cans floating in the creek, and trash was all over the house. (Tr. p. 126, lines 23 – 25). Mr. Lewis testified, “When you walked in the house, the house had a pretty distinct nasty smell to it of poop, because the bathrooms were - - the bathrooms were disgusting. There was poop stopped up in the toilets, water was overflowing out of the toilets, tissue, trash, beer cans was just laying around the house. People would smoke cigarettes and throw it on the floor. It was just a nasty environment.” (Tr. p. 126, line 25 – p. 127, line 6). This was generally the condition of the house each time Mr. Lewis was there. (Tr. p. 127, lines 7 – 9). Cigarette burns were on the furniture, and trash and dirty clothes were on top of the furniture. (Tr. p. 129, lines 17 – 20).
69. Mr. Lewis saw condoms out of the package floating in the toilet, on the bathroom floor, and the wrappers were lying around the house. (Tr. p. 127, lines 17 – 21).
70. There was mostly beer and liquor in the refrigerator but no food. (Tr. p. 128, lines 3 – 8).
71. When Mr. Heyward was in Mr. Lewis’ presence, he would walk very slowly with his head down. He would walk in circles and mumble to himself, and then he would go back to his room for the rest of the night. (Tr. p. 128, line 23 – p. 128, line 1). Mr. Lewis heard him grunt, make noise, and mumble. (Tr. p. 129, lines 2 – 3).

Attorney, John D. McLeod

72. At the time of trial, John D. McLeod was an attorney admitted to the South Carolina Bar and engaged in the private practice of law.² (Tr. p. 132, lines 2 – 6). Mr. McLeod had known Mr. Heyward since the late 1980s or early 1990s. (Tr. p. 132, lines 9 – 11).
73. Mr. McLeod had a meeting with Mr. Heyward in the Winter of 2001. At that time, Mr. Heyward was disheveled, his hair was long and matted, he had a growth of beard, and his clothes were dirty. He had a detectable odor from across Mr. McLeod’s desk. Mr. McLeod testified, “He was just filthy really.” (Tr. p. 132, lines 15 – 19).
74. Mr. McLeod could not remember the purpose of his meeting with Mr. Heyward on that occasion. He did remember that Mr. Heyward had just gotten out of jail for a driving offense. As best he could recall, it was sometime shortly after November 1, 2001, during cold weather but before Mr. Heyward entered Baptist Hospital. (Tr. p. 134, lines 8 – 18). Mr. McLeod had concerns about Mr. Heyward’s ability to talk about business. Mr. McLeod felt, “He had deeply gone downhill from the last time previous I had seen him. And I said to myself that it won’t be long before George will have to be put up somewhere.” (Tr. p. 133, lines 9 – 13). Later Mr. McLeod heard in 2002 that Mr. Heyward was in the psychiatric unit at Baptist Medical Center. (Tr. p. 133, lines 14 – 18). During the meeting, Mr. McLeod was concerned about Mr. Heyward’s mental situation. (Tr. p. 134, lines 19 – 24).
75. Mr. Heyward had come to Mr. McLeod’s office for a specific purpose, but Mr. McLeod could not recall the purpose. Mr. Heyward would stop into his office from time to time on sometimes trivial matters. (Tr. p. 132, lines 21 – 25). He testified that Mr. Heyward was eccentric and that he drove a lot of different cars. (Tr. p. 137, lines 3 – 6).

² Shortly after the trial, Mr. McLeod was elected to serve as an Administrative Law Judge.

76. At the time of the meeting, Mr. Heyward had just gotten out of jail for a driving offense for charges levied against him on November 1, 2001. (Tr. p. 134, lines 2 – 11). Trooper Dennis Reeder testified earlier in the trial that these charges included Driving Under Suspension Third, and that Mr. Heyward no longer had a driver's license. (Tr. p. 56, lines 10 – 21). Nonetheless, Mr. McLeod testified that Mr. Heyward probably drove himself back to Columbia, South Carolina, after the meeting in Winnsboro, South Carolina, or at least was driving when he left Mr. McLeod's office. (Tr. p. 136, line 18 – 25).

House Visitor, Avery Russell

77. Avery Russell attended three or four parties at Mr. Heyward's house in August and September of 2001. (Tr. p. 139, lines 7 – 16). Most of the time, he attended the parties with Chris Lewis and Ian Desportes. (Tr. p. 139, lines 12 – 13). The parties started in the evening around 10:30 or 11:00. (Tr. p. 139, lines 17 – 19). Mr. Russell left the parties at 2:30 or 3:00 in the morning, but they were still going on. (Tr. p. 139, line 20 – p. 140, line 1).

78. Mr. Russell described the house as trashed with beer cans everywhere, garbage overflowing, people all over smoking cigarettes, and not in good condition. (Tr. p. 140, lines 2 – 5). Mr. Russell observed marijuana, cocaine, and alcohol use. (Tr. p. 140, lines 6 – 11). There were approximately fifteen to twenty people at the parties. (Tr. p. 140, lines 12 – 13). The age group was generally from seventeen to twenty-three. (Tr. p. 140, lines 14 – 16). There was no one else in Mr. Heyward's age group attending the parties. (Tr. p. 140, lines 17 – 19).

79. Mr. Russell spoke to Mr. Heyward, but what Mr. Heyward said to Mr. Russell was "kind of incoherent." (Tr. p. 140, lines 23 – 25). Mr. Heyward was walking around slowly. One time he was wearing a robe. He had his head down, and "looked like somebody – like he had some problems." (Tr. p. 141, lines 2 – 5). Mr. Heyward never attempted to assert his authority over the house. (Tr. p. 141, lines 11 – 13). Mr. Russell saw Mr. Heyward for a matter of minutes at the most. He assumed that the rest of the time he was in his bedroom. (Tr. p. 141, lines 16 – 22).

80. Mr. Russell testified that there might have been a pack of baloney or some eggs in the refrigerator, but mostly there was alcohol. (Tr. p. 142, lines 4 – 11). He did not specifically remember seeing any food. (Tr. p. 142, lines 12 – 13). The furniture was dirty with cigarette ashes and burns in it. (Tr. p. 142, lines 14 – 16). The bathrooms were very disgusting with toilets overflowing, water everywhere, "really nasty." (Tr. p. 142, lines 20 – 22).

81. Mr. Heyward did not appear oriented and was not very alert at all. (Tr. p. 142, line 23 – p. 143, line 1).

82. There were approximately an equal number of males and females at the parties. (Tr. p. 143, lines 2 – 7). Mr. Russell saw used condoms in the toilet. (Tr. p. 143, lines 14 – 17).

83. Mr. Heyward never took any action to take care of the property. (Tr. p. 143, line 23 – p. 144, line 1). The house had a distinct smell of garbage and smoke that had accumulated over time. (Tr. p. 144, lines 4 – 5). Mr. Russell saw dirty dishes in the sink which had been there so long that mold had started to accumulate on them. (Tr. p. 145, lines 14 – 20).

Neuropsychologist L. Randolph Waid, Ph.D.

84. L. Randolph Waid, Ph.D. testified that he was a licensed in clinical psychology. He served as an expert for Mr. Heyward's Conservator. He was certified by the American Board of Forensic Examiners (Tr. p. 148, lines 1 – 6) and had received a bachelor of arts in psychology magna cum laude from Temple University and an M.A. in general psychology from the University of Richmond. (Tr. p. 148, lines 1 – 12). Dr. Waid did an internship in clinical psychology at the V.A. Medical Center and the University of South Carolina and obtained a Ph.D. in clinical psychology from the University of North Texas State. (Tr. p. 148, lines 13 – 18).
85. At the time of trial, Dr. Waid was clinical associate professor in the Departments of Psychiatry and Neurology at the Medical University of South Carolina and an adjunct professor at the Citadel. (Tr. p. 149, lines 8 – 16). He was also in an independent practice in clinical, forensic, and neuropsychological services. (Tr. p. 149, line 14 – 17). Dr. Waid was a neuropsychology consultant at Strand Regional Specialty Associates in Myrtle Beach, South Carolina, and with the Charleston Pain and Rehabilitation Center in Charleston, South Carolina. (Tr. p. 149, lines 20 – 25).
86. Dr. Waid was a member of the American Psychological Association's divisions of Clinical Psychology, Clinical Neuropsychology, American Psychology Law Society, and Addictive Behavior. (Tr. p. 151, lines 5 – 16). He was also a member of the Southeastern Psychological Association, Research Society on Alcoholism, National Academy of Neuropsychology, and the International Neuropsychology Society. (Tr. p. 151, line 17 – p. 152, line 1). He served on the Geriatric Improvement Team at the Institute of Psychiatry, Medical University of South Carolina. (Tr. p. 152, lines 20 – 23).
87. Dr. Waid served as a neuropsychologist. Neuropsychology is a subset of clinical psychology. He had expertise in research, assessment, and treatment of individuals suffering from neuropathology across a life span. He had experience working with Alzheimer's, Vascular Dementias, Huntington's, Multiple Sclerosis, head injury, and attention deficit disorder. Dr. Waid had been supervising and teaching in this area for about twenty years. (Tr. p. 153, lines 1 – 9).
88. ESB stipulated that Dr. Waid was an expert in neuropsychology. (Tr. p. 153, line 25 – p. 154, line 3).
89. Dr. Waid did a report of a neuropsychological evaluation and consultation which he conducted on Mr. Heyward. It involved evaluating Mr. Heyward and reviewing records. (Tr. p. 154, lines 10 – 17). Dr. Waid reviewed the records of Dr. Hamon Patrick, the Department of Social Services, Dr. Patrick Butterfield, Palmetto Baptist Hospital, Dr. John Taylor, and Dr. Kevin Krebs. (Tr. p. 154, line 18 – p. 155, line 8). He also conducted an in-person evaluation of Mr. Heyward. (Tr. p. 155, lines 9 – 12).
90. The records raised concerns for Dr. Waid as to whether Mr. Heyward was acting in a rational and competent way with regard to financial transactions. There were records dating back to 1998 in terms of concerns about Mr. Heyward's rationality and competence to make the financial transactions. (Tr. p. 155, lines 16 – 24). Transactions that Mr. Heyward was making were potentially profitable to other people. (Tr. p. 156, lines 1 – 3).
91. There was recitation in the records of vocal tics. This type of behavior can be part of Tourette's, but it can also manifest during a dementing illness, so dating the history of that behavior is important to knowing its causal factor. (Tr. p. 156, lines 14 – 18).

92. There were concerns in the records by the Department of Social Services about Mr. Heyward's ability to reason and think logically, his judgment, his alcohol consumption, and his behavior in buying cars and giving them to people. (Tr. p. 156, line 21 -- p. 157, line 6).
93. There was a letter from Mr. Heyward's accountant, Mr. Scheffield, who had handled Mr. Heyward's account since 1998, expressing concern about Mr. Heyward's confusion and cognitive impairment. (Tr. p. 157, lines 9 -- 16).
94. Baptist Medical Center did multiple evaluations during in-patient stays. The initial one was May 9, 2002, because of bizarre behavior that family members were reporting. (Tr. p. 157, lines 19 -- 22). The initial workup at Baptist generated the idea that there was a probable dementia or loss of intellectual abilities. (Tr. p. 157, lines 22 -- 24). Mr. Heyward was released but returned to Baptist on May 27, 2002. At that time, he returned because he had been picked up by the Richland County Sheriff's Department for erratic driving. (Tr. p. 157, line 25 -- p. 158, line 4). That led to a rather extended stay at Baptist Hospital where Mr. Heyward underwent very thorough evaluations, including an evaluation by Dr. Taylor from a neuropsychological point of view, resulting in a diagnosis of dementia, or loss of intellectual abilities. (Tr. p. 158, lines 4 -- 8).
95. Dr. Waid testified that Mr. Heyward's pattern of impairments was most consistent with diffuse, broad-based impairments. The physicians involved thought the pattern, presentation, and course of the dementia most consistent with an Alzheimer's type process. (Tr. p. 158, lines 10 -- 14).
96. Mr. Heyward's physicians tried to treat any reversible causes. They gave him antidepressants and gave him time to clear from the delirium. They ceased his substance usage. Continued evaluation, including neuropsychological testing, indicated that there was no reversal of the cognitive impairment. The impairments were broad-based and diffuse, including memory and other capacities. Therefore, other diagnoses were ruled out, with the final one being a senile dementia of the Alzheimer's type. (Tr. p. 158, lines 17 -- 25).
97. Mr. Heyward stayed at Baptist Medical Center during the Probate Court process appointing a *Guardian ad Litem*. Ultimately he was placed in an assisted living facility on September 26, 2002. (Tr. p. 159, lines 4 -- 16). When Mr. Heyward was discharged from Baptist Medical Center and entered assisted living, his medications were Wellbutrin, Seroquel, and Exelon. Wellbutrin and Seroquel are antidepressants, and Seroquel helps organize the thinking. Exelon is a drug provided to individuals with Alzheimer's in hopes of slowing the deteriorating process. (Tr. p. 159, lines 19 -- 24).
98. Dr. Waid conducted a neuropsychological evaluation of Mr. Heyward on March 15, 2004. Mr. Heyward had been adjudicated incompetent in September 2002. Mr. Heyward was transported to Dr. Waid's office by his sister-in-law, Floride Heyward, who was serving as his Guardian. (Tr. p. 160, lines 2 -- 11).
99. In the records relevant to the clinical course, there were concerns expressed in the late 1990s and continuing concerns about erratic behavior. Finally Mr. Heyward was picked up for erratic driving behavior. The subsequent workups came to the conclusion that this was a progressive dementing illness. (Tr. p. 160, lines 15 -- 22).
100. Dr. Waid testified that in 2002, but not before that, there was finally an evaluation that would be most sensitive to this diagnosis, the one conducted by Dr. Taylor. He testified that neuropsychological testing is often the most sensitive way to

detect intellectual decline and impairments. Often M.R.I.'s or radiographic studies are not forthcoming with much early in the dementing process. (Tr. p. 160, line 23 – p. 161, line 4).

101. In Alzheimer's, unlike other types of dementia, individuals have a total lack of awareness of their deficits; they do not think that there is anything wrong. They still think they can drive and can do everything. (Tr. p. 161, lines 10 – 16). This was Mr. Heyward's presentation. Basically, Mr. Heyward believed that there was nothing wrong with him. He was not aware of any loss whatsoever. He was not aware of what was going on in terms of the legal process or the evaluation process. (Tr. p. 161, lines 16 – 20). Mr. Heyward was not a good historian and could not give Dr. Waid details over the last five years. (Tr. p. 161, lines 21 – 23). Mr. Heyward was aware that his sister-in-law, Floride Heyward, was his *Guardian*; however, he did not have a great awareness of why he was in Dr. Waid's office or what had been going on for the past two years while he was in assisted living. (Tr. p. 162, lines 1 – 5).
102. Dr. Waid testified that Mr. Heyward had not reported any sleep difficulties, and the evaluation did not reveal any psychiatric symptomatology. (Tr. p. 162, lines 6 – 9).
103. Dr. Waid tested Mr. Heyward's memory, attention, and cognitive process. He then had an opportunity to compare those test scores to the ones obtained in 2002. (Tr. p. 162, lines 10 – 13).
104. Dr. Waid performed the CERAD neuropsychological battery, which is used with people Mr. Heyward's age with mild, moderate, and severe levels of impairments associated with senile dementia of the Alzheimer's type. Dr. Waid then gave Mr. Heyward more demanding tests of language, attention, concentration, memory, and high reasoning capacities. These were the Weschler Memory Scale- Revised and the Trail Making Test. (Tr. p. 162, line 15 – p. 163, line 2).
105. The Formal Mini-Mental Status Exam, the bedside examination, was incorporated into the CERAD battery of tests. That test starts out with orientation. Mr. Heyward made errors regarding the date, the day of the week, as well as the fact that, at the time of the test, he had been driven to Dr. Waid's office in Mount Pleasant, South Carolina. Mr. Heyward could not identify that he was outside of his normal location. (Tr. p. 163, lines 10 – 14).
106. Dr. Waid testified that during the evaluation, Mr. Heyward was alert, as would be expected with this type of dementia. He was able to repeat some information immediately to Dr. Waid. Nonetheless, when Dr. Waid asked Mr. Heyward to spell the word "world" in a backwards direction, he was unable to do that. Mr. Heyward was able to recall two of three objects after a brief delay. He recalled the third object after queuing, but he showed memory problems there. (Tr. p. 163, lines 15 – 22). Mr. Heyward attained a score of 17 out of 30, which Dr. Waid testified is very suggestive of significant impairment. (Tr. p. 163, lines 23 – 25). Dr. Waid testified that most people typically get 30 on this test, particularly in the early stages of a dementing illness. (Tr. p. 163, line 25 – p. 164, line 2). He stated that, generally, memory starts to deteriorate first and mental status is intact until well into the disease process. (Tr. p. 164, lines 5 – 9).
107. At the time of Dr. Waid's evaluation, Mr. Heyward was not aware of being cared for by Dr. Harmon Patrick in the 1990s. He was also unable to tell Dr. Waid what his current medications were. (Tr. p. 164, lines 12 – 16).
108. On the date of Dr. Waid's evaluation of Mr. Heyward, Dr. Waid also interviewed Floride Heyward, Mr. Heyward's *Guardian*. What Dr. Waid learned was confirmatory of the medical records. (Tr. p. 164, lines 17 – 23). Mr. Heyward was an

interesting man, often described as “eccentric” in terms of his behavior. (Tr. p. 164, lines 23 – 25). Ms. Heyward said that Mr. Heyward always associated with people from car dealerships. (Tr. p. 164, line 25 – p. 165, line 1). There was concern about Mr. Heyward’s giving his house away. (Tr. p. 165, lines 2 – 3). Ms. Heyward gave historical information about Mr. Heyward’s early enlistment in the military. (Tr. p. 165, line 3 – 6).

109. The results of Dr. Waid’s evaluation were that Mr. Heyward was a seventy-two-year-old man who continued to be in assistive care. From the medical records, during the course of the last four to six years, he had shown a progressive decline in his intellectual and neurocognitive abilities. (Tr. p. 165, lines 11 – 16). One way that Dr. Waid was certain of Mr. Heyward’s decline was that he was able to compare the absolute scores to those of Dr. Taylor, and Mr. Heyward had declined since those scores two years before. (Tr. p. 165, lines 17 – 19).

110. Dr. Waid’s evaluation was consistent with a progressive decline occurring within the context of a structured facility where Mr. Heyward was receiving appropriate medication and was not drinking. (Tr. p. 165, lines 19 – 23). Mr. Heyward’s performance on the battery of tests was most consistent with the pattern and profile of impairments that are obtained on individuals his age who have senile dementia of the Alzheimer’s type. (Tr. p. 165, line 23 – p. 166, line 2). Dr. Waid’s opinion was that his evaluation was confirmatory of what was determined in 2002, that Mr. Heyward was not competent to manage his affairs because of cognitive impairments. (Tr. p. 166, lines 3 – 6).

111. Dr. Waid testified that Mr. Heyward’s eccentricity could have masked the onset of the progressive dementia. (Tr. p. 184, line 22 – p. 185, line 3).

112. Dr. Waid explained that other causal factors can lead to a dementing process. The most common is vascular dementias which have to do with microangiopathic changes and the occurrence of small strokes. Nonetheless, Dr. Waid testified that Mr. Heyward’s level of impairment both in 2002 and 2004 was more consistent with the more encompassing cordical dementias that Alzheimer’s involve, because there are more spared functions in sub-cordical dementias. Sometimes there are both pathologies, vascular breakup as well as the disease cordical Alzheimer’s. (Tr. p. 168, line 16 – p. 169, line 1).

113. Dr. Waid testified that he did not believe that appropriate evaluations were conducted in 1999 or 2001 by the Department of Social Services. (Tr. p. 169, lines 4 – 8). There was never an evaluation from a neurocognitive point of view, much less a psychiatric point of view. Dr. Waid was concerned that there has been a significant decline, but, as an expert, he had no real data to give him a certainty level for 2001. He believed that the decline existed before 2002, where there was already a thirty-point drop in intelligence as it relates to Mr. Heyward’s I.Q. score. Thus, Dr. Waid believed that there was a dementing process and disease before 2002, but he did not render an opinion about Mr. Heyward’s mental capacity in 2001. (Tr. p. 169, lines 4 – 18).

114. Dr. Waid had read Dr. Elin Berg’s report and her deposition in this case. (Tr. p. 171, lines 6 – 11). He disagreed with Dr. Berg’s report in that he did not conclude from the DSS evaluations conducted in 1999 and in 2001 that DSS was rendering an opinion that Mr. Heyward was competent. DSS did not do the standard care evaluation. Although there was interest in doing this evaluation, it did not take place. That what was needed was an accurate evaluation of Mr. Heyward’s psychiatric and cognitive functioning. (Tr. p. 171, lines 16 – 24). There was no way to get an accurate evaluation without

neuropsychological testing, which was warranted under the circumstances. (Tr. p. 171, line 25 – p. 172, line 3). Dr. Waid did not believe that a medical opinion could be rendered about Mr. Heyward's competency without an evaluation of brain function, which DSS did not do during the period in question. (Tr. p. 172, lines 4 – 10).

115. With regard to Dr. Berg's report, Dr. Waid also testified that the vocal tics Mr. Heyward had could either be caused by Tourette's disorder or could be exacerbated by cognitive decline. There are Tourette's type symptoms or vocal tics that manifest during the dementing process. (Tr. p. 172, lines 13 – 17). Vocal tics do not contraindicate dementia. Dementia is another disease process. People with Tourette's or people with vocal tics can get Alzheimer's. (Tr. p. 172, lines 13 – 24).
116. With regard to vascular based dementia, or "Lacunar" dementia, vascular changes could be evident on the M.R.I., but they were not evident on the initial ones viewed by the doctors in Baptist Hospital. (Tr. p. 173, lines 3 – 5). Generally, the doctors would have noted micro-angiopathic changes, but they did not in Mr. Heyward's case. Rather, the doctors at Baptist Hospital called it Alzheimer's. (Tr. p. 173, lines 3 – 8).
117. If micro-angiopathic changes are present, the quality of one's functioning is much better. (Tr. p. 173, line 8 – 9). The level of impairment associated with vascular dementia is not as severe and does not involve the gray matter. (Tr. p. 173, lines 9 – 11). Vascular disease attacks the white matter in the sub-cortical region. (Tr. p. 173, lines 11 – 13). With vascular dementia, there is slowing and executive difficulties with sequencing, but one's memory is much better. (Tr. p. 11 – 13). If people are quod to remember, they will. (Tr. p. 173, lines 14 – 16). Thus, the nature and severity of impairment is very different in vascular dementia. (Tr. p. 173, lines 17 – 18).
118. Also, in vascular dementia, people are aware of their cognitive losses and do not show the profound lack of awareness, termed "innocent noshia." (Tr. p. 173, lines 18 – 21). Both vascular dementia and Alzheimer's can exist in the brain. (Tr. p. 173, lines 21 – 24). Dr. Waid had not ruled out vascular dementia. Some of these diseases could not be ruled out until a biopsy is done after death. (Tr. p. 181, lines 22 – 25). Nonetheless, he testified, the clinical course from 2002 to 2004 was much more suggestive of Alzheimer's. (Tr. p. 173, lines 21 – 24).
119. Dr. Waid testified that the course of vascular dementia is also slower than Alzheimer's. Vascular dementia has step-wise changes. (Tr. p. 174, lines 10 - 12). Often there will be an abrupt change for a day or two. (Tr. p. 180, lines 5 – 7). This is called a transient ischemic attack, meaning that there has been the rupture of a little vessel. The person may even show some stroke-like symptoms like Palsey or weakness on one side. (Tr. p. 180, lines 7 – 14). The person is very confused, but then he clears. (Tr. p. 174, lines 12 – 16; Tr. p. 180, lines 7 - 14). There is a little drop in the person's overall cognitive abilities. (Tr. p. 180, lines 7 – 14). Generally this happens over a long period of time. If there is rapid vascular dementia, it looks like a stroke and the person would probably end up in the hospital because of such rapid deterioration. (Tr. p. 174, lines 16 – 20). Dr. Waid testified that he did not see the clinical course in Mr. Heyward's case as most consistent with vascular dementia. He saw them as most consistent with Alzhiemers, particularly since alcohol had been ruled out. (Tr. p. 174, lines 21 – 24).
120. Alzheimer's sufferers still have their physical capacities. They may still drive or be on the golf course; however, they get very confused. (Tr. p. 175, lines 5 – 7). On the golf course, they may hit the ball back to the tee. In Alzheimer's, people actually look better than they are cognitively. (Tr. p. 175, lines 7 – 12).

121. Dr. Waid testified that Dr. Berg had rendered an opinion that Mr. Heyward was competent to execute the two deeds in question. (Tr. p. 176, lines 12 – 17). He testified that his disagreement was that the appropriate measures and evaluations were not there to make an opinion, so he was not making an opinion either way. (Tr. p. 176, lines 18 – 24).
122. Mr. Heyward was admitted to Baptist Hospital on May 9, 2002, and then again on May 17, 2002 under the care of Dr. Kevin Krebs. (Tr. p. 177, lines 10 – 18). The diagnosis was Access 1 Dementia, N.O.S. Dementia is broad-based term that generally means a significant diffuse loss of intellectual abilities, memory, and other capacities. (Tr. p. 177, lines 21 – 24). The “N.O.S.” part of the diagnosis meant that there was a loss, but that the doctor was not yet ready to know the causal factors, or etiology. (Tr. p. 177, line 21 – p. 178, line 1). Dr. Waid testified that with Mr. Heyward’s alcohol use, one would be concerned about that and other possible causal factors. (Tr. p. 178, lines 1 – 4).
123. Dr. Waid testified that over the last two years while Mr. Heyward has been in assisted living, there has been no report of any abrupt changes, which would be expected in vascular dementia if that was the only cause for Mr. Heyward’s decline to continue. (Tr. p. 182, lines 2 – 6). Also, over the last two years, there has been no report of delirium. (Tr. p. 182, lines 2 – 8).
124. Dr. Waid testified that Mr. Heyward was suffering from Alzheimer’s dementia in 2001. He testified that in the early stages of Alzheimer’s, a person could still be competent, but since DSS did not get the data that would be necessary, Dr. Waid was unwilling to make an evaluation of competency. (Tr. p. 183, lines 1 – 4). By the time Mr. Heyward was evaluated, his loss was so significant that the question “had become moot.” (Tr. p. 183, lines 19 – 20). He testified that someone suffering from the early stages of Alzheimer’s type dementia is more susceptible to manipulation and are often taken advantage of. (Tr. p. 191, lines 9 – 14).
125. Dr. Waid’s belief was that Mr. Heyward was in the moderate stages of Alzheimer’s. (Tr. p. 166, lines 7 – 18). In the severe form, he testified, the sufferer starts to become neuro-vegetative. (Tr. p. 186, lines 15 – 17). For his age group, Mr. Heyward was scoring at the second percentile for being able to retain stories that were read to him. He was scoring in the first percentile for retaining and being able to draw visual information shown to him. Mr. Heyward was in the lower first and second percentile with regard to memory functioning. (Tr. p. 166, lines 7 – 18).
126. At the time of his evaluation of Mr. Heyward, Mr. Heyward’s memory impairment, relative to Dr. Taylor’s evaluation of Mr. Heyward in 2002, was worse. Even at the time Dr. Taylor saw Mr. Heyward, his IQ. at that time was 71, which is at the cutoff score generally used for mental deficiency and mental retardation. (Tr. p. 168, lines 1 – 5). There was a broad base of loss of intellectual abilities. (Tr. p. 168, line 6).
127. Dr. Taylor gave Mr. Heyward the Mathis Dementia Rating Scale, which is similar to CERAD. Mr. Heyward had significant impairment when Dr. Taylor saw him in 2002. There was more downward impairment which seemed to be in a progressive course when Dr. Waid saw Mr. Heyward in 2004. (Tr. p. 168, lines 7 – 12).
128. Dr. Waid testified that the likely length of the dementing process was about five years (Tr. p. 168, lines 13 – 14) and that the severity and profile pattern suggested Alzheimer’s. (Tr. p. 168, lines 15 – 16).
129. The severity of Mr. Heyward’s memory disturbance, along with the other impairments, in Dr. Waid’s opinion, showed that Mr. Heyward was in the moderate stages of Alzheimer’s. In his opinion, Mr. Heyward had been in the disease process

husband and son, Steve Dyer, had sold George numerous vehicles. She stated that George likes to buy a new car every three to four weeks.

As she left she stated that the investigating officer should speak to her son, Steve, about this, that he used to take care of George. The investigating officer then met George at the front door of his \$400,000 home. George appeared very sickly and disoriented. He walked very slowly and made grunting noises. He was dirty and had a strong odor about his person. He appeared not to have had a shower or bath in several weeks. His hair is long, shoulder-length, unkempt, greasy, and matted. He has month-long growth of beard with dried saliva on his face and chin. His teeth are yellow and dirty. His socks were white but looked yellow and brown from not being washed in a long time. His fingernails were very long and dirty.

Investigating officer asked him about his physical state and appearance, and he advised investigating officer that it was none of my business. Investigating officer advised George that his car had not been stolen but that Ian had told Chris to take his friend home. George called the investigating officer a liar and stated that the investigating officer was an idiot. Investigating officer then asked George if we could look around and see if any of the kids were there, or if there were any illicit drugs in the house. He stated that it was none of our business but that we could look anywhere we wanted.

Investigating officer went to the southwest bedroom where George stated that Ian stayed. Investigating officer discovered a very dusty and dirty bedroom and bathroom where there were used condoms on the sink, in the toilet, and on the bed. The toilet was stopped up with condoms, paper, and plastic wrappers. There were approximately 10 empty beer bottles all over the bedroom and bathroom, and vomit on the bed sheets and bathroom sink. Investigating officer also discovered marijuana paraphernalia like blunts and rolling paper. Numerous bags of cigar tobacco that had been taken out of cigars was discovered in the bedroom.

Investigating officer then went into the kitchen and found about three cases full of beer, and 10 to 14 bottles that were empty, along with five bottles of empty liquor. Investigating officer looked in the refrigerator and cabinets and found no food whatsoever. Investigating officer then asked George what was going on. He stated that investigating officer had no business in his house. Investigating officer reminded him that he had given him permission. He stated that investigating officer was a horse's ass and that investigating officer needed to leave his house. As investigating officer was leaving, he stated that if he wanted to party with these boys he could, and that if he wanted to drink with them he could, and that it was none of our business. Note: Investigating officer discovered a prescription bottle, possibly valium, prescribed to Steve Dyer in the medicine cabinet when he searched the bedroom.

50. In his deposition, Mr. Foy characterized Mr. Heyward's overall appearance as, "Howard Hughes - - long fingernails, long toenails to the point where some of the nails were curling; real yellow fingers, like an old person who smoked filterless cigarettes all their lives would have. Yellowish, long fingernails - - I mean yellow, something like if he was in public that would be the first thing probably that caught your eye." (Tr. p. 106, lines 11 - 17).
51. Mr. Heyward had a lot of unkempt facial hair, a massive beard that had not been trimmed or cut for a long period of time with yellow stain on his white beard. (Tr. p. 106, lines 19 - 21). The whole time Mr. Foy was talking to Mr. Heyward, Mr. Heyward was drooling. (Tr. p. 106, lines 21 - 22). Mr. Heyward's teeth were really yellow, black, and dirty. He had drink, drool, or dried food particles around his mouth. (Tr. p. 106, lines 22 - 24). Mr. Heyward had long nose hairs and two or three inch hair on his eyebrows that was curled and uncut. (Tr. p. 106, line 24 - p. 107, line 2). His hair was shoulder-length. His shirt was buttoned crookedly. In other words, one of the shirt tails was longer than the other because it was buttoned improperly. (Tr. p. 107, lines 2 - 6). There were stains all over Mr. Heyward's shirt, and it smelled badly. (Tr. p. 107, lines 6 - 11). Mr. Heyward's pants did not fit him. They were "high-water" pants. (Tr. p. 107, lines 20 - 22). He was rather slim and

boney and appeared undernourished and sickly. (Tr. p. 107, line 23 – p. 108, line 1). Mr. Heyward spoke slowly, with a drawl, and cussed a lot. (Tr. p. 108, lines 1 – 2).

52. Mr. Heyward started to get nasty when Mr. Foy asked him where the condoms came from and why there was no food in the house. (Tr. p. 108, lines 7 – 10).

53. Mr. Foy did not remember any food at all in the house but a lot of alcohol. He testified that he had searched many houses in his work, and that there are some houses where there are at least a few cans, "But this was nothing, not a bottle of ketchup, no can of tuna they stuck back in the cabinet. I mean, there was just no food whatsoever, just alcohol and these other things." (Tr. p. 109, lines 8 – 12).

54. Mr. Foy testified that there were empty beer bottles and liquor bottles in the bedroom, bathroom, and kitchen. (Tr. p. 108, lines 14 – 16; p. 109, lines 4 – 6).

55. There was marijuana paraphernalia in the house, like blunts and rolling papers. (Tr. p. 108, lines 15 – 17). Mr. Foy found a lot of cigar tobacco where the tobacco had been taken out of cigars. (Tr. p. 108, line 16 – p. 109, line 3). He testified that a current trend was to take the tobacco out of the cigars, to put marijuana in them, and to call them "blunts." (Tr. p. 108, lines 19 – 22).

56. Mr. Heyward mumbled a lot. When Mr. Heyward called Mr. Foy a "horse's ass," it was not like Mr. Foy pronounced "horse's ass" in his deposition; everything was mumbled. (Tr. p. 109, line 25 – p. 110, line 3).

57. Mr. Foy testified that there was a Cadillac dealership in Columbia that sold Mr. Heyward a lot of cars and that it was not just the Dyers who were taking advantage of him. (Tr. p. 110, lines 13 – 24).

58. Mr. Foy was concerned that Mr. Heyward was contributing to the delinquency of minors. (Tr. p. 112, lines 1 – 5). He called the South Carolina Law Enforcement Division and was referred to a lady who investigates abuse. (Tr. p. 112, lines 1 – 12). He also called the Department of Social Services. (Tr. p. 112, lines 12 – 13).

59. Based on what Mr. Foy saw in the house and his discussions with Mr. Heyward, there was no doubt in Mr. Foy's mind that Mr. Heyward was not able to take care of his financial affairs. Mr. Foy was unable to determine whether this was from mental incapacitation or laziness, but said that Mr. Heyward definitely had a mental problem. (Tr. p. 113, lines 2 – 5).

60. Mr. Foy testified at one point that Mr. Heyward, "talked very sensible. Not like a mental person." (Tr. p. 114, lines 19 – 25). He also appeared to understand that he was giving Mr. Foy permission to look around the house. (Tr. p. 115, lines 2 – 9). Mr. Foy could understand what Mr. Heyward was saying, although it was a "slurry mumble." (Tr. p. 115, lines 10 – 16). He testified:

He always made these really weird noises out of his mouth. But when it came down to making sentences, like when I first got there, "You need to talk to Jan," I understood that. But he [did] do a lot of mumbling throughout. In other words, I did not pick up everything he was saying just because I think that they were just not noise (sic) that he was making. I don't think he was trying to make a sentence. I could be wrong. Grunting, maybe that's a good way to describe it, a lot of grunting, and he shuffled when he walked. He didn't take normal steps like we do.

(Tr. p. 116, lines 5 – 15).

61. Mr. Foy testified that as much as he thought Mr. Heyward was crazy, he also thought that he knew what he was doing and was exchanging some sexual favors for some of these items. (Tr. p. 117, lines 21 – 24).
62. All of the bathrooms in the house were a total mess. There were no towels on the rack, and there was no toothbrush or toothpaste. There were just beer bottles, condoms, and sexual magazines open in front of the toilet. There were clothes everywhere. (Tr. p. 113, lines 15 – 23). Inside one toilet, there was vomit, and inside another there were cigar tobacco and cigarette butts. (Tr. p. 113, line 25 – p. 114, lines 3). All four bathrooms were trashed. (Tr. p. 119, lines 21 – 22). The bathroom near the master bedroom was the same as the others in that it had clothes and blankets thrown everywhere. (Tr. p. 120, lines 3 – 7). Mr. Foy believed that that was the bathroom in which he found vomit, but he did not believe that he found beer bottles in that bathroom. (Tr. p. 120, lines 7 – 9).

House Visitor, Chris Lewis

63. In August and September of 2001, Chris Lewis, who was age twenty at the time, went to Mr. Heyward's house in the Spring Valley subdivision of Columbia, South Carolina, three or four times for the purpose of partying. He saw Mr. Heyward on these occasions and talked to him on one occasion. (Tr. p. 122, lines 1 – 2). Mr. Lewis went to these parties with Ian Deportes and Avery Russell. (Tr. p. 122, lines 16 – 19). Ian Deportes had invited him. (Tr. p. 124, lines 2 – 4). There were always about fifteen to twenty people there. (Tr. p. 122, lines 19 – 20). The general age of the people partying at the house was from seventeen to twenty-two. (Tr. p. 123, lines 2 – 4). There were males and females. (Tr. p. 127, lines 10 – 12). There was a lot of drinking going on, marijuana use, and cocaine use. (Tr. p. 123, lines 8 – 13). Mr. Lewis saw beer and hard liquor at the parties. (Tr. p. 123, lines 15 – 20). He did not see Mr. Heyward drink any alcohol. (Tr. p. 123, lines 21 – 24). The parties would start about ten or eleven o'clock in the evening and go until about four or five in the morning. (Tr. p. 124, lines 5 – 10).
64. Of the four or five hours Mr. Lewis was at a given party, he would probably see Mr. Heyward about ten minutes. (Tr. p. 124, lines 20 – 24). Mr. Lewis believed that the rest of the time Mr. Heyward was in his room. (Tr. p. 124, line 25 – p. 125, line 1).
65. Mr. Lewis observed in regard to Mr. Heyward, "He was lost, he didn't know what was going on. He couldn't function well. He would just walk around in a daze and mumble to himself." (Tr. p. 125, lines 4 – 6).
66. Mr. Lewis never saw Mr. Heyward talking to anyone. (Tr. p. 125, lines 7 – 8). He had a dirty appearance, had a long, scraggly beard, and did not have good hygiene. (Tr. p. 125, lines 14 – 18). He wore dirty clothes with holes. (Tr. p. 125, lines 20 – 21).
67. Mr. Lewis saw marijuana use in the house and on the porches, but not when Mr. Heyward was present. (Tr. p. 125, line 24 – p. 126, line 7). There was drinking when Mr. Heyward was present. (Tr. p. 126, lines 8 – 10). There was cocaine use in the house, but not around Mr. Heyward. (Tr. p. 126, lines 11 – 14). Mr. Heyward never asked anyone to leave and never attempted to assert authority over the party. (Tr. p. 126, lines 15 – 19).

since the late 1990s. (Tr. p. 166, lines 22 – 23). As a rough estimate, Dr. Waid believed that, at the time of his evaluation, Mr. Heyward was about five years into the disease process. (Tr. p. 167, lines 1 – 3).

Deed Recipient Stephen R. Kern

130. Stephen R. Kern appeared as a witness. He met Mr. Heyward in 1992 through friends at the Lake Murray Marina. He was not related to Mr. Heyward in any way. (Tr. p. 201, lines 1 – 3). Mr. Kern got to know Mr. Heyward fairly well since 1995 and socialized with him on holidays, on Mr. Heyward's boat, and at various meals. (Tr. p. 194, lines 19 – 25; p. 199, lines 20 – 25; p. 201, lines 4 – 8; p. 516, lines 10 – 21). Mr. Kern's relationship to Mr. Heyward got closer in late 1997 when he took the duty of driving Mr. Heyward on his boat, a 40-foot Sea Ray named the WELL PLEASED, once or twice a week. (Tr. p. 201, lines 15 – 22; p. 218, lines 8 – 10; p. 518, lines 7- 14; p. 201, lines 11 - 14). Mr. Heyward was unable to manage the boat. (Tr. p. 239, lines 8 – 11).
131. Mr. Kern's former wife, Ginger Kern, eventually became a caretaker for Mr. Heyward in approximately 1998. (Tr. p. 200, lines 1 – 5). In 1999, she reported Mr. Heyward to the Department of Social Services. (Tr. p. 200, lines 9 – 14). She continued to provide care for Mr. Heyward a few months after the DSS involvement. (Tr. p. 200, lines 9 – 11). Steve Kern's assistance with Mr. Heyward progressed to "full care" in 1999 (Tr. p. 232, lines 8 – 16), including helping with buying his clothes, doing his laundry, changing his bed sheets, paying his house bills, including gas and utility bills, and driving Mr. Heyward to court and to the Alcohol and Drug Safety Action Program ("ADSAP"). (Tr. p. 219, lines 7 – 22; p. 220, lines 18 – 24). Prior to that, Ginger Kern was doing the same types of things in 1998. (Tr. p. 232, lines 18 – 22). Mr. Kern testified that in 2001, he was still taking care of Mr. Heyward until he moved to Florida. (Tr. p. 533, lines 1 – 6).
132. On July 20, 2001, Mr. Heyward gave Mr. Kern a Quitclaim Deed to his house at 14 Glenlake Road in the Spring Valley Subdivision of Columbia, South Carolina. The deed recited consideration of five dollars. (Tr. p. 195, lines 13 – 20; Exhibit 39).
133. On the same day, July 20, 2001, Mr. Heyward gave a bill of sale transferring his yacht, the WELL PLEASED, to Mr. Kern. (Tr. p. 196, lines 3 – 17; p. 202, lines 20 - 22). The Bill of Sale for the WELL PLEASED showed a sale price of one dollar. (Exhibit 38).
134. Mr. Kern attempted to place a mortgage on 14 Glenlake Road house. He testified that it was necessary to get a General Warranty Deed to the property, because Nick Atria, the closing attorney, requested it through the mortgage broker, Nealie Cook. (Tr. p. 198, lines 7 – 11; p. 207, lines 16 – 17; p. 265, lines 19 – 21; p. 529, line 21 – p. 530, line 3).
135. On December 13, 2001, Mr. Heyward gave Mr. Kern a General Warranty Deed to 14 Glenlake Road. The deed again recited consideration of five dollars. (Tr. p. 197, lines 2 – p. 198, line 8). Mr. Kern did not explain to Mr. Heyward that it was another deed. (Tr. p. 265, lines 22 – 25).
136. Mr. Kern returned to Florida in January 2002. (Tr. p. 218, lines 16 – 25).
137. Mr. Heyward's signature on the July 20, 2001, Quitclaim Deed as well as his signature on the December 13, 2001, General Warranty Deed were purportedly notarized by Jerry Verdino. (Tr. p. 196, line 25 – p. 197, line 1; p. 197, lines 14 –

- 15). Nonetheless, Mr. Kern testified that Mr. Heyward signed the Quitclaim Deed at Mr. Heyward's house and that Mr. Verdino notarized it at Mr. Verdino's jet ski business in Chapin, South Carolina, but Mr. Heyward was not present at that time. (Tr. p. 204, lines 1 – 10). Mr. Kern testified that Mr. Heyward signed the General Warranty deed at his house, but Mr. Verdino was not present. (Tr. p. 206, lines 10 – 13).
138. Both the Quitclaim deed and the General Warranty Deed were purportedly witnessed by Larry Williams and Jerry Verdino. (Tr. p. 196, line 18 – p. 197, line 1; p. 197, line 16 – p. 198, line 4). Mr. Kern testified that Mr. Williams was present when Mr. Heyward signed the Quitclaim Deed, but Mr. Verdino was not present. (Tr. p. 204, lines 11 – 16; p. 204, lines 1 – 10). He testified that Mr. Heyward signed the General Warranty deed at Mr. Heyward's house, but neither Mr. Verdino nor Mr. Williams was present (Tr. p. 206, lines 1 – 9), and Mr. Heyward signed in Mr. Kern's presence only. (Tr. p. 206, lines 10 – 13).
139. Mr. Kern could not recall whether he actually paid Mr. Heyward the five dollars for the Quitclaim Deed. (Tr. p. 195, lines 21 – 24). He could not remember whether he actually gave the five dollars to Mr. Heyward for the General Warranty Deed. (Tr. p. 198, lines 16 – 18).
140. After a legal action was initiated, Mr. Kern deeded the yacht back to Mr. Heyward. (Tr. p. 202, line 24 – p. 203, line 1; p. 276, lines 11 – 19). Likewise, after the present action was initiated by Mr. Heyward's Conservator, Mr. Kern deeded the house back to Mr. Heyward. (Tr. p. 203, lines 2 – 10).
141. Prior to trial, Mr. Heyward submitted an affidavit stating:
- Personally appeared Stephen R. Kern, who, first being duly sworn deposes and says as follows: I agree that at the time George M. Heyward deeded his 14 Glenlake Road, Columbia, South Carolina, house by Quitclaim Deed in July, 2001, and again by General Warranty Deed in December, 2001, and, in addition, prior to that time, I had notice that he was not mentally competent to make such transactions. (Tr. p. 198, line 19 – p. 199, line 3).
142. At trial, Mr. Kern testified, "I don't think [Mr. Heyward] was mentally competent to handle anything of any kind of legal affairs, or any kind of business decision, anything that required some responsible thought." (Tr. p. 199, lines 11 – 13).
143. In 2001, Mr. Heyward was not capable of making financial decisions, was not capable of managing his financial affairs, was not capable of understanding simple utility bills, was not capable of understanding more complicated transactions, did not know how much money he had, did not realize that making the various gifts was depleting his money, and did not understand the concept that he could give it all away and be left with nothing. (Tr. p. 232, line 23 – p. 233, line 19).
144. The Conservator's counsel drafted the affidavit he signed stating that Mr. Heyward was not mentally competent at the time he deeded 14 Glenlake Road to him. (Tr. p. 268, lines 1 – 6). Mr. Kern called ESB's counsel and said that he had questions about the affidavit. (Tr. p. 268, lines 7 – 15). He agreed to sign the affidavit based on the fact that Mr. Heyward had never had the capacity or mental stability to sign anything. Mr. Kern agreed to sign the affidavit reflecting that. (Tr. p. 543, lines 11 – 16).
145. Mr. Heyward was not ever able to handle his affairs back to 1999. (Tr. p. 268, line 24 – p. 269, line 3).

146. Mr. Kern also testified that Mr. Heyward was not capable of handling his own affairs as far back as 1991 or 1992, but did not know about the time period before that. (Tr. p. 269, lines 4–7). Nonetheless, Mr. Kern testified that he did not know Mr. Heyward as far back as 1991 or 1992. (Tr. p. 269, lines 8–10).
147. Mr. Kern testified that Mr. Heyward's incapacity started when Ginger Kern started to serve as his caretaker. (Tr. p. 279, lines 9–13). He believed that Ms. Kern started working for Mr. Heyward in 1998. (Tr. p. 279, lines 9–17). She was still there when DSS came in 1999. (Tr. p. 279, lines 18–19).
148. Mr. Kern testified that there came a time when Mr. Heyward knew that he did not have anymore money, but did not understand why. (Tr. p. 236, lines 21–23). Mr. Heyward did not understand the various transfers such as the depletion of his stock. (Tr. p. 236, line 24–p. 237, line 1). Mr. Heyward would get very upset that he did not have anymore money and not understand why. (Tr. p. 237, lines 3–4). Mr. Heyward needed someone to manage his money from the time Ginger Kern started taking care of him from 1998 on. (Tr. p. 237, lines 5–9).
149. Mr. Kern observed that Mr. Heyward appeared wealthy, spent money recklessly (Tr. p. 517, lines 1–5), and his mannerisms were nonconforming. (Tr. p. 517, lines 8–12). He liked to yell a lot. (Tr. p. 517, lines 10–12). If something startled him, for instance, he would blurt out obscenities. (Tr. p. 517, lines 13–15).
150. Mr. Kern testified that he could not remember whether he talked to Mr. Heyward about the Quitclaim deed. (Tr. p. 262, lines 18–p. 263, line 2). He then testified that he was sure that he had to talk to him about it (Tr. p. 263, lines 3–5), but that Mr. Heyward did not appear to know what he was doing (Tr. p. 263, lines 6–8). Mr. Kern then testified that Mr. Heyward did appear to know what he was doing when he signed the Quitclaim Deed. (Tr. p. 264, lines 4–8).
151. Mr. Heyward was a steady but not a heavy drinker. (Tr. p. 247, lines 13–14). He drank every day, but he did not drink heavily every day. (Tr. p. 247, lines 16–19). Mr. Kern testified that Mr. Heyward had been drinking when he signed the Quitclaim Deed on July 20, 2001, but not more than usual and that he was coherent. (Tr. p. 527, line 16–p. 528, line 1).
152. Mr. Kern testified that Mr. Heyward was selling him the property so that he could put a mortgage on it. (Tr. p. 531, lines 1–17). Nonetheless, Mr. Kern also testified that when Mr. Heyward signed the second deed, "he just knew it was another form he needed to sign to get the money" (Tr. p. 530, lines 15–22). He testified that Mr. Heyward was "somewhat" aware of what was going on in that "he was aware it was taking a long time to get some money." (Tr. p. 530, lines 20–25). He testified that at the time Mr. Heyward signed the General Warranty deed, there was no discussion about whether Mr. Heyward intended to give Mr. Kern the house. Mr. Kern testified, "It was just a formality, 'Sign this to get the paperwork in order.'" (Tr. p. 206, lines 14–17).
153. Mr. Kern testified that he was not qualified to answer whether Mr. Heyward knew what he was doing during the time Mr. Kern was taking care of Mr. Heyward's property. (Tr. p. 542, lines 11–16). Mr. Heyward wanted money, and that, at that point, any way he could get money would do. (Tr. p. 542, lines 17–25). Earlier in this litigation, in response to the allegation in Mr. Heyward's Complaint, "On information and belief, on or before July, 2001, Heyward's mental condition was declining," Mr. Kern responded, "Unknown." (Tr. p. 271, lines 16–19).

154. During the period 1999 to 2001, there were times Mr. Heyward was confused. (Tr. p. 235, lines 1 – 3). Mr. Kern remembered an instance in which he went over to Mr. Heyward's house. The house was in disarray. Mr. Heyward did not have any cars out front. Mr. Heyward accused Mr. Kern of taking his car. Mr. Kern told Mr. Heyward, "I just go here. My car is out front. I don't know where your car is." Mr. Kern asked Mr. Heyward what he had done the night before, but Mr. Heyward could not remember. (Tr. p. 235, lines 6 – 13). Someone called while Mr. Kern was there, and Mr. Heyward began yelling at the caller wanting to know where his car was. (Tr. p. 235, lines 13 – 16).
155. Mr. Kern testified that Mr. Heyward had the belief that everyone should have the same things he had. If Mr. Heyward had a Mercedes-Benz, then he did not understand why a friend of his, whoever it may be, did not have a Mercedes-Benz. (Tr. p. 535, lines 9 – 13). Mr. Heyward did not understand, if someone owned a house, why they would have a mortgage payment on it and not own it. (Tr. p. 535, lines 13 – 15). Mr. Kern testified that Mr. Heyward had these beliefs six or seven years ago and that "from there I think it deteriorated." (Tr. p. 535, lines 9 – 16).
156. Mr. Kern testified that Mr. Heyward liked to socialize and drink. (Tr. p. 240, line 23 – p. 241, line 4).
157. Mr. Kern's wife at the time, Ginger Kern, worked for Mr. Heyward during 1998 and 1999. (Tr. p. 221, lines 2 – 3). She would go to Mr. Heyward's house in the morning, clean and feed Mr. Heyward, make sure the bills were paid, and make sure that everything was alright. (Tr. p. 221, lines 5 - 7). She typically stayed until early afternoon. Sometimes they would shop. (Tr. p. 221, lines 12 – 14).
158. Mr. Kern would buy Mr. Heyward clothes, take Mr. Heyward's clothes to the cleaners, and rotate his clothes. Mr. Heyward basically had two sets of clothing that he would wear. He had a couple of pairs of pants, three to five shirts, socks, and underwear. (Tr. p. 221, lines 18 – 23). Mr. Kern would take those to the cleaners and rotate them so that Mr. Heyward had "some type of clean clothing." (Tr. p. 221, lines 23 – 25). Typically Mr. Kern would see Mr. Heyward at least two times a week (Tr. p. 222, lines 3 – 10) and spent a half-day each time with Mr. Heyward (Tr. p. 222, lines 10 – 13).
159. Mr. Kern had to make sure that Mr. Heyward's bills were paid. (Tr. p. 222, line 21). Mr. Heyward would not pay his utility bills; he would forget. (Tr. p. 222, lines 21 – 22). There were a couple of times when Mr. Heyward's electricity was turned off due to failure to pay. (Tr. p. 222, lines 23 – 25). Mr. Kern was not sure that Mr. Heyward understood that he would lose his services if the bills were not paid. (Tr. p. 223, lines 1 – 3).
160. Mr. Kern testified that Mr. Heyward did not understand bills. (Tr. p. 252, line 21). Mr. Heyward hated insurance, hated taxes, did not keep up with his finances (Tr. p. 245, lines 5 – 7), and he did not understand bills in general. (Tr. p. 233, line 24 – 25; p. 244, lines 12 – 20).
161. Nonetheless, Mr. Heyward would write his own checks. Mr. Kern would open the mail. Mr. Heyward was not able to open a bill and understand what it was about. He could possibly understand that it was, for example, for electricity, but he would not be able to decipher the amount of the bill and write a check for the proper amount. (Tr. p. 223, lines 14 – 19). Mr. Kern would help Mr. Heyward by telling him what the bill was about and the amount for which to make the check. (Tr. p. 223, lines 20 - 21). There might be a balance due from the previous month, because Mr. Heyward was typically late in

paying the bills (Tr. p. 223, lines 22 – 23), so Mr. Heyward would not understand why the bill was so high, when, in fact, the bill might be, for example, for two months of electricity. (Tr. p. 223, lines 23 – 25).

162. Sometimes the bills were in the house. Other times the mailbox was full, so Mr. Kern would take the mail inside. Many times the bills would be sitting on the table, so Mr. Kern knew that “other people were seeing George.” (Tr. p. 223, lines 6 – 10). Mr. Kern testified that he handled all of Mr. Heyward’s bills. (Tr. p. 258, lines 10 – 15). Generally, Mr. Heyward did not keep up with his tax filings, fines, or paying estimated income tax. (Tr. p. 259, lines 8 – 18).
163. Mr. Heyward came over to Mr. Kern’s house many times. (Tr. p. 220, lines 6 – 7). Mr. Kern had an “open-door policy” with Mr. Heyward. (Tr. p. 8 – 13; p. 520, lines 14 – 17). Mr. Kern traveled out of town frequently. Sometimes when he returned and pulled in the driveway, Mr. Heyward’s car would be at Mr. Kern’s house, and Mr. Heyward would be there in Mr. Kern’s house watching television. (Tr. p. 220, lines 11 – 15; p. 520, lines 23 – 24).
164. Once, Mr. Kern went over to Mr. Heyward’s house and saw one of Mr. Heyward’s driving tickets. It alerted him because it was a serious infraction, Driving Under Suspension. (Tr. p. 226, lines 18 – 21). There was a [court] date on the ticket, and that date had already passed. (Tr. p. 226, lines 21 – 23). Mr. Kern called the courthouse number on the back of the ticket to find out the status of the ticket. (Tr. p. 226, lines 23 – p. 227, line 2). The Clerk’s office told Mr. Kern that there was a bench warrant out for Mr. Heyward and that Mr. Kern would need to bring Mr. Heyward to the courthouse immediately so that the matter could be handled, which Mr. Kern did. (Tr. p. 227, lines 2 – 8).
165. Mr. Heyward had a DUI and had to attend ADSAP. (Tr. p. 224, line 20). There were several instances in which Mr. Heyward drove after he got his DUI and after his license was suspended. (Tr. p. 224, lines 21 – 22). There was a bench warrant issued for Mr. Heyward’s arrest. (Tr. p. 224, lines 23 – 25). Nonetheless, Mr. Heyward did not know that he had any legal issues. (Tr. p. 226, line 12). Mr. Heyward would either forget about the charges or dismiss the thought of them. (Tr. p. 226, lines 13 – 15). Many times the police would feel sorry for Mr. Heyward and let him go. (Tr. p. 226, lines 15 – 17).
166. Mr. Heyward’s not paying attention to his finances was apparent by the time Ginger Kern started taking care of him in 1997 or 1998. (Tr. p. 245, line 11 – p. 246, line 2).
167. In 2000 or 2001, Mr. Kern observed the house being a mess with stopped up toilets. (Tr. p. 248, lines 5 – 10). He testified that he cleaned up the mess. (Tr. p. 11 – 14).
168. Mr. Kern had prepared a two-page handwritten list summarizing his knowledge of various gifts that Mr. Heyward made. (Tr. p. 212, lines 3 – 8). The first item on the list was a 38’ Fountain boat to Larry Williams in 1991 or 1992 valued at \$141,000 (Tr. p. 212, lines 12 – 13; p. 521, lines 20 – 23). The next transfer was money to purchase three Party Zone liquor stores from 1993 to 1995 to Larry Williams. (Tr. p. 212, line 19 – p. 213, line 7; p. 522, lines 8 – 13). The next transfer was \$225,000 for a sixty-one-foot houseboat Mr. Heyward gave to Steve Dyer. (Tr. p. 213, lines 8 – 13). In 1996, Mr. Heyward gave a \$300,000 Provost Motor Home to Vance Sharpe. (Tr. p. 213, lines 14 – 15; p. 523, lines 4 – 6). Mr. Heyward gave a 560 SEL Mercedes valued at \$80,000 to Mr. Sharpe in 1996. (Tr. p. 213, line 16 – p. 214, line 13). In 1998, Mr. Heyward gave a twenty-four-foot Regal boat valued at \$45,000 to Bill Senn, who met Mr. Heyward mowing his grass. (Tr. p. 215, lines 15 – 20; p. 525, lines 11 – 15). Mr. Heyward gave a house and land valued at \$300,000 to Bill Senn in 1999. (Tr. p. 215, lines

13 – 14; p. 523, lines 21 - 22). He also gave Mr. Senn a Cadillac Seville in 1999 (Tr. p. 523, lines 23 – 24). The same year, 1999, Mr. Heyward gave a \$35,000 Saab to friends in Charleston, South Carolina. (Tr. p. 215, lines 23 – 24; p. 523, line 24). Also in 1999, he gave a twenty-four-foot Sea Ray to friends in Charleston (Tr. p. 519, lines 14 – 17). In 2000, Mr. Heyward gave a 310 Sea Ray to Mr. Sharpe valued at \$130,000. (Tr. p. 214, lines 19 – 21). Mr. Kern's understanding was that Mr. Heyward gave away \$1 million in cash disbursements and stock from 1992 to 2000. (Tr. p. 216, lines 4 – 8). Mr. Kern said that Mr. Heyward told him that he gave Larry Williams about \$1 million over a period of five or six years from approximately 1993 to 1999. (Tr. p. 524, line 25 – p. 525, line 5).

169. Mr. Kern testified that it did not surprise him that Mr. Heyward gave Randy Harbeson \$400,000, because "this is part of a grand sum of money that estimates could be three to six million." (Tr. p. 254, lines 15 – 20; p. 538, lines 23 – 24). He testified that there was a certain control that Mr. Heyward had when he gave things to people, and he liked that. (Tr. p. 535, lines 21 – 24). Mr. Heyward would not loan out a car, even if there were ten in his driveway (Tr. p. 241, lines 22 – 24), but he would give them away (Tr. p. 242, lines 1 – 5).

170. Mr. Kern was not surprised to learn from ESB's counsel that Mr. Heyward spent a total of \$2.9 million over a three-year period purchasing cars. (Tr. p. 253, lines 5 – 9, lines 17 – 20; p. 280, lines 4 – 10). He sometimes traded those vehicles in and sometimes gave them away. (Tr. p. 253, lines 12 – 16). Mr. Kern testified that it appeared that Mr. Heyward was buying cars and selling them back to the dealers untitled. These cars were put back into inventory and sold again. (Tr. p. 216, lines 14 – 18; p. 280, lines 11 - 18).

171. Mr. Heyward had a habit of giving things away and then forgetting that he gave them away or deciding that he wanted to give them to someone else. (Tr. p. 202, lines 8 – 9; p. 251, lines 20 – 23; p. 520, lines 4 – 6). He would make promises regarding items that he was going to give someone. Sometimes he followed through. Other times he did not. Mr. Heyward did not have a good understanding of what he still had and what he was giving away. (Tr. p. 234, lines 16 – 25).

172. For example, Mr. Heyward gave an Acura automobile to Ginger Kern. (Tr. p. 523, line 25). He then came to the house with a new owner and took the car back. (Tr. p. 202, lines 10 – 19; p. 217, lines 7 – 14; p. 251, lines 24 – 25; p. 542, lines 2 – 4). This occurred either in 1999 or 2000.

173. Likewise, Mr. Heyward gave a thirty-one-foot Sea Ray boat to Mr. Kern, and then he took it back. (Tr. p. 217, lines 19 – 20). He also gave a Saab to Karen Ray then took it back. (Tr. p. 217, lines 20 – 22). Mr. Kern testified that, looking back on it, Mr. Heyward did not realize what he was doing. (Tr. p. 217, line 23 – 218, line 2).

174. With regard to the Sea Ray, Mr. Kern testified that Mr. Heyward was supposed to give him a 310 Sea Ray Express Cruiser but changed his mind and gave it to his friends in Charleston. He then changed his mind and gave it to Vance Sharpe. Mr. Sharpe then sold that boat to Mr. Mulleck. (Tr. p. 230, lines 8 – 12).

175. With regard to the WELL PLEASED, Mr. Kern testified that Mr. Heyward gave him a bill of sale to that boat in July 2001. (Tr. p. 235, lines 19 – 21). Mr. Kern then took the WELL PLEASED to Florida. (Tr. p. 235, lines 22 – 24). Subsequently Mr. Kern learned that Mr. Heyward attempted to give the same boat to someone else. (Tr. p. 235, line 25 – p. 236, line 7).

176. Mr. Kern testified that he had no knowledge of Well Pleased Charters, LLC, but that he agreed to give the boat to it, "because it was what George wanted." Mr. Heyward's taking back a gift was common place for him, nothing out of the ordinary, and had happened many times before. (Tr. p. 541, lines 7 – 20). Mr. Kern testified that he did not have any qualms about giving the boat back, because he had not spent any money for it. (Tr. p. 541, lines 16 – 18).
177. Mr. Kern testified that when Mr. Heyward gave away a car, it would be an assumption that he knew he was giving it away. (Tr. p. 266, lines 14 – 17).
178. Mr. Kern testified that the purpose of Mr. Heyward's deeding his house to Mr. Kern was to generate some funds to pay Mr. Heyward's federal tax liens and his real estate taxes (Tr. p. 249, lines 10 – 14; p. 258, lines 16 – 22; p. 274, lines 11 – 16; p. 528, lines 3 – 11; p. 274, lines 2- 4, lines 11 - 16; p. 275, lines 16 - p. 276, line 4), to obtain funds for Mr. Williams (Tr. p. 249, lines 14 – 15), and to give Mr. Kern some funds (Tr. p. 249, lines 16 – 18; p. 274, lines 2 - 4). Mr. Kern testified that he paid Larry Williams out of the funds Mr. Heyward gave him (Tr. p. 250, lines 21 – 24), and that the balance of the funds were for use on the boat that Mr. Heyward had given Mr. Kern. (Tr. p. 250, line 25 – p. 251, line 3). Mr. Kern testified that he did not wrongly obtain title to Mr. Heyward's house (Tr. p. 275, lines 16 – 18), since Mr. Heyward received the benefit of having his tax liens, real estate liens, and debts to Mr. Kern paid. (Tr. p. 274, line 24 – p. 275, line 4, line 16 – p. 276, line 4).
179. Mr. Kern testified that Mr. Heyward told Mr. Kern before that he owed him some money (Tr. p. 249, lines 19 – 21) for his taking care of Mr. Heyward and seeing to his bills (Tr. p. 249, line 24 – p. 249, line 6; p. 250, lines 7 - 10). Mr. Kern testified that the money was "more or less a gift," but that Mr. Heyward owed him money. He testified that there was never an amount discussed, but that Mr. Heyward owed him money for taking care of him from about 1998 to 2000. (Tr. p. 532, lines 13 – 25).
180. There was a federal tax lien that had been filed against the 14 Glenlake Road property. (Tr. p. 258, lines 23 – 25; p. 270, lines 16 - 22). Mr. Heyward had received several registered letters that his house would be sold for taxes. (Tr. p. 228, lines 19 – 20). There was a sticker put on the front door of the house. (Tr. p. 228, line 20 – 21; p. 246, lines 12 - 19). Notice of an auction of Mr. Heyward's house was to be published in the newspaper. (Tr. p. 228, lines 21 – 23).
181. Mr. Kern testified that part of the reason to convey the property was to satisfy that federal tax lien. (Tr. p. 259, lines 1 – 3). Mr. Kern testified when asked whether Mr. Heyward knew what a tax sale was, "He did, but he didn't." (Tr. p. 529, lines 4 – 5). He also testified that the conveyance was made, "because George needed money for taxes and money to live on, because this time, he did not have any money." (Tr. p. 526, line 22 – p. 527, line 4). Mr. Kern testified that Mr. Heyward understood the gravity of the situation, "but not that anything could actually happen per se. I don't think he grasped that." (Tr. p. 529, lines 15 – 18).
182. Mr. Kern testified that the reason Mr. Heyward could not go get any money to pay the tax lien was because he had bought hundreds of thousands of dollars worth of cars, several of which were repossessed for bad checks, "frankly, just monetary things that George did that made no sense at all." (Tr. p. 528, lines 21 – 25).

183. Mr. Kern testified that he told Mr. Heyward that he could "take over the house in my name, get the money, pay off the debt, and move on." (Tr. p. 229, lines 14 – 16). Mr. Kern testified that this plan was his idea. (Tr. p. 229, lines 18 – 24). Mr. Heyward did not have any other way he knew of to pay the taxes. (Tr. p. 230, lines 5 – 7).
184. Mr. Kern did not discuss with Mr. Heyward whether Mr. Heyward would continue to live in the house (Tr. p. 278, lines 22 – 24), but Mr. Heyward did continue to live there until he entered Baptist Hospital (Tr. p. 278, line 25 – p. 280, line 1).
185. Mr. Kern testified that Mr. Heyward wanted Mr. Kern to have the funds generated by the conveyance of the property and that he understood what he was doing at the time (Tr. p. 277, lines 2 – 7), but he then testified that he did not know whether Mr. Heyward knew that he no longer owned the house after he signed the Quitclaim Deed. (Tr. p. 277, lines 17 – 19).
186. After Mr. Kern obtained the Quitclaim Deed and the General Warranty Deed, he recorded them in the R.M.C. Office for Richland County, South Carolina. (Tr. p. 206, lines 18 – 23). He obtained two separate mortgages on the house. (Tr. p. 206, line 24 – p. 207, line 2).
187. For the first mortgage, Mr. Kern used Luthi Mortgage Company. (Tr. p. 207, lines 20 – 22). He borrowed approximately \$135,000. (Tr. p. 207, line 23 – p. 208, line 4). Mr. Kern moved to Florida in late January 2002, taking the boat WELL PLEASED with him. (Tr. p. 208, lines 11 – 17). The Luthi Mortgage transaction closed on February 4, 2002. (Tr. p. 208, lines 5 – 10).
188. Mr. Kern testified that a letter dated June 12, 2002, which stated that Mr. Heyward deeded his property at 14 Glenlake Road for tax reasons and others was required by the closing attorney (Tr. p. 536, lines 22 – 25), but he did not know who typed the document and was not present when Mr. Heyward signed it. (Tr. p. 537, lines 1 – 5). Mr. Kern testified that he was not present when a document was signed by Mr. Heyward and sent to Mr. Atria, the closing attorney, stating that Mr. Heyward was not the same George Heyward against whom there was a certain judgment (Tr. p. 257, lines 3 – 16), nor was he present when Mr. Heyward signed a statement that Mr. Kern handled all of Mr. Heyward's financial business. (Tr. p. 257, line 17 – p. 258, line 13).
189. From the first mortgage, Mr. Kern paid \$4,000 and some odd dollars for the 2001 real estate taxes, and he paid \$10,878.35 in regard to the L.R.S. tax lien. (Tr. p. 260, lines 11 – 16).
190. Another \$19,561.21 was paid to Paramount Communications from the first mortgage, but Mr. Kern testified that he could not remember whether that bill was in his name or Mr. Heyward's name. (Tr. p. 260, lines 17 – 25).
191. After property taxes were paid for the house and various expenses were paid through the mortgage, there was approximately \$89,000 left. (Tr. p. 228, lines 6 – 10). Of the money Mr. Kern obtained from the Luthi Mortgage, approximately \$40,000 went to Mr. Kern, \$20,000 went to Larry Williams, and \$20,000 Mr. Kern spent on the boat. (Tr. p. 208, lines 18 – 24; p. 532, lines 2 – 6; p. 533, line 12 – p. 534, line 3). Mr. Kern testified that he gave Larry Williams some money to continue taking care of Mr. Heyward, some to pay on the note, "and I used the rest of it for my personal use." (Tr. p. 536, lines 4 – 6).
192. Later Mr. Kern applied for a second mortgage on the house of \$187,000 with Eastern Savings Bank. (Tr. p. 208, line 25 – p. 209, line 10). The mortgage broker involved again was Nealie Cook. (Tr. p. 209, lines 7 – 15).

193. There were some problems with ESB's processing of the mortgage. ESB was trying to write the mortgage as a primary residence mortgage although Mr. Kern did not live at the house. (Tr. p. 210, lines 14–21). Mr. Kern's credit rating was also a problem. (Tr. p. 210, line 22–p. 211, line 1). ESB was concerned about Mr. Kern's previous bankruptcy. (Tr. p. 211, lines 6–9).
194. In taking the second mortgage with ESB, the first mortgage with Luthi Mortgage was satisfied. (Tr. p. 210, lines 4–8).
195. Mr. Kern testified that the purpose of refinancing was to pay off the existing loan and to keep the balance current. (Tr. p. 209, lines 16–18). The proceeds of that mortgage were approximately \$21,000. Mr. Kern gave Larry Williams approximately seven thousand dollars and kept the rest. (Tr. p. 209, line 23–p. 210, line 3).
196. In the second mortgage transaction, Mr. Kern testified that Mr. Heyward was unaware of the amounts he was disbursing. (Tr. p. 261, line 23–p. 262, line 1). Mr. Heyward was not involved in the mortgage transaction. (Tr. p. 262, lines 2–7).
197. Mr. Kern testified that he did not know Ian Desportes (Tr. p. 248, lines 18–25) and never observed a roofer working on Mr. Heyward's house. (Tr. p. 249, lines 3–5). He testified that Mr. Heyward never sent a roofer to talk to him as the house owner. (Tr. p. 278, lines 4–6). To Mr. Kern's knowledge, Mr. Heyward never told anyone that Mr. Kern owned the house. (Tr. p. 278, lines 16–18).

Notary Public, Jerry Verdino

198. Gerald A. Verdino, Jr. was a notary public for South Carolina. (Tr. p. 283, line 7–12).
199. He testified that he notarized the July 20, 2001, Quitclaim Deed, Plaintiff's Exhibit 39, believing that it was going to be the sale of a boat between Larry Williams and Steve Kern. (Tr. p. 284, lines 8–9).
200. Messrs. Williams and Kern approached Mr. Verdino at a jet ski business he owned, Lexington Personal Water Craft, on July 20, 2001, and asked him to notarize a piece of paper between them. (Tr. p. 284, lines 12–15). Nothing on the paper mentioned George Heyward (Tr. p. 284, lines 12–15) and Mr. Kern told Mr. Verdino that Mr. Williams was buying a boat from Mr. Kern for a dollar. (Tr. p. 284, lines 15–17). They had bought and sold boats at the Marina over the years many times. (Tr. p. 284, lines 17–18). At the time Mr. Verdino notarized the Deed, Mr. Heyward's signature did not appear on it. (Tr. p. 285, line 22–p. 286, line 1). The printed name "George Heyward" was not on the documents. (Tr. p. 286, lines 2–4). George Heyward was not present. (Tr. p. 286, lines 7–8).
201. Mr. Verdino knew Messrs. Williams and Kern as slip renters at the Lake Murray Marina. (Tr. p. 285, lines 1–5). He had been the general manager at the Lake Murray Marina. (Tr. p. 284, lines 23–25). He had known them since about 1994. (Tr. p. 285, lines 8–9).
202. Mr. Verdino notarized the July 20, 2001 Quitclaim Deed and signed as a witness. (Tr. p. 286, line 23–p. 287, line 2). He was never shown the first page of the Quitclaim Deed. (Tr. p. 290, lines 21–23). Neither Mr. Kern nor Mr. Williams ever represented that Mr. Heyward was deeding his house to Mr. Kern. (Tr. p. 290, line 24–p. 291, line 1).

- testified that Mr. Heyward showed up with one Form 1099 for a very small amount and said, "Do my taxes based on this." (Tr. p. 299, lines 22 – 23). It was very incomplete information. (Tr. p. 299, lines 23 – 24).
210. Mr. Scheffield asked Mr. Heyward for any additional tax documents. (Tr. p. 299, line 25 – p. 300, line 2). Mr. Heyward remarked, "I have not sold anything, and I have not bought anything." (Tr. p. 300, lines 2 – 5).
211. For the previous tax year, 1998, just to get a return filed, Mr. Scheffield had looked at what stock Mr. Heyward owned, and, using standard published documents from the S & P 500, determined what dividends were paid on those securities and input the dividends Mr. Heyward should have been reporting. (Tr. p. 300, lines 5 – 11). Mr. Scheffield also made certain other estimates, like Mr. Heyward's social security, just to get a tax return filed. (Tr. p. 300, lines 10 – 13).
212. Mr. Heyward never picked up the 1999 tax return from Mr. Sheffield's office. (Tr. p. 300, lines 18 – 19). Mr. Scheffield had obtained an extension for filing and the time was elapsing. (Tr. p. 300, lines 18 – 20). Sometime in October 2000, Mr. Scheffield went to Mr. Heyward's house and put the tax return in Mr. Heyward's mailbox. (Tr. p. 300, lines 20 – 21). Mr. Scheffield had called Mr. Heyward several times to pick up the return, and Mr. Heyward was not able to come by Mr. Scheffield's office to do so. (Tr. p. 300, lines 21 – 23). This went on from approximately May of 2000 to September of 2000. (Tr. p. 302, lines 3 – 4). Mr. Scheffield was concerned that Mr. Heyward would become delinquent on his tax return, so Mr. Scheffield delivered it to the mailbox. (Tr. p. 300, lines 23 – 25). Mr. Scheffield did not know whether that tax return was ever actually filed. (Tr. p. 302, lines 13 - 15).
213. Mr. Scheffield was not aware of any tax returns before 1999 that were not filed. (Tr. p. 302, lines 18 – 21).
214. Mr. Scheffield testified that on at least two occasions, Mr. Heyward has bounced checks to the I.R.S. (Tr. p. 302, line 22 – p. 303, line 7). He believed those checks were in connection with tax years 1996 or 1997. (Tr. p. 303, lines 3 – 9).
215. In Mr. Scheffield's letter to Mr. Foy of September 21, 2001, he indicated concerns about Mr. Heyward's lack of detail to financial matters. (Tr. p. 303, lines 10 – 13). For one, Mr. Heyward had not come to see Mr. Scheffield or sent him any information about preparing his year 2000 tax return. (Tr. p. 303, lines 13 – 16). For the 1998 and 1998 returns, the information Mr. Heyward had provided was very lacking. (Tr. p. 303, lines 15 – 17). Mr. Scheffield was concerned that Mr. Heyward was not keeping track of his records promptly or properly. (Tr. p. 303, lines 18 – 19).
216. Mr. Scheffield testified that a gentleman from Smith-Barney called him and said that he went to see Mr. Heyward anticipating getting a large account but left fairly promptly, concerned about the appearance of the house. (Tr. p. 304, lines 4 – 11).
217. Mr. Scheffield testified that he also had concerns after talking to Mr. Heyward's sister-in-law, Flo Heyward, about Mr. Heyward's condition. (Tr. p. 304, lines 22 – 24).
218. Mr. Scheffield testified he had not had contact with Mr. Heyward since April of 2000; however, Mr. Heyward did appear at Mr. Scheffield's office sometime, he believed, in 2003. Either Mr. Scheffield was unavailable or not in his office. Mr. Heyward arrived unannounced, accompanied by someone, asking for David Scheffield, his "stock broker." Mr. Scheffield testified that he is not in the stock brokerage business. (Tr. p. 305, 11 – 19).

219. When Mr. Heyward arrived at Mr. Scheffield's office in April of 2000 concerning his 1999 tax return, his personal hygiene condition was "very poor." (Tr. p. 307, lines 6–9). Mr. Scheffield testified that Mr. Heyward had not shaved or had a haircut in awhile. There was some body odor. Some of the ladies in Mr. Scheffield's office had some comments about Mr. Heyward's body odor. (Tr. p. 307, lines 9–14).
220. When Mr. Scheffield met with Mr. Heyward in 1999, Mr. Heyward's personal hygiene was also "kind of rough." (Tr. p. 307, line 20). Mr. Heyward was "a little bit shaggy" regarding his haircut and beard. He looked as though he had not bathed in a couple of days. His fingernails were very long. (Tr. p. 307, lines 20–24).
221. Mr. Scheffield testified that for the year 2000, the I.R.S. has proposed an income tax assessment against Mr. Heyward based on information reported to it from various sources totaling \$2,297,808.00. (Tr. p. 306, lines 3–16).
222. Mr. Scheffield testified that the I.R.S. assessment of Mr. Heyward for the year 2000 for approximately \$2.3 million was for income from various stock sales, which, after some investigation, Mr. Scheffield believes was all Wachovia stock sales made during that year. (Tr. p. 308, lines 14–16).
223. Mr. Scheffield testified that Mr. Heyward would not be considered a model J.W. Hunt client. (Tr. p. 310, lines 7–11).
224. Mr. Scheffield testified that there had been an I.R.S. levy against Mr. Heyward's property with regard to his filings for 1995 and 1996. (Tr. p. 314, lines 6–16).
225. Mr. Heyward received a notice for 1997 from the I.R.S. reminding him of overdue tax. (Tr. p. 314, lines 18–22).
226. Mr. Scheffield testified that when Mr. Heyward came to see him in 1999, that was the first time Mr. Heyward met with Mr. Scheffield. (Tr. p. 315, lines 13–16). Mr. Scheffield described Mr. Heyward's appearance as "kind of rough." (Tr. p. 315, lines 13–19). Mr. Heyward asked Mr. Scheffield what the date was. When Mr. Scheffield told him, Mr. Heyward "was astonished" and said, "I'm sorry. Normally I give you fifteen days." (Tr. p. 315, line 24–p. 316, line 2). Mr. Heyward also said that if Mr. Scheffield had any questions, he could call Mr. Heyward; however, Mr. Heyward did not know his phone number. (Tr. p. 316, lines 2–5).
227. While the I.R.S. assessed Mr. Heyward with income for the year 2000 of approximately \$2.3 million from selling his Wachovia stock, Mr. Heyward never told Mr. Scheffield that that he had sold that much stock. (Tr. p. 317, line 5–p. 318, line 13).
228. Mr. Scheffield testified that, since the I.R.S. had some assessment, it was likely that Mr. Heyward filed a tax return for the year 1995. (Tr. p. 319, lines 5–21). The I.R.S. assessments for certain years were \$2,000; \$16,000, and \$1,000. (Tr. p. 319, lines 22–24).
229. In Mr. Scheffield's business as a C.P.A., he normally asks clients to provide information on sales and gifts. (Tr. p. 321, lines 15–19).
230. The sale of a house would be a taxable transaction. (Tr. p. 321, lines 20–22). Gifts of large sums of money could have tax implications. (Tr. p. 321, lines 23–25). One of the specific questions that the J.W. Hunt questionnaire asks of clients is, "Have you given any individuals more than \$10,000 during the tax year?" (Tr. p. 321, line 25–p. 322, line 3). Nonetheless, Mr. Heyward never told Mr. Scheffield about any large gifts. (Tr. p. 322, lines 4–5).

Guardian Floride B. Heyward

231. Floride "Flo" B. Heyward was George Heyward's sister-in-law. She was married to Mr. Heyward's brother, the late Tabb Heyward. (Tr. p. 323, lines 16 – 17). Ms. Heyward married Tabb Heyward in 1958. He died in 1995. (Tr. p. 323, lines 15 – 17).
232. Flo Heyward had known George Heyward since the 1940s and had known him well since 1958. (Tr. p. 323, lines 18 – 22). She had also known Mr. Heyward, although not well, as a child. (Tr. p. 323, lines 20 – 21).
233. Flo Heyward's grandfather was the doctor for George Heyward's grandparents. Her parents were good friends with George Heyward's parents and socialized with them over a period of years. (Tr. p. 323, line 24 – p. 324, line 1).
234. Ms. Heyward testified that she knew Ian Desportes (Tr. p. 348, lines 14 – 15), and Mr. Desportes' grandfather was friends with Ms. Heyward's husband. Ms. Heyward knew Mr. Desportes' grandfather and great grandparents. (Tr. p. 348, lines 14 – 17).
235. When Flo Heyward first married to Tabb Heyward, George Heyward was running the family business for his father in Charlotte, North Carolina. (Tr. p. 324, lines 6 – 7). The family owned a granite quarry. The business took granite and sold monuments from it. (Tr. p. 324, lines 6 – 9).
236. When George Heyward's father died in 1976, he came back to Rion, South Carolina, and ran Winnsboro Granite Corporation, the quarry in Rion, and Heyward Granite Company, a quarry in Missouri. (Tr. p. 324, lines 14 – 17). Mr. Heyward was the President and possibly also the Treasurer of those corporations. (Tr. p. 324, lines 18 – 20).
237. Mr. Heyward served in some directorships during the course of his career (Tr. p. 351, lines 2 – 4), but Ms. Heyward did not know what duties Mr. Heyward performed at the meetings. (Tr. p. 351, lines 8 – 10). The Blue Grass Quarry in Fairfield County ceased doing business December 31, 1986. The quarry in Missouri was sold sometime between 1976 and 1986. (Tr. p. 351, lines 17 – 18).
238. George Heyward was also the director of the Bank of Fairfield in Winnsboro, which subsequently became part of Wachovia Bank. (Tr. p. 325, lines 5 – 6). Mr. Heyward was director of a group now called Associate Supply Companies. This group included Columbia Supply in Columbia, South Carolina; a steel company in Florence, South Carolina; Charleston Supply in Charleston, South Carolina; Matthew Morris in Charlotte, North Carolina; and another company in Wilmington, North Carolina. (Tr. p. 325, lines 5 – 11).
239. During the time Ms. Heyward knew Mr. Heyward, he was not prone to give gifts to people. (Tr. p. 325, lines 17 – 20).
240. Flo Heyward learned that Mr. Heyward had made substantial gifts to people for the first time in 2002. She was at Mr. Heyward's house and saw mail addressed to Steve Kern about insurance on 14 Glenlake Road, a mortgage application, and related documents. (Tr. p. 326, lines 16 – 20). Before that time, she had no idea that Mr. Heyward was making gifts. (Tr. p. 326, lines 21 – 23).
241. Flo Heyward was appointed as Guardian for Mr. Heyward in September of 2002. (Tr. p. 326, line 24 – p. 327, line 3). Since that time, she has had occasion to investigate the gifts Mr. Heyward previously made. (Tr. p. 327, lines 4 – 6). She

assisted William L. Pope, Esquire, who was appointed as Mr. Heyward's conservator and reviewed canceled checks and other evidence. (Tr. p. 372, lines 7–9).

242. Ms. Heyward testified that neither Mr. Pope nor Ms. Heyward are being compensated for their respective services as Conservator and Guardian. (Tr. p. 327, lines 14–15).
243. Flo Heyward made arrangements for Mr. Heyward to be placed at Raipha Residential Care. (Tr. p. 327, line 25 – p. 328, line 4). He has been there substantially since he was discharged from Baptist Medical Center. (Tr. p. 328, lines 9–13). Mr. Heyward takes Wellburtin, Seroquel, Exelon, blood pressure medication, cholesterol medication, and aspirin. (Tr. p. 328, lines 17–20).
244. After Ms. Heyward's husband died, between 1995 and 2002, she saw George Heyward maybe ten times. (Tr. p. 344, lines 22–24). She usually did not go to Mr. Heyward's house, but instead invited him to her house or to other places. (Tr. p. 344, lines 22–25). Ms. Heyward said that she tried to see Mr. Heyward on his birthday and on holidays. (Tr. p. 345, lines 3–11).
245. During the 1995 to 2001 time period, Mr. Heyward also came to Ms. Heyward's house for meals and came to the beach in 1998 when her daughter married. (Tr. p. 350, lines 2–4). Also, a couple of times, they met at the attorney's office concerning some environmental issues with the rock quarry. (Tr. p. 350, line 8–25).
246. When Ms. Heyward met with Mr. Heyward for meals from 1995 to 2001, he knew who she was and seemed coherent, but only talked about cars and had superficial conversations. (Tr. p. 348, line 21 – p. 349, line 6). In the context of the superficial conversations, Mr. Heyward's responses were appropriate. (Tr. p. 349, lines 7–10). He recognized Ms. Heyward and would drive himself to the restaurant and back. (Tr. p. 349, lines 13–23). Mr. Heyward talked about cars and boats. (Tr. p. 352, lines 3–6).
247. Ms. Heyward recalled a telephone call from a DSS case worker. (Tr. p. 347, lines 9–12). Ms. Heyward told the D.S.S. case worker that she had talked to Mr. Heyward the previous week and that he was "fine." (Tr. p. 347, lines 16–25).
248. Ms. Heyward testified that Mr. Heyward never told her that he gave away his house and property in Fairfield County, South Carolina. (Tr. p. 345, lines 18–21). Rather, he said that he had sold it, had a mortgage on it and that the money was paid through attorney John McLeod. (Tr. p. 345, line 22 – p. 346, line 2).
249. In 2002, Flo Heyward went to Mr. Heyward's house about a letter from the Court stating that Mr. Heyward needed to appear for court because he had ignored a proceeding for one of his traffic violations and that he needed to come and be prepared to go to jail. (Tr. p. 328, line 24 – p. 329, line 3). Ms. Heyward retained Hugh Roberts, Esquire, who resolved the matter. (Tr. p. 329, lines 19–24).
250. When, in approximately February 2002, Flo Heyward saw the mail addressed to Mr. Kern about a mortgage or insurance on 14 Glenlake Road, Ms. Heyward checked with the Richland County RMC office and asked for a copy of the deed to the house. She found both the Quitclaim Deed and the General Warranty Deed. (Tr. p. 330, lines 16–20). Before that time, Ms. Heyward had no idea that Mr. Heyward had signed the deeds to his house. (Tr. p. 330, line 24 – p. 331, line 1).

251. At Mr. Heyward's house there was a bank statement from Wachovia showing only a couple of dollars. (Tr. p. 331, lines 4–5). In one of the bathrooms, in the bathtub, there were several envelopes where dividend checks had been opened and the envelopes had been thrown around. It made Ms. Heyward concerned that someone was getting Mr. Heyward's money. (Tr. p. 331, lines 5–10).
252. Ms. Heyward told Mr. Heyward, "George, I'm concerned that you don't have any money." He said, "I have plenty of money." (Tr. p. 331, lines 13–15). With the bank balance and the problem with the house, Ms. Heyward became very concerned about Mr. Heyward's financial situation. (Tr. p. 331, lines 15–17).
253. Ms. Heyward testified that at Mr. Heyward's house, she collected a garbage bag full of beer bottles. (Tr. p. 331, lines 18–24). There were cigarette butts in the glasses on the table, but also there were butts from cigarettes that had been put out on the floor of the house. (Tr. p. 331, line 24–p. 332, line 1). The general condition of the house was dirty. (Tr. p. 332, lines 2–4).
254. When Ms. Heyward asked Mr. Heyward about selling the house, he said that it was absolutely not true. (Tr. p. 332, lines 15–16).
255. At trial, Ms. Heyward testified about a copy of a statement for Mr. Heyward's account at Morgan Stanley ending June 30, 2001. The holdings Mr. Heyward had with Morgan Stanley at that time were \$154,520.52. Ms. Heyward testified that had Mr. Heyward needed cash in June of 2001, to pay the IRS and real estate taxes, he could have requested it from Morgan Stanley by telephone. (Tr. p. 333, line 25–p. 334, line 2). There was \$12,683.02 in cash and \$141,837.50 in bonds, and the bonds could have been liquidated on request. (Tr. p. 334, lines 3–9). The June 2001 statement was sent to Mr. Heyward at 14 Glenlake Road, Columbia, South Carolina. (Tr. p. 334, lines 10–16).
256. The July 2001 Morgan Stanley statement showed that Mr. Heyward had \$158,052.62. It was sent to Mr. Heyward at P.M.B. 119, 100 Old Cherokee Road, Suite, F, Lexington, South Carolina. (Tr. p. 334, line 23–p. 335, line 1). Ms. Heyward said that at the time, Steve Kern was living in Lexington, South Carolina. (Tr. p. 335, lines 2–4). Mr. Kern had also testified earlier that in 2001, he was living in Lexington, South Carolina. (Tr. p. 194, lines 10–16).
257. From the time Flo Heyward married Tabb Heyward in 1958 until his passing in 1995, she had spent a lot of time with George Heyward. (Tr. p. 335, lines 13–18). They were together for Christmas, Thanksgiving, and Easter. She also went on trips with George Heyward. Once, Flo Heyward and Tabb Heyward went with George Heyward to Mexico for a week. (Tr. p. 335, lines 21–25). Every year, Flo and Tabb Heyward spent a week or two at the beach with George Heyward. (Tr. p. 335, line 23–p. 335, line 3).
258. Ms. Heyward described Mr. Heyward as "somewhat eccentric" in some ways. For instance, when he ate a meal, he would eat his peas first, then his rice, and then the meat. (Tr. p. 343, line 23–p. 344, line 2). He would also incorporate slogans from car dealerships into conversations. (Tr. p. 344, lines 3–7). She testified that Mr. Heyward liked cars, would go to car shows, and he collected car catalogues. (Tr. p. 344, lines 14–18).
259. Over the period in which Flo Heyward spent time with George Heyward, she never knew him to give gifts or be generous. (Tr. p. 336, lines 13–15). He did not act erratically during that period. (Tr. p. 336, lines 16–17).

260. There was a sixtieth birthday party for Ms. Heyward's husband in 1994. George Heyward was there, and he made grunting noises a lot of the time. (Tr. p. 336, lines 20 – 24).
261. In 1997, George Heyward's aunt was celebrating her ninetieth birthday in Charlottesville, Virginia. Ms. Heyward's daughter and son-in-law drove George Heyward there. While checking into a motel, George Heyward learned that his room would cost sixty dollars. Ms. Heyward stood in the lobby of the hotel, talked about how outrageous the price was, and "put on a big show." (Tr. p. 337, lines 5 – 10). Mr. Heyward cursed the clerk and yelled, "Damn you, damn you, damn you." (Tr. p. 337, line 25 – p. 338, line 6). Everyone on the hall could hear. (Tr. p. 338, lines 4 – 8). Ms. Heyward had never heard anything like the incident at the hotel in 1997 in the past from Mr. Heyward. (Tr. p. 338, lines 9 – 12).
262. In 2001, Mr. Heyward also had DuPont stock worth over \$100,000 (Tr. p. 339, lines 3 – 12) and stock for General Motors, AT&T, IIT, Hartford, Starwood Hotels, and Cardinal Health Services (Tr. p. 340, lines 1 – 3).
263. After Mr. Pope was appointed conservator, he gathered Mr. Heyward's assets at Smith-Bamery, including Mr. Heyward's cash and bonds at Morgan Stanley, and, in total, they were worth over \$500,000. (Tr. p. 340, lines 6 – 10).
264. Mr. Heyward never approached Ms. Heyward for help with tax liens on his house. (Tr. p. 340, lines 23 – p. 341, line 1). In fact, Mr. Heyward never asked her for any money until once between his stays at Palmetto Baptist Hospital (Tr. p. 341, lines 1 – 3), when he asked her for some money for food. (Tr. p. 341, lines 2 – 3).
265. Mr. Heyward had received an assessment from the I.R.S. for the year 2000 for unpaid taxes relating to liquidating stock (Tr. p. 341, lines 14 – 18). Ms. Heyward was unaware that Mr. Heyward had been liquidating the stock. (Tr. p. 341, line 22 – p. 342, line 1).
266. After Mr. Pope was appointed conservator, Ms. Heyward became familiar with the check Mr. Heyward wrote to Thomas R. Harbeson in July of 2001. (Tr. p. 342, lines 2 – 4).
267. Ms. Heyward testified that the reason that Mr. Heyward's Conservator was not pursuing Mr. Harbeson or the bank regarding the check was that research had determined that Mr. Harbeson did not have any money, and the bank claimed that it did not have any liability. (Tr. p. 342, lines 8 – 13).
268. Ms. Heyward did not have any knowledge that Mr. Heyward was giving cars away until after she was appointed Guardian (Tr. p. 342, lines 14 – 18), nor did she have any knowledge that Mr. Heyward was buying so many cars. (Tr. p. 342, lines 22 – 25). She knew Mr. Heyward was buying cars but did not know the extent of it. (Tr. p. 342, lines 24 – 25).

Morgan Stanley Operations Manager, Laura M. Edwards

269. Laura M. Edwards was the operations manager for Morgan Stanley in Columbia, South Carolina. (Tr. p. 353, lines 18 – 25). She had been the operations manager in 2001. (Tr. p. 354, lines 1 – 2).
270. Ms. Edwards testified that an excerpt from the records of Mr. Heyward's Morgan Stanley account for the month ending June 30, 2001, showed a total account value of \$154,520.52. The address to which that statement was mailed was 14 Glenlake Road, Columbia, South Carolina. Ms. Edwards testified that this money could have been liquidated by Mr. Heyward over the telephone. (Tr. p. 355, lines 2 – 10). He could have called and gotten a check. (Tr. p. 355, lines 11 – 12).

271. Based on a Morgan Stanley statement for the month ending July 31, 2001, Mr. Heyward had an amount at that time of \$158,052.62. The address to which that statement was mailed was P.N.B. 119, 100 Old Cherokee Road, Suite F, Lexington, South Carolina. (Tr. p. 355, lines 18–22). Thus, the mailing address had changed from the previous month. (Tr. p. 355, lines 21–22). Like the amount from the previous month, had Mr. Heyward wanted to get some money to pay property taxes, or for any other reason, he could have called and gotten a check. (Tr. p. 356, lines 2–5). There would have been a small charge for liquidating the account. (Tr. p. 356, lines 8–10).
272. The account balance in the same account on January 31, 1997 was \$152,191.64. (Tr. p. 357, lines 7–11). Ms. Edwards testified that it appeared that the account balance stayed relatively the same, except for interest, from that time forward. (Tr. p. 357, lines 13–16).
273. Ms. Edwards testified that to change the mailing address on the account, someone would have to call in and change the address. (Tr. p. 357, line 23–p. 358, line 8). It was supposed to be the client. (Tr. p. 358, lines 6–7).

House Guest, Ian Desportes

274. Ian M. Desportes grew up in Columbia, South Carolina, graduated from Ridgeview High School in the Spring of 2000, and worked for Asset Realty selling residential real estate. (Tr. p. 363, lines 2–15; p. 375, lines 11–15).
275. George Heyward's brother, Tabb Heyward, was the architect of Mr. Desportes' grandfather's house. (Tr. p. 363, line 24–p. 364, line 1).
276. Mr. Desportes met George Heyward in the year 2000. (Tr. p. 364, lines 2–4). The first time Mr. Desportes met Mr. Heyward, he and some friends had cocktails at Mr. Heyward's house for an hour or an hour and a half around October or November. (Tr. p. 364, lines 7–15). Mr. Desportes testified that, at that time, the house was in good shape. (Tr. p. 364, lines 16–24).
277. The first time he met Mr. Heyward, Mr. Heyward could hold a conversation about cars for several hours at a time (Tr. p. 365, lines 6–7), but, "as far as asking him what he had for lunch, he wouldn't remember." (Tr. p. 365, lines 8–9). If one asked Mr. Heyward over and over, he would end up getting mad. (Tr. p. 365, lines 9–11). Nonetheless, Mr. Heyward could talk about cars "for a whole day at a time." (Tr. p. 365, lines 11–12). Mr. Desportes testified that Mr. Heyward had thirty-eight cars at one time. (Tr. p. 390, lines 21–23). Once he bought thirteen cars in one day. (Tr. p. 390, lines 24–25). Mr. Heyward would drive a car for a week or two and then trade it in. (Tr. p. 391, lines 1–4). He had a suspended license and could not get tags for them. (Tr. p. 391, lines 5–7).
278. Mr. Desportes testified that it was his opinion that the car dealerships in Columbia, South Carolina, "ripped Mr. Heyward off," including Steve Dyer and Chris Moses. (Tr. p. 391, lines 14–20). Mr. Heyward recognized that these car transactions were not financially beneficial to him, but he would trade in another car with the same dealer the next week. (Tr. p. 391, line 21–p. 392, line 1).
279. Mr. Heyward told Mr. Desportes that Steve Dyer "ripped him off all the time," but that Mr. Heyward did not care. (Tr. p. 392, lines 2–4). Sometimes Mr. Heyward would wake up at 10:00 a.m. and buy cars until 6:00 p.m. or 7:00 p.m. (Tr. p. 392,

lines 7 – 12). For awhile, Mr. Heyward would buy a new car everyday. (Tr. p. 392, lines 15 – 17). Mr. Heyward was not drinking when he was going to buy the cars. (Tr. p. 392, lines 20 – 22). When asked about his finances, Mr. Heyward got uneasy. (Tr. p. 393, lines 13 – 14). He would get agitated. (Tr. p. 393, lines 15 – 16). Mr. Heyward told Mr. Desportes that Steve Dyer owed him a fortune because of the cars and a large loan. (Tr. p. 393, lines 19 – 22).

280. Mr. Heyward would tell Mr. Desportes how much he paid for a car. Then he would tell how much he got on a trade-in. When Mr. Desportes told him how stupid it was, Mr. Heyward would say, “I know,” but did not appear to know what to do about it. (Tr. p. 394, lines 5 – 9). Mr. Desportes also testified that Mr. Heyward did not like talking about the cars he purchased. He would get agitated when someone asked him how much he paid or who sold them. (Tr. p. 368, lines 8 – 12).

281. Mr. Desportes testified that Mr. Heyward could converse coherently at the dinners and did not have a problem communicating. (Tr. p. 365, lines 13 – 19). Mr. Heyward would occasionally burst out unexpectedly. (Tr. p. 365, lines 24 – 25). He did that from the time Mr. Desportes met him in the year 2000. (Tr. p. 366, lines 1 – 2). Mr. Heyward would yell out random things like “damn you” and “sins of inequity.” (Tr. p. 366, lines 4 – 8).

282. Mr. Desportes described Mr. Heyward as a friend and said that they would have drinks and go out to dinner. (Tr. p. 366, lines 12 – 14). The majority of the time, Mr. Desportes would order food at restaurants for Mr. Heyward, because he did not know what to get. (Tr. p. 366, lines 23 – 25). Mr. Desportes testified that Mr. Heyward could communicate during the meals, that Mr. Desportes did not have any problem understanding Mr. Heyward, and Mr. Heyward did not appear to have any problem understanding Mr. Desportes. (Tr. p. 367, lines 7 – 15). Mr. Desportes testified that Mr. Heyward paid for the dinners sometimes, and Mr. Desportes and his friends paid sometimes. (Tr. p. 372, lines 5 – 8).

283. Mr. Desportes testified that at one point in 2000, he remembered riding by Mr. Heyward’s house, and he had close to twenty cars out front. (Tr. p. 368, lines 5 – 7).

284. Mr. Heyward knew everything about the cars, and he drove them. (Tr. p. 368, lines 14 – 16). Mr. Desportes testified that Mr. Heyward drove to the restaurants, probably once a week, that he would drive slowly but well, and that he observed traffic signs. (Tr. p. 368, line 17 – p. 369, line 4). Mr. Heyward got a little worse during the two year period before he went to the retirement home. (Tr. p. 369, lines 5 – 11). Mr. Heyward’s yelling expletives got a little worse. (Tr. p. 369, lines 13 – 14). Also, Mr. Heyward’s memory got worse. He never remembered what he ate for dinner or for breakfast (Tr. p. 369, lines 15 – 16), but he always remembered his cars. (Tr. p. 369, line 17).

285. Mr. Desportes described Mr. Heyward as “somewhat eccentric.” (Tr. p. 369, lines 23 – 25).

286. Mr. Desportes would drink over at Mr. Heyward’s house and would “crash,” meaning sleep, there. (Tr. p. 370, lines 4 – 7). He had parties at Mr. Heyward’s house. (Tr. p. 370, lines 8 – 9). Mr. Desportes said that Mr. Heyward did not mind the parties. (Tr. p. 370, lines 13 – 21). The parties occurred about once a month over a year-and-a-half or two years. (Tr. p. 372, lines 12 – 15). There were about ten to fifteen people at each party. (Tr. p. 372, lines 15 – 16). Mr. Desportes admitted that in his deposition he said approximately twenty to thirty people, and that once there were about seventy-five people. (Tr. p. 379, line 15 – p. 380, line 6). Mr. Desportes testified that “nobody gave a rat about George Heyward.” (Tr. p. 380, lines 13 -15). They just wanted a place to party. (Tr. p. 380, line 15).

287. Mr. Desportes testified that Mr. Heyward drank during the parties and carried on conversations with people. (Tr. p. 372, line 24 – p. 373, line 8). He testified that after the parties, the house was a mess, but that he and some friends always cleaned it up. (Tr. p. 373, lines 18 – 25). Some people would spend the night. (Tr. p. 379, lines 10 – 11). A lot of girls would sleep over at Mr. Heyward's house. (Tr. p. 379, lines 12 – 14). There was marijuana use and cocaine use at the parties. (Tr. p. 380, lines 18 – 21). There was sexual activity going on in the house, but Mr. Heyward did not have any sexual activities during the time period Mr. Desportes knew him. (Tr. p. 381, lines 8 – 19).
288. The last time Mr. Desportes saw Mr. Heyward, the house was not being maintained. There were clothes everywhere. There were stains on the carpet in Mr. Heyward's bedroom. Mr. Desportes noticed that "things were really starting to get bad." Mr. Desportes believed that a month later Mr. Heyward was in the retirement home. (Tr. p. 374, line 18 – p. 375, line 1). He believed that was in January or February of 2002.
289. Mr. Desportes testified that in 2001, Mr. Hayward was not very clean and was "going downhill." (Tr. p. 377, lines 1 – 2). He wore the same clothes all of the time. (Tr. p. 377, lines 3 – 5). He looked like he lived on the streets. (Tr. p. 377, lines 6 – 8). He did not bathe often. (Tr. p. 377, lines 9 – 11). Mr. Heyward would dress in dirty clothes all of the time. (Tr. p. 377, line 12 – p. 378, line 9). He took a shower approximately once a month. (Tr. p. 378, lines 10 – 12). He wore the same socks for almost a year. (Tr. p. 378, lines 13 – 16).
290. Mr. Heyward had plenty of clothes, but he would only change his clothes if someone took different clothes and put them on his bed. (Tr. p. 378, line 19 – p. 379, line 1).
291. Mr. Desportes testified that 14 Glenlake Road was in bad shape in 2001 because nobody was taking care of it. (Tr. p. 382, lines 3 – 5). He testified that the pornographic magazines in the house were his and that Mr. Heyward had nothing to do with pornography. (Tr. p. 382, lines 6 – 9).
292. At the time Mr. Desportes lived in the house, he never heard about Mr. Heyward deeding the house. (Tr. p. 382, lines 10 – 17). Mr. Heyward never told Mr. Desportes that he deeded the house to Mr. Kern. (Tr. p. 382, lines 18 – 20; p. 384, lines 4 – 8). Mr. Heyward said that he did not know where the deed to his house was. (Tr. p. 384, lines 9 – 11). Mr. Desportes was there on an ongoing basis and was there in July 2001 and past December of 2001. (Tr. p. 382, line 21 – p. 383, line 2).
293. Mr. Desportes testified that he would have a couple of friends over, three, four, or five people, during the week (Tr. p. 383, lines 9 – 11) and there were one or two parties a month. (Tr. p. 383, lines 12 – 17).
294. Mr. Heyward never asked Mr. Desportes to help him move (Tr. p. 384, lines 22 – 24) and never made any preparation to move. (Tr. p. 384, line 22 – p. 385, line 3). Mr. Heyward never told Mr. Desportes that he had given away his house or that he was going to be leaving. (Tr. p. 385, lines 4 – 6). As far as Mr. Desportes knew, Mr. Heyward did not know that he had signed his house away and believed that he still owned the house through 2002. (Tr. p. 385, lines 10 – 17).
295. Mr. Desportes testified that he saw the canceled \$400,000 check to Thomas Harbeson. (Tr. p. 386, line 22 – p. 387, line 6). He asked Mr. Heyward about the \$400,000 check, and Mr. Heyward told Mr. Harbeson that he did not know anything about it. (Tr. p. 387, lines 7 – 11).

296. According to Mr. Desportes, a short time after Mr. Heyward gave the check to Mr. Harbeson, Mr. Harbeson bought a house and a new B.M.W. (Tr. p. 387, lines 15 – 18). After that time, Mr. Heyward complained about not having any cash. As far as Mr. Desportes knew, the \$400,000 check wiped out Mr. Heyward's checking account. (Tr. p. 387, lines 19 – 25).
297. Mr. Desportes testified that he assumed that Mr. Harbeson asked Mr. Heyward if he could borrow the \$400,000, that Mr. Heyward agreed, and then Mr. Heyward did not remember it two hours later. (Tr. p. 388, lines 4 – 7).
298. Mr. Desportes testified that Mr. Heyward took him and some friends out to the Lake Murray Marina attempting to board the yacht WELL PLEASED, but both times Mr. Heyward could not find his keys. (Tr. p. 388, lines 8 – 12). He said that Steve Kern had the keys. (Tr. p. 388, lines 12 – 13). Mr. Heyward was mad that Mr. Kern was living on the yacht but did not do anything about it. (Tr. p. 388, lines 16 – 18).

Check Recipient, Thomas R. Harbeson

299. Thomas R. "Randy" Harbeson lived in Charleston, South Carolina and was self-employed with H & R Painting. (Tr. p. 400, lines 12 – 21). He had a brother named Dusty Harbeson. (Tr. p. 401, lines 7 – 8). Mr. Harbeson testified that he became acquainted with Mr. Heyward in his early teens through his uncle, Bob Staples, who was friends with Mr. Heyward. (Tr. p. 401, line 19 – p. 402, line 3). He testified that Mr. Heyward would spend most holidays, including Easter, Thanksgiving, Christmas, and birthdays with his family in Columbia, South Carolina. (Tr. p. 402, lines 6 – 15).
300. Mr. Harbeson graduated from high school in 1990 (Tr. p. 402, lines 21 – 23), attended college at Georgia Southern, the University of Kentucky, and the College of Charleston, but did not graduate from college (Tr. p. 403, lines 2 – 6). He stopped attending in 1995 or 1996 (Tr. p. 403, lines 7 – 8) and had contact with Mr. Heyward after that in the context of holidays and family get-togethers. (Tr. p. 403, lines 9 – 15). He testified that he saw Mr. Heyward five or six times a year from 1995 to 2000. (Tr. p. 403, lines 19 – 21). Mr. Harbeson testified that during that period, Mr. Heyward was "eccentric" (Tr. p. 403, lines 22 – 25) because he would "do things that people wouldn't normally do" (Tr. p. 404, line 2), like loan people money, buy people businesses, and give people cars (Tr. p. 404, lines 2 – 5). Mr. Harbeson testified that Mr. Heyward had these behaviors the whole time he knew Mr. Heyward. (Tr. p. 404, lines 6 – 10).
301. Mr. Harbeson testified that Mr. Heyward had a particularly odd mannerism, "something like Trouettes," blurring out obscenities. (Tr. p. 404, lines 14 – 17). He testified that it occurred the whole time he knew Mr. Heyward but he heard it more often when he was an adult. (Tr. p. 404, lines 20 – 23).
302. Mr. Heyward had a boat and expressed an interest in taking the boat to the Bahamas, Key West, and the Virgin Islands. (Tr. p. 408, line 21 – p. 409, line 1). In 2000 and 2001, Mr. Harbeson discussed with Mr. Heyward using Mr. Heyward's boat in a business. (Tr. p. 409, line 2 – p. 410, line 1). Mr. Harbeson testified that Mr. Heyward seemed to understand what Mr. Harbeson was talking about. (Tr. p. 410, lines 4 – 10). He talked to Mr. Heyward about forming a limited liability company ("LLC"). (Tr. p. 410, lines 15 – 24). Mr. Harbeson testified that Mr. Heyward began "pushing" the idea. (Tr. p. 412, lines 16 – 19).

203. Mr. Verdino also notarized the Bill of Sale to the WELL PLEASED on July 20, 2001. (Tr. p. 287, lines 12 – 16). He notarized the Bill of Sale to the WELL PLEASED and the Quitclaim Deed at the same time. (Tr. p. 287, lines 12 – 19). There was nothing on the front of the Bill of Sale indicating that it was a boat owned by George Heyward. (Tr. p. 287, lines 20 – 23). There was not a signature by George Heyward in Block 7 of the Bill of Sale. (Tr. p. 287, lines 24 – 25). The Bill of Sale document was blank, and Messrs. Williams and Kern said that they were going to complete it. (Tr. p. 288, 1 – 3).
204. Mr. Verdino testified that he notarized the General Warranty Deed, Plaintiff's Exhibit 40, on December 13, 2001. (Tr. p. 289, lines 1 – 2). Mr. Heyward was not present when he notarized that document. (Tr. p. 289, lines 6 – 8). Mr. Heyward's signature did not appear on the document when Mr. Verdino notarized it. (Tr. p. 289, lines 9 – 11). Mr. Williams was present and signed as a witness. (Tr. p. 12 – 15). Mr. Verdino signed as a witness and as a notary. (Tr. p. 289, lines 16 – 19). Mr. Verdino did not see Mr. Heyward that day and had not seen him since Mr. Verdino left the Lake Murray Marina in approximately 1997. (Tr. p. 289, line 25 – p. 290, line 3). Mr. Verdino was never shown the front page of the General Warranty Deed. (Tr. p. 291, lines 2 – 5). No one told Mr. Verdino that the transaction involved real estate or Mr. Heyward's house. (Tr. p. 291, lines 14 – 18).
205. When Mr. Verdino worked as the general manager of the Lake Murray Marina, he knew Mr. Heyward. (Tr. p. 291, lines 19 – 21). Mr. Verdino knew Mr. Heyward from approximately 1993 to 1997. (Tr. p. 291, line 22 – p. 292, line 3). Mr. Verdino testified that Mr. Heyward always had people taking care of him. (Tr. p. 292, lines 4 – 5). He testified that while he saw Mr. Heyward drive to and from the Marina alone, people were helping Mr. Heyward get out on the water, including the Kerns, the Dyers, and Mr. Williams. (Tr. p. 292, lines 10 – 19). Mr. Verdino never saw Mr. Heyward operate his boat himself, but it was not unusual for people to get help operating large boats. (Tr. p. 293, lines 2 – 4; p. 294, line 25 – p. 295, line 4).

Accountant, David G. Sheffield

206. David G. Sheffield was a partner and a certified public accountant with J.W. Hunt and Company and had been with that company since 1986. (Tr. p. 296, line 24 – p. 297, line 7). He had handled Mr. Heyward's account as a client of J.W. Hunt's since October 1998. (Tr. p. 297, lines 10 – 13; p. 298, lines 6 – 8).
207. Mr. Sheffield wrote a letter to Investigator Howard Foy of the Richland County Sheriff's Department on September 21, 2001. (Tr. p. 297, lines 18 – 25). In the letter, Mr. Sheffield stated that he had not seen or heard from Mr. Heyward since April of the year 2000 (Tr. p. 298, lines 9 – 11); however, Mr. Sheffield had received phone calls from car dealers and bankers seeking financial or background information on Mr. Heyward. (Tr. p. 12 – 18). Generally, they were trying to loan Mr. Heyward funds to purchase various items, mainly cars. (Tr. p. 298, lines 21 – 25).
208. Mr. Sheffield discussed with Mr. Heyward paying the property taxes on the cars. (Tr. p. 299, lines 8 – 10). Mr. Heyward told Mr. Sheffield, "I never keep one long enough to pay any property taxes on them." (Tr. p. 299, lines 10 – 14).
209. Mr. Scheffield prepared a 1999 tax return for Mr. Heyward. Mr. Heyward arrived in Mr. Scheffield's office unannounced with no appointment sometime between April 10th and April 15th. (Tr. p. 299, lines 18 – 20). Mr. Scheffield

303. Mr. Harbeson testified that Mr. Heyward became serious about forming the LLC in about October 2001. (Tr. p. 411, lines 7 – 11). He testified that he had been to Mr. Heyward's home about five or six times that year. (Tr. p. 411, lines 13 – 16). Mr. Heyward never kept the house clean, and the bills were always in a certain area. (Tr. p. 411, lines 17 – 22). Mr. Harbeson testified that he had visited Mr. Heyward's house thirty or forty times from 1995 on. (Tr. p. 412, lines 1 – 3). The house never changed dramatically over the course of his visits. (Tr. p. 412, lines 7 – 8).
304. Mr. Harbeson testified that when he visited Mr. Heyward, he was sometimes disheveled and baggy and sometimes not. (Tr. p. 413, lines 8 – 10). Mr. Heyward's dress stayed about the same from 1995 on. (Tr. p. 413, lines 11 – 14).
305. Mr. Harbeson retained attorney Alex Weatherly to form an L.L.C. (Tr. p. 413, line 25 – p. 414, line 8). Preparation of the L.L.C. paperwork took from October 2001 to December 2001. (Tr. p. 414, lines 9 – 13).
306. The L.L.C. formation document listed organizers, including Brad Fludgate, Averill "Dusty" Harbeson, and Clayton Staples. (Tr. p. 415, lines 8 – 25).
307. Mr. Harbeson testified that he recognized George Heyward's signature on the back of the L.L.C. document and that Mr. Heyward was present in Mr. Weatherly's office when he signed it. (Tr. p. 416, lines 12 – 16). He testified that he believed Mr. Heyward rode to Mr. Weatherly's office with him. (Tr. p. 417, lines 11 – 13). Mr. Harbeson testified that Mr. Heyward coherently discussed what was going on that day. (Tr. p. 417, lines 19 – 21).
308. Mr. Harbeson testified that Mr. Heyward intended to place the boat WELL PLEASED in the L.L.C. for chartering. (Tr. p. 418, lines 8 – 14).
309. When Mr. Harbeson tried to retrieve the WELL PLEASED from the Lake Murray Marina, he was stopped by the manager of the Marina (Tr. p. 418, lines 18 – 20) because the boat was no longer owned by Mr. Heyward. (Tr. p. 419, lines 1 – 2). The Marina showed Mr. Harbeson a document indicating that Steve Kern owned the boat. (Tr. p. 419, lines 3 – 19). After Mr. Harbeson left the Marina, he discussed this with Mr. Heyward that day, and Mr. Heyward told him that he would never sell his boat. (Tr. p. 419, lines 20 – 25). Mr. Heyward appeared upset. (Tr. p. 420, lines 13 – 14). Mr. Harbeson testified that his going to the Marina could have occurred in January or February of 2002. (Tr. p. 420, lines 5 – 7).
310. Mr. Harbeson testified that maybe the following year he saw Mr. Heyward in the retirement home (Tr. p. 421, lines 1 – 5) while he was going to visit his grandmother. (Tr. p. 421, lines 6 – 7). He testified that Mr. Heyward recognized who Mr. Harbeson was, recalled his name, and asked about his parents. (Tr. p. 421, lines 17 – 24). Mr. Harbeson said that he had a conversation with Mr. Heyward, but it was brief. (Tr. p. 421, line 25 – p. 422, line 1). Mr. Harbeson testified that Mr. Heyward asked after his wife, remembered her name, and asked about a place where the family had a vacation house in Lake Tahoe. (Tr. p. 424, lines 8 – 12). Mr. Heyward had been to Lake Tahoe in the mid-1990s. (Tr. p. 424, lines 13 – 18).
311. Mr. Heyward also asked about whether Mr. Harbeson's brother's dog was doing better. The dog had had mange. (Tr. p. 425, lines 11 – 13). Mr. Heyward had seen the dog a couple of years before. (Tr. p. 425, lines 19 – 24).
312. Mr. Harbeson testified that at the time Mr. Heyward was in the nursing home, he appeared to understand what was happening. (Tr. p. 426, lines 6 – 10). Mr. Harbeson testified that there was never a time in his dealings with Mr. Heyward that he believed that Mr. Heyward did not understand what was occurring. (Tr. p. 425, line 25 – p. 426, line 3). Nonetheless, Mr.

Harbeson admitted that he signed a Petition for filing in the Probate Court for Appointment of Conservator for Mr. Heyward on May 10, 2002. (Tr. p. 426, lines 22 – 24; Tr. p. 427, line 1). The Petition stated, “He is unable to manage his financial affairs due to short-term memory loss and other difficulties.” (Tr. p. 427, lines 8 – 9). Mr. Harbeson testified that the “other difficulties” were trusting people. For example, he said that Mr. Heyward trusted Mr. Kern to sign a document Mr. Heyward believed to be authorization to make repairs on the WELL PLEASED which was actually a Bill of Sale for the WELL PLEASED to Mr. Kern for one dollar. (Tr. p. 427, lines 10 – 16).

313. Mr. Harbeson testified that he thought Mr. Heyward’s sister-in-law should take over his affairs, because Mr. Heyward was not reading documents he was signing and therefore had no right to sign documents. (Tr. p. 428, lines 7 – 18).

314. Mr. Heyward never told Mr. Harbeson that he sold his house to Mr. Kern (Tr. p. 428, line 19 – p. 429, line 10) and never told Mr. Harbeson that he no longer owned the house (Tr. p. 429, lines 5 – 12).

315. Mr. Harbeson testified that Mr. Heyward signed the documents to form the L.L.C., that Mr. Harbeson was there and saw him sign (Tr. p. 431, lines 2 – 6), but Mr. Heyward did not say anything about already having sold the boat. (Tr. p. 431, lines 7 – 9).

Dr. Elin Berg

316. Dr. Elin Berg was ESB’s expert. She received a medical degree from the University of Oslo School of Medicine in Norway in 1974. (Tr. p. 433, lines 13 – 22). She practiced medicine in Norway as an orthopedic surgeon from 1974 to 1986. (Tr. p. 434, lines 2 – 6).

317. Dr. Berg came to the United States in 1986. She started residency training in psychiatry at the University of South Carolina in 1992 (Tr. p. 434, lines 15 – 16). She had a temporary license to practice as a psychiatric resident since 1992 (Tr. p. 454, lines 5 – 6) and became licensed to practice medicine and psychiatry in the State of South Carolina in 1995 (Tr. p. 433, line 22 – p. 434, line 1; p. 454, lines 4 - 5). She completed her psychiatric residence, a childhood adolescence fellowship, and a forensic fellowship in 1998. (Tr. p. 434, lines 15 – 18; p. 435, lines 13 -15).

318. Dr. Berg switched from orthopedic surgery to psychiatry because of an eye problem in which she lost her depth perception, which impaired her ability to do surgery. (Tr. p. 434, line 21 – p. 435, line 1).

319. In addition to Dr. Berg’s residency training, she had various post-graduate courses within child and adolescent psychiatry, adult psychiatry, psychopharmacology, and forensic psychiatry. (Tr. p. 435, lines 18- 23). She was board certified in general psychiatry, adolescent psychiatry, and forensic psychiatry. (Tr. p. 435, lines 21 – 23). Dr. Berg was a clinical assistant professor and taught general residents, childhood adolescent residents, and forensic fellows at the South Carolina School of Medicine (Tr. p. 438, lines 8 – 14).

320. Dr. Berg practices in Columbia, South Carolina. (Tr. p. 438, lines 15 – 16). She does seven hours of medication management each week at the Alvin Glenn Detention Center for mentally ill inmates. (Tr. p. 438, lines 18 – 19). A little more than half of her practice is treatment cases, including light therapy with children, counseling and medication management of school-aged children, and counseling and medication with adults. (Tr. p. 438, lines 20 – 24). In terms of numbers of patients

in adult psychiatry and childhood adolescent psychiatry, it is about even. (Tr. p. 455, lines 20 – 22). A little less than half of her practice is as an expert for civil and criminal cases with various attorneys. (Tr. p. 438, line 24 – p. 439, line 3). Dr. Berg testified that she had been designated as an expert in court cases in the area of forensic psychiatry approximately fifty times. (Tr. p. 439, lines 4 – 15).

321. Dr. Berg testified that none of the six presentations that she listed in her C.V. as “presentations/papers in progress” have yet been published. (Tr. p. 456, lines 22 – 25).
322. ESB engaged Dr. Berg to render an opinion regarding the competency of Mr. Heyward to sign the two deeds, the July 2001 Quitclaim Deed and the December 2001 General Warranty Deed. (Tr. p. 439, line 25 – p. 440, line 4).
323. Dr. Berg testified that in formulating her opinion, she reviewed the medical records of Baptist Hospital in 2002, a couple of DSS cases, one in 1999 and the other in 2001, various court documents, copies of checks and deed transactions, and a neuropsychiatric evaluation by Dr. Waid on March 15, 2004. (Tr. p. 440, lines 8 – 16).
324. Dr. Berg testified that “competency” from a medical standpoint has to do with one’s knowing with whom he is dealing and knowing what is going on. (Tr. p. 441, lines 10 - 11). She testified that in the sense of entering into contracts, competency involves whether the patient is oriented to time, place, and person, and whether the patient recognizes the person with whom he is dealing and the matter the dealing involves. (Tr. p. 441, lines 16 – 21).
325. Dr. Berg testified that “dementia” means a loss of memory plus one or more of the following: loss of vocabulary and something called apraxia, which means that in spite of having the strength and coordination to execute tasks, one does not remember how to do it and therefore cannot. (Tr. p. 441, line 24 – p. 442, line 4). Dr. Berg testified that there is also a problem with recognizing faces, objects, and putting the right name on the object. (Tr. p. 442, lines 5 – 7). She testified that memory loss alone is not sufficient to diagnose someone with dementia. (Tr. p. 442, lines 7 – 8).
326. “Senile dementia of the Alzheimer’s type” is a particular form of dementia which, on occasion, runs in families. (Tr. p. 442, lines 10 – 12). There are two types. Early onset dementia has a strong family history and has a progressive, steady decline over a period of about five years. (Tr. p. 442, lines 12 – 14). Then there is the non-familial type that is steady but a much slower progress and has a very insidious onset. (Tr. p. 442, lines 14 – 16).
327. The only way to confirm that a person had Alzheimer’s dementia is to do a brain biopsy after death. (Tr. p. 442, lines 17 - p. 443, line 11). Absent the rather extreme procedure of a brain biopsy, in which the risk would likely outweigh the diagnostic benefits, Alzheimer’s cannot be finally diagnosed until death. (Tr. p. 443, lines 12 – 15).
328. Vascular dementia, also referred to as Lacunar dementia, is based on compromised blood flow through the brain caused by arteriosclerotic narrowing of the blood vessels. (Tr. p. 443, lines 17 – 21).
329. The mini-mental status exam conducted by Dr. Waid is used to screen someone suspected of having dementia. (Tr. p. 444, lines 3 – 8). The maximum possible score is thirty. (Tr. p. 444, lines 7 – 10). Dr. Berg first testified that if someone scores between a nine and a twenty-one, then he has moderate dementia. (Tr. p. 444, lines 10 – 13). After reviewing a document, she then testified that if someone scores between twenty-one and twenty five, then he has mild-range dementia. (Tr. p. 444, lines 13 – 15).

330. The note on Mr. Heyward's discharge summary from Baptist Medical Center, "N.O.S." stands for "not otherwise specified." (Tr. p. 444, line 19). It means that there is dementia according to the diagnostic criteria, but that one is not quite sure of the cause of the dementia. (Tr. p. 444, lines 19–22).
331. Dr. Berg testified that Tourettes' Syndrome is a disorder that starts in childhood and sometimes is co-morbid with attention deficit hyperactivity disorder in children. (Tr. p. 445, lines 2–4). There are vocal tics and motor tics. Sometimes the patient has both. Vocal tics can be a kind of involuntarily noises, like a grunt or a funny noise. (Tr. p. 445, lines 6–7). A motor tic is a rhythmic contraction of a group of muscles, such as an eye blinking rapidly or a contraction of the corner of one's mouth. (Tr. p. 445, lines 12–15).
332. Dr. Berg testified that if someone has full-blown Tourettes by the time they are a teenager, it can be very disrupting to normal social life. (Tr. p. 445, lines 21–25). She testified that some adults who have Tourettes may not be able to go out to dinner, for example, because they might say something ugly and someone might take it personally. (Tr. p. 446, lines 1–5). Tourettes does not equate to dementia. (Tr. p. 446, lines 6–8).
333. Dr. Berg testified that to a reasonable degree of medical certainty, Mr. Heyward was competent to execute the two deeds. (Tr. p. 446, lines 9–18).
334. Dr. Berg testified that Mr. Heyward's case was a complex one because there was behavior throughout his life that was somewhat unusual, Mr. Heyward was wealthier than most, and he had an unusual social life. (Tr. p. 446, line 24–p. 447, line 4).
335. Dr. Berg testified that if Mr. Heyward ultimately developed dementia, as Dr. Waid testified, it would be difficult to get a handle on the pattern of evolution of the dementia. (Tr. p. 447, lines 4–9).
336. Alzhiemers dementia has a steady downfall. (Tr. p. 447, lines 17–19). Lacunar, or vascular, dementia has a step-wise decline. As arteries get plugged, there is a drop in a specific function. (Tr. p. 447, lines 19–22). Then the person may stay steady for awhile. (Tr. p. 447, line 22). During an "infarct" in the brain, the surrounding area will be swollen and therefore under pressure and not function well. Once things settle down, the swelling goes away, and there are certain areas that might pick up a little bit of function. Thus, there is a zigzag with a downward trend. (Tr. p. 447, line 22–p. 448, line 4).
337. Dr. Berg testified that the most prudent diagnosis is dementia not otherwise specified, but the mini-mental status exams at Baptist Hospital reflect some zigzag. (Tr. p. 448, lines 9–13).
338. Dr. Berg testified that she detected some step-wise decline in the evidence she reviewed. For example, when Mr. Heyward was admitted to Baptist Medical Center the first time, he was initially very confused (Tr. p. 448, lines 18–19) and was initially diagnosed with delirium (Tr. p. 448, line 19–p. 449, line 2).
339. Dr. Berg testified that as far as the decline noted by Dr. Waid's testing in 2004 from when Mr. Heyward was in Baptist Hospital in September 2002, if the decline relationship was a function of time, such that one could draw a straight line backwards in time, and if it "keeps going and going and going, and then you can go back as far as you want to. And by the time the child is an infant, then he is probably a genius." She testified that her point was that was not the way the relationship is between time and decline in dementia cases. (Tr. p. 458, line 10–p. 459, line 1). Nonetheless, Dr. Berg testified that the

decline was relevant. She testified that the difference between someone who is retarded and someone who is demented is that in retardation, one stays that way, whereas, with dementia, there is cognitive decline. (Tr. p. 459, lines 4 – 10). Dr. Berg testified that what was important about the difference between Dr. Waid's test and the tests at Baptist Hospital was that there was a decline. (Tr. p. 460, line 2 – 3). A comparison of those two tests showed a significant cognitive decline. (Tr. p. 460, lines 5 – 7).

340. Dr. Berg testified that Mr. Heyward had a pattern of giving things away over the years. (Tr. p. 449, lines 3 – 8). She testified that Mr. Heyward liked cars, and he would get cars, drive them a little bit, give them away, and sometimes ask to get a car back and give it someone else. (Tr. p. 449, lines 7 – 12).

341. Dr. Berg testified that if there is a change in someone's pattern of behavior, if a person is starting to behave out of character for themselves, then one would like to know why. (Tr. p. 449, lines 16 – 19).

342. Dr. Berg testified that the DSS contacts with Mr. Heyward were significant in formulating her opinion of Mr. Heyward's competence to execute the deeds in question. (Tr. p. 449, lines 20 – 25). She testified that there was a closure of the DSS case and a finding that the concerns were unfounded as far as Mr. Heyward's being able to care for himself. (Tr. p. 449, lines 20 – 25). Dr. Berg testified that she was talking about the second D.S.S. case. (Tr. p. 450, lines 1 - 2).

343. Dr. Berg testified that despite the first DSS's case being "founded," Mr. Heyward was competent to the level that he could take care of himself. (Tr. p. 450, lines 6 – 8).

344. Dr. Berg testified that Dr. Harmon Patrick's letter was important to her opinion because it pointed out that Mr. Heyward had a "different style of giving things away and it affirmed Mr. Heyward's history in dealing with his belongings and interacting with his friends." (Tr. p. 450, lines 20 – 24).

345. Dr. Berg testified that Mr. Heyward's attempt to convey the boat into the L.L.C. was significant in formulating her opinion that Mr. Heyward was competent to execute the two deeds in question. (Tr. p. 451, lines 1 – 6). She testified that it seemed that Mr. Heyward knew that he owned the boat and knew that what they were doing was making a company. (Tr. p. 451, lines 8 – 11); however Dr. Berg admitted that in formulating her opinion, she was not aware that Mr. Heyward had already given the boat to someone else. (Tr. p. 451, lines 16 – 21).

346. Dr. Berg testified that the car sales transactions did not seem unusual for Mr. Heyward's style of behavior. (Tr. p. 451, lines 22 – 24). She testified that from a medical standpoint, competency has to do with knowing what you are doing and who you are dealing with. (Tr. p. 451, line 25 – p. 452, line 2). Dr. Berg testified that as far as "why you are doing something," that would probably be "more a legal issue." (Tr. p. 451, line 25 – p. 452, line 5). She testified that the pattern of what Mr. Heyward did would be important. (Tr. p. 452, lines 6 – 8).

347. Dr. Berg never interviewed Mr. Heyward and had never seen Mr. Heyward. (Tr. p. 453, lines 4 – 12). She did not gather a history from Mr. Heyward's relatives. (Tr. p. 453, lines 13 – 15).

348. Dr. Berg testified that when one does a dementia workup, what is needed is an understanding of the particular document in question and that the person "knows their bounty, ball park range," and, as far as knowing their bounty, one has to

substantiate that through documents, calling the bank, or whatever is needed. (Tr. p. 457, lines 14 – 21). Dr. Berg testified that she did not go over any of that with Mr. Heyward because she did not see him. (Tr. p. 457, lines 22 – 23).

349. Dr. Berg testified that Exhibit Number 51 contained the excerpts from the DSS reports and the excerpts from the various deposition transcripts important to her opinion. (Tr. p. 460, line 13 – p. 461, line 22).
350. Dr. Berg concluded that the first DSS case was closed on November 9, 1999, because Mr. Heyward was “alert, oriented and able to make a decision regarding his own care.” (Tr. p. 462, lines 3 – 6). When asked to cite the page of the first D.S.S. report that stated that Mr. Heyward was “alert and oriented,” Dr. Berg cited DSS document 0021 and quoted, “Ms. Flo Heyward talked to Mr. Heyward approximately a week ago and he seems fine.” (Tr. p. 463, lines 19 – 20). Dr. Berg testified that she inferred from the documents that Mr. Heyward was alert and oriented. (Tr. p. 463, line 23 – p. 464, line 4). She testified that the case manager was probably not medically qualified to make such a statement using those words. (Tr. p. 464, lines 5 – 8). Dr. Berg admitted that the first report does not use the words “alert and oriented.” (Tr. p. 465, lines 4 – 8). She testified that she never said that she quoted the first DSS report as stating that Mr. Heyward was “alert and oriented,” that her opinion was her summary of it. (Tr. p. 465, lines 13 – 17). She again testified that the case manager was not qualified to make those decisions, that it was a “medical thing” (Tr. p. 465, lines 18 – 21). After reviewing the DSS documents, Dr. Berg admitted that the first DSS case was actually “substantiated” for exploitation. (Tr. p. 468, lines 10 - 15).
351. Dr. Berg was concerned about the DSS caseworker’s definition of the term “dementia” and her competence to make that diagnosis. (Tr. p. 468, lines 21 – 24).
352. Dr. Berg testified that bizarre behavior is not a component of dementia and could be explained by other a number of things. (Tr. p. 469, lines 5 – 9). She stated that Mr. Heyward’s behavior did not seem by his history to be out of character with what he had done in the past. (Tr. p. 469, lines 11 – 12).
353. Dr. Berg testified that when a medical professional determines competency, it is “not why they are doing the thing,” its about “who they are dealing with and what it is about.” She explained that there are a number of things that will make a person make a decision that another person would not have made. (Tr. p. 469, lines 18 – 20). This has to do with undue influence, buying company, buying friends, and other things (Tr. p. 469, lines 20 – 23), but none of those have to do with not understanding what you are doing and with whom you are dealing. (Tr. p. 469, lines 23 – 24).
354. Dr. Berg testified that in forming her opinion, she reviewed the parts of the depositions of Randy Harbeson and Brad Fludgate. (Tr. p. 470, lines 6 – 10). She admitted that she did not review the depositions of Millie Allison and was not familiar with what Ms. Allison had to say about Mr. Heyward’s inability to deal with his banking in the summer of 2001. (Tr. p. 470, lines 13 – 16).
355. Dr. Berg testified that, in preparing her opinion, she did not read the deposition of case workers Judy Smith-Irvin or Desmond Rice. (Tr. p. 470, lines 20 – 25).
356. Dr. Berg did not read the depositions of Chris Lewis, Avery Russell, or Dr. Randy Waid. (Tr. p. 471, lines 4 – 8). She also did not read the depositions of Steve Kern, Jerry Verdino, Laura Edwards, Flo Heyward, or Ian Desportes. (Tr. p. 471, lines 11 – 13).

357. In forming her opinion, she did not conduct any interviews with anyone who knew Mr. Heyward. (Tr. p. 471, lines 14–16). She did not interview Trooper Dennis Reeder, John McLeod, David Scheffield, or Dr. Harmon Patrick. (Tr. p. 471, lines 17–23). She did not interview Mr. Heyward’s Guardian or his Conservator. (Tr. p. 472, lines 2–3).
358. Dr. Berg testified that she primarily relied on the group of documents labeled as Plaintiff’s Exhibit 51. (Tr. p. 472, lines 4–9). She testified that counsel for ESB prepared Exhibit 51. She was not aware that Exhibit 51 was the printed version of ESB’s PowerPoint presentation given in its opening statement. (Tr. p. 472, lines 1–22). Dr. Berg testified that Exhibit 51 was various excerpts from other documents. (Tr. p. 472, lines 23–25). She admitted that her report was not based on the entire DSS file. (Tr. p. 473, lines 1–3).
359. Dr. Berg testified that she did not form an opinion on whether Mr. Heyward was competent on February 4, 2002 to handle his own financial affairs. (Tr. p. 473, lines 12–20).
360. Dr. Berg testified that a certain financial transaction, of which she did not know the name, closed on February 4, 2002, but she could not answer whether Mr. Heyward was competent on February 4, 2004. (Tr. p. 474, line 21 – p. 475, line 9).
361. Dr. Berg testified that to a reasonable degree of medical certainty Mr. Heyward was competent on July 20, 2001, when he signed the Quitclaim Deed and on December 13, 2001, when he signed the General Warranty Deed. (Tr. p. 475, lines 6–8).
362. Dr. Berg testified that Mr. Heyward was not competent to enter into contracts on September 17, 2002, when the Probate Court found him mentally incompetent (Tr. p. 477, lines 1–13; p. 478, lines 1–4). She testified that the time between December 13, 2001, when she asserts that that Mr. Heyward was competent to enter into contracts, and September 17, 2002, when she asserts that he was not, was nine months and a couple of weeks. (Tr. p. 477, lines 14–25).
363. Dr. Berg testified that the major categories of dementia are Alzhiemers, Lacunar (or vascular), and Alcohol. (Tr. p. 480, lines 1–3).
364. Dr. Berg testified that she ruled out Early Onset Alzhiemers because it starts in the person’s fifties (Tr. p. 480, lines 8–10), and Mr. Heyward was older than the fifty to sixty year old range (Tr. p. 480, lines 11–13).
365. Dr. Berg testified that late onset Alzheimer’s dementia has a slower progression. (Tr. p. 480, lines 19–23). For someone to go from capacity to incapacity, it usually takes longer than five years. (Tr. p. 480, lines 21–25). Dr. Berg testified that she was not aware of a case where a person with Alzheimer’s type dementia went from capacity to incapacity in less than a year, unless there are medical complications of other kinds. (Tr. p. 482, lines 8–11).
366. Dr. Berg testified that with regard to Lacunar (or vascular) dementia, unless the patient suffers from a large, traumatic, widespread stroke, typically it takes ten years to go from capacity to incapacity. (Tr. p. 482, lines 10–19). Dr. Berg testified that patients who have traumatic widespread strokes, in the less-than-one-year case will not have capacity to enter into any type of interaction. (Tr. p. 482, lines 20–23). With that clinical picture, there are obvious motor and sensory deficits. It is like what one typically knows as a stroke patient and there may be language problems. (Tr. p. 482, line 23 – p. 483, line 2).
367. Dr. Berg testified that Mr. Heyward went from having capacity on December 13, 2001, to not having capacity by September of 2002, a period of less than a year, but he did not have a large stroke during that time. (Tr. p. 483, lines 13–18).

368. Dr. Berg testified that Mr. Heyward had other things which complicated this case. (Tr. p. 483, lines 18 – 19). He was admitted with delirium and had some type of infection. In addition, he had a history of alcoholism. Dr. Berg testified that having those factors in addition to Lacunar dementia may accelerate the dementia significantly. (Tr. p. 483, line 19 – p. 484, line 2).
369. Dr. Berg testified that she did not know that Mr. Heyward had an episode of delirium when he was arrested by Trooper Dennis Reeder in November of 2001. (Tr. p. 484, lines 3 – 8). She testified that she did not know whether Trooper Reeder was capable of making a diagnosis of delirium. (Tr. p. 485, lines 2 – 3).
370. Dr. Berg testified that she was not aware of how many cars Mr. Heyward purchased in 1998, 1999, 2000, or 2001. (Tr. p. 485, lines 4 – 12). She testified that a change in the pattern of car buying would indicate something if, for example, a person had a pattern of buying a car every other year for his lifetime then he started “buying thirty cars at a time.” Her first thought would not be dementia, but rather drug use or manic depressive illness. (Tr. p. 485, lines 13 – 22). Dr. Berg testified that she was not aware of any change in Mr. Heyward’s automobile buying habits during those years. (Tr. p. 485, lines 23 – 25). Dr. Berg testified that none of the records pointed out numbers of cars or percentage differences. (Tr. p. 486, lines 3 – 6).
371. The first DSS case was “substantiated” for actual exploitation. (Tr. p. 488, lines 2 – 5). Dr. Berg testified that from a medical standpoint, that does not imply incompetence. (Tr. p. 488, lines 4 – 7). She testified that one could be making bad decisions because of poor judgment and could be giving away property to buy friends or because one is conned into falsely presented investments. (Tr. p. 488, lines 7 – 11). She testified that when she is evaluating competency, the question is not why the person entered into the transaction, but rather whether the person knew who they were dealing with and what they were giving away. (Tr. p. 488, lines 11 – 14).
372. Dr. Berg testified that she understood that Mr. Heyward had obligated himself to put a boat into a business so that it could be chartered. (Tr. p. 488, lines 20 – 24). She testified that she was not aware that six months before Mr. Heyward had sold the boat. (Tr. p. 488, line 25 – p. 489, line 3). Dr. Berg admitted that the bill of sale for the boat indicated that Mr. Heyward was not aware of the effect of some of his actions and what was happening to his assets. (Tr. p. 489, lines 7 – 11). Dr. Berg testified that the bill of sale was executed and signed by Mr. Heyward on July 20, 2001. (Tr. p. 489, lines 12 – 20).
373. Dr. Berg testified that a person with Tourette’s disorder could get old and get demented. (Tr. p. 489, lines 23 – 25).
374. Dr. Berg testified that she reviewed Dr. Waid’s report (Tr. p. 493, lines 2 – 15) and that ordinarily a psychiatrist would review psychological testing in formulating a psychiatric opinion. (Tr. p. 493, lines 12 – 15).
375. Dr. Berg said that the second DSS case was substantiated for possible self neglect. (Tr. p. 491, line 24 – p. 492, line 4).
376. Dr. Berg testified that based on the documents she reviewed, including the part of the DSS file she reviewed, the Baptist Medical Hospital records, she concluded that Mr. Heyward was adequately groomed. (Tr. p. 490, lines 8 – 14).

Automotive Salesman, Chris C. Moses

377. Christopher C. Moses had been employed in sales at Hampton Automotive in Columbia, South Carolina, off and on since 1991. (Tr. p. 495, lines 11 – 22).
378. Mr. Moses testified that he met George Heyward in about 1994 and started selling him cars around 2000. (Tr. p. 496, lines 2 – 6). Mr. Moses met Mr. Heyward in 1995 when he was buying a car from another salesman. (Tr. p. 496, lines 9 – 11). In 2000, Mr. Moses became Mr. Heyward's salesman. (Tr. p. 496, lines 12 – 13). Mr. Moses sold Mr. Heyward cars for a couple of years, from 2000 to 2002. (Tr. p. 496, lines 19 – 21). During that period of time, Mr. Moses saw Mr. Heyward on a "very frequent basis." (Tr. p. 496, line 24 – p. 497, lines 2).
379. Mr. Moses said that he saw Mr. Heyward mostly on a daily basis. Sometimes Mr. Heyward would miss a few days, but mostly it was daily. (Tr. p. 497, lines 3 – 4). He saw Mr. Heyward at least three or four times a week. (Tr. p. 497, lines 6).
380. Mr. Moses testified that Mr. Heyward wore "casual wear." (Tr. p. 497, lines 12 – 14). He testified that sometimes Mr. Heyward would have the same clothes on. (Tr. p. 497, line 24 – p. 498, line 2).
381. Mr. Moses testified that Mr. Heyward was always able to converse in a fashion that indicated that he knew what was going on. (Tr. p. 498, lines 3 – 6). He testified that Mr. Heyward would negotiate prices (Tr. p. 498, lines 17 – 23), including trade-in value (Tr. p. 499, lines 3 – 6). Mr. Moses testified that there never came a time when Mr. Heyward could not communicate regarding prices or trade-in value. (Tr. p. 499, lines 7 – 11). Mr. Heyward drove to and from Hampton Automotive. (Tr. p. 499, lines 12 – 14). Mr. Moses testified that he was not familiar with Mr. Heyward's status as a licensed driver in South Carolina. (Tr. p. 499, lines 23 – 25). He then testified that Mr. Heyward told him that he did not have a license and that he had gotten in trouble for driving. (Tr. p. 500, lines 1 – 5). Mr. Moses testified that when Hampton Automotive allowed Mr. Heyward to drive automobiles off the lot, he knew that Mr. Heyward had lost his license. (Tr. p. 500, lines 6 – 9). Mr. Moses still sold Mr. Heyward cars, because, "I was told you can sell cars -- if you didn't have a license you could buy a car, is what I was understanding." (Tr. p. 500, lines 10 – 12).
382. Mr. Moses testified that he sold Mr. Heyward "quite a few cars," but Mr. Heyward never kept a car long enough to get it titled. (Tr. p. 500, lines 13 – 17). They were both high-end and low-end cars. (Tr. p. 500, lines 18 – 21).
383. Mr. Heyward bought Pontiacs, Buicks, and Jaguars. (Tr. p. 500, line 23). Mr. Moses identified a stack of documents as detailing the cars Mr. Heyward bought at Hampton Automotive from April 14, 2000 through March 13, 2002. (Tr. p. 501, lines 11 – 18).
384. Mr. Moses testified that Mr. Heyward sold him a Jaguar in 2000 for \$5,000. (Tr. p. 502, line 22 – p. 503, line 5). He testified that was significantly less than the automobile was worth. (Tr. p. 503, lines 5 – 8). Mr. Moses testified, "I couldn't believe it, but it was a great deal for me." (Tr. p. 503, lines 11 – 12).
385. Mr. Heyward was able to tell Mr. Moses when Mr. Heyward's mother's birthday was. (Tr. p. 503, lines 21 – 22). He told Mr. Moses that he had a brother who passed away, a sister-in-law, and a couple of nieces. (Tr. p. 503, lines 24 – 25).
386. Mr. Moses would go to Mr. Heyward's house and pick up cars that Mr. Heyward had traded in. (Tr. p. 504, lines 4 – 7). He observed some rather young gentlemen at Mr. Heyward's house in the Summer of 2001. (Tr. p. 504, lines 10 – 11). Mr.

- Moses tried to 'run them off' one day. Mr. Heyward wanted them out of there. Then he changed his mind. (Tr. p. 504, lines 17-23).
387. Mr. Moses went inside the house, but just in the foyer area. (Tr. p. 504, lines 24-25). He observed beer bottles and clutter in the foyer when the kids were over there, but not before. (Tr. p. 505, lines 9-15).
388. Once in 2000 Mr. Moses rode with Mr. Heyward on his boat. (Tr. p. 505, lines 16-22). Scott Johnson, another sales person at Hampton Automotive, drove the boat. (Tr. p. 505, lines 22-25).
389. Mr. Heyward appeared to give a number of things away, cars, boats, money, and "stuff like that." (Tr. p. 506, lines 10-17).
390. Mr. Moses saw Mr. Heyward in the nursing home about a year before the trial. (Tr. p. 506, lines 23-25). Mr. Heyward had called Mr. Moses at the dealership, appeared to know who Mr. Moses was, and carried on a conversation with him. (Tr. p. 507, lines 10-21; p. 508, lines 13-20). Mr. Moses testified that at the nursing home, they were taking care of Mr. Heyward, and "he was just getting old." (Tr. p. 508, lines 9-12).
391. Mr. Moses took cars over to Mr. Heyward's house forty-five times. (Tr. p. 509, lines 9-11). Mr. Heyward bounced checks to the dealership several times for the purchase of cars. (Tr. p. 509, lines 12-14).
392. About 75% of the cars Mr. Heyward purchased were new cars. (Tr. p. 509, lines 15-17). He would keep these cars for about a week or two and then trade them in. (Tr. p. 509, lines 18-20). That was the normal routine. (Tr. p. 509, lines 21-22).
393. Every time Mr. Heyward would trade in a car, there would be depreciation on the car. (Tr. p. 509, lines 23-25). There would be at least 30% or more depreciation on a new car after a week or two. (Tr. p. 510, lines 1-5).
394. Mr. Moses sold Mr. Heyward a Jaguar for \$60,000. (Tr. p. 510, lines 6-9). After a month, Mr. Heyward sold Mr. Moses the Jaguar for \$5,000. (Tr. p. 510, lines 10-12).
395. Mr. Moses sold Mr. Heyward a Buick LeSabre for \$27,000. (Tr. p. 510, lines 16-18). After about two weeks, Mr. Heyward gave Mr. Moses the Buick LeSabre for no charge. (Tr. p. 510, lines 19-23).
396. Mr. Moses made a commission on the forty-five or so cars he sold Mr. Heyward. (Tr. p. 510, line 24-p. 511, line 1). The commission was anywhere from \$300 to \$400 per car. (Tr. p. 511, lines 6-10). Every deal was a "split deal," so Mr. Moses would get half of it. For example, if it was a \$300 commission, he would get \$150. If it was a \$400 commission, he would get \$200. (Tr. p. 511, lines 11-16).
397. In terms of depreciation, if a car new sold for \$50,000, and if the depreciation was 30% or more, that would be a loss of \$15,00 for every car. (Tr. p. 511, lines 17-22).
398. Mr. Moses testified that the average price of the cars Mr. Heyward bought was \$20,000 to \$30,000, or about \$25,000. (Tr. p. 512, lines 2-11). Some were more, some were less. (Tr. p. 512, lines 14-15).
399. On a \$25,000, there would be an average depreciation at 30% of \$7,500 per car. (Tr. p. 512, lines 21-23). Conservatively Mr. Heyward lost \$225,000 in depreciation doing the trade-in deals with Mr. Moses. (Tr. p. 512, line 24-p. 513, line 2).

400. Mr. Moses discussed the depreciation with Mr. Heyward. (Tr. p. 513, lines 8 – 10). He testified that Mr. Heyward knew he was losing a lot of money, but did not seem concerned about it. (Tr. p. 513, lines 12 – 15).

DSS Case Manager, Desmond S. Rice

401. Desmond S. Rice had been employed by the Richland County, South Carolina, Department of Social Services for four-and-a-half years. (Tr. p. 546, lines 15 – 18). In 2001, he worked as a case manager in DSS's Adult Protective Services. (Tr. p. 547, lines 4 – 6). When Mr. Rice was employed with Adult Protective Services, he received training which lasted approximately a month or two prior to beginning case work. (Tr. p. 547, line 19 – p. 548, line 1). Mr. Rice also attended continuing education and a summer school for two years in gerontology. (Tr. p. 548, lines 5 – 8). During the time he worked for Adult Protective Services, Mr. Rice was supervised by Judy Smith-Irvin. (Tr. p. 548, lines 9 – 11).
402. Over the two year period during which he worked for Adult Protective Services, Mr. Rice handled hundreds of cases. In any given month, he handled fifteen to twenty. (Tr. p. 548, lines 16 – 21). Mr. Rice had testified in Family Court about twenty times. (Tr. p. 549, 6 – 9).
403. Mr. Rice investigated a DSS case involving Mr. Heyward beginning September 25, 2001. (Tr. p. 549, line 12 – p. 550, line 3).
404. When a complaint is called into DSS, the intake supervisor determines whether it could possibly meet one of three criteria: abuse, neglect, or exploitation. Then it is assigned to a case manager to investigate. (Tr. p. 550, lines 7 – 12).
405. Mr. Rice was assigned Mr. Heyward's case. (Tr. p. 550, lines 13 – 17). He discussed with his supervisor how to proceed. (Tr. p. 550, lines 20 – 25).
406. The first time or two Mr. Rice attempted to make contact with Mr. Heyward at his home, no one answered the door. (Tr. p. 551, lines 3 – 7). Mr. Rice went unannounced. (Tr. p. 551, lines 8 – 9). When he finally made contact, Mr. Rice was accompanied by two uniformed Richland County Sheriff's Deputies. (Tr. p. 551, line 12 – p. 552, line 1). After some time knocking on the door, the deputies announced themselves, and Mr. Heyward came to the door. (Tr. p. 552, lines 10 – 11). This contact with Mr. Heyward occurred on September 27, 2001. (Tr. p. 552, lines 12 – 14).
407. Mr. Heyward had on pajamas. He was unshaven. His nails were long, and he was unkempt. (Tr. p. 552, lines 18 – 21). It was approximately 11 a.m. (Tr. p. 552, lines 22 – 23). Mr. Rice did not detect any body odor. (Tr. p. 552, line 24 – p. 553, line 1).
408. Mr. Rice remembered Mr. Heyward cursing a lot and being irate about invading his privacy. (Tr. p. 553, lines 9 – 10). After some time and explanation, Mr. Heyward appeared to understand who Mr. Rice and the deputies were. (Tr. p. 553, lines 11 – 14).
409. Mr. Rice went into the foyer area of Mr. Heyward's house. (Tr. p. 553, lines 14 – 19). There was minimal furniture. The entryway was clean; however, the bedrooms, restrooms, and kitchen had some clutter. (Tr. p. 554, lines 3 – 6).
410. Mr. Rice talked to Mr. Heyward, but could not recall whether he stood or sat. (Tr. p. 554, lines 7- 9). Mr. Heyward appeared to understand why Mr. Rice was there "somewhat." (Tr. p. 554, lines 13 – 14). He was upset and agitated that Mr.

Rice was there. (Tr. p. 554, lines 13 – 16), which, Mr. Rice testified, was not unusual when he arrived unannounced to discuss a complaint. (Tr. p. 554, lines 19 – 22).

411. The initial complaint allegation was questionable mental limitations. (Tr. p. 555, lines 11 – 15). Mr. Heyward was upset that Mr. Rice and the deputies were in his home, and he denied the allegations. (Tr. p. 556, lines 6 – 7).

412. Mr. Heyward said that he paid to eat out. (Tr. p. 556, lines 9 – 10). Mr. Heyward appeared to be unstable on his feet at times and had some trembling. (Tr. p. 556, lines 16 – 21).

413. Mr. Heyward said that he purchased automobiles for his friends. (Tr. p. 556, line 24 – p. 557, line 3).

414. Mr. Heyward told Mr. Rice that he did not have to work and spent his days watching TV or driving around. (Tr. p. 557, lines 17 – 19). Mr. Heyward said that he liked to collect cars and give them away to people he knew. (Tr. p. 557, lines 19 – 23).

415. Mr. Rice's notes stated, "The client was alert and oriented during the entire conversation. However, he did get visibly upset when asked about his finances and personal life." (Tr. p. 557, line 25 – p. 558, line 2). From time to time, Mr. Heyward made grunting noises. Mr. Heyward stated that he managed his own funds, and no one, not even his accountants, had full knowledge of all of his assets. (Tr. p. 558, lines 5 – 9).

416. Mr. Rice testified that the kitchen looked as if it had never been used. (Tr. p. 558, lines 13 – 17). The kitchen was clean and orderly, there was no sign of alcohol, and there was no trash or any odors in the kitchen. The dishes were washed and put away neatly in the cabinets. (Tr. p. 558, lines 21 – 24).

417. Mr. Rice remembered one bathroom distinctly. There were condoms on the floor. The toilet was full of vomit or some other matter. It was fairly messy. (Tr. p. 559, lines 8 – 9).

418. Mr. Rice stayed at Mr. Heyward's home approximately one hour or less. (Tr. p. 559, lines 10 -11).

419. Mr. Rice concluded that there was no risk of imminent harm to Mr. Heyward or anyone else at that time. (Tr. p. 559, lines 15 – 23).

420. There was a company doing some roofing work at the house, but Mr. Rice did not speak to anyone in it. (Tr. p. 560, lines 1 – 3).

421. Mr. Rice did not see any indication in his file that he or any other D.S.S worker made a subsequent visit to Mr. Heyward's home. (Tr. p. 560, lines 10 – 15).

422. Mr. Rice spoke to his supervisor and Richland County Investigator Terry Downing, Deputy Culp, Deputy Thomas, and Investigator Howard Foy about Mr. Heyward. (Tr. p. 561, line 21 – p. 562, line 2).

423. Mr. Heyward signed a DSS disclaimer in Mr. Rice's presence. (Tr. p. 562, lines 5 – 21).

424. A portion of Mr. Heyward's case was substantiated for possible self neglect. (Tr. p. 563, lines 14 – 21). Mr. Rice testified that based on one of the documents, part of the case was "unsubstantiated." (Tr. p. 564, lines 13 – 15). Mr. Rice notes stated in part, "Situation found by worker: Client is a multi-millionaire. Client is able to provide for himself. There is an ongoing law enforcement investigation." (Tr. p. 565, lines 1 – 4). Mr. Rice also read part of a document from his file which stated, "The client's case was substantiated for possible self neglect. However, due to the client's current status there is no

- reason at the current time for Adult Protective Services intervention. The client refused all Adult Protective Services attempts for assistance. The case manager will not open a treatment folder and will staff the client's case for possible closure." (Tr. p. 565, lines 11–18).
425. Mr. Rice read another document from his file which stated, "The allegations were unsubstantiated for the client. The case manager will notify the client of the service termination." (Tr. p. 565, lines 20–25).
426. Mr. Rice noted in his file under "physical and functional abilities," "the client is able to function and complete all activities of daily living." (Tr. p. 567, line 24–p. 568, line 2). In another portion of the file, Mr. Rice wrote, "The client is able to function independently and is able to manage his own finances. The client is able to afford services if he needs them." (Tr. p. 568, lines 14–16).
427. Mr. Heyward's case was closed by DSS, and Mr. Rice did not have any further contact with Mr. Heyward. (Tr. p. 568, lines 17–24).
428. Mr. Rice testified that he interviewed Mr. Heyward for thirty to forty-five minutes. (Tr. p. 569, line 6–p. 570, line 5).
429. Mr. Heyward briefly discussed his finances with Mr. Rice, but there was a point at which he did not care to go into it at that time. (Tr. p. 570, lines 6–9). Mr. Heyward was extremely agitated. (Tr. p. 571, lines 15–19).
430. Mr. Heyward did not disclose to Mr. Rice how much money he made or where his accounts were located. (Tr. p. 572, lines 3–5). Mr. Rice did not obtain a financial statement or a bank account statement. (Tr. p. 572, lines 9–13). He did not contact any of Mr. Heyward's bankers or stock brokers. (Tr. p. 572, lines 17–22). Mr. Rice could not recall whether he contacted any of Mr. Heyward's accountants. (Tr. p. 572, lines 23–24). Mr. Heyward's general attitude was that his finances were none of DSS's business. (Tr. p. 574, lines 19–21).
431. Mr. Heyward did not ask Mr. Rice for assistance with moving and did not tell Mr. Rice that he had sold his house for five dollars. (Tr. p. 574, line 24–p. 575, line 2). Mr. Rice testified that Mr. Heyward appeared to think that he still owned the house. (Tr. p. 575, lines 11–13). Mr. Heyward did not tell Mr. Rice that he had recently written a check for \$400,000, depleting his bank account. (Tr. p. 575, lines 14–16).
432. Mr. Rice testified that Mr. Heyward appeared unkempt, walked slowly, made grunting noises, and looked like he needed a bath. (Tr. p. 575, lines 17–22). Mr. Heyward's hair was shoulder-length, greasy, matted, and had a month-long grown of beard. (Tr. p. 576, lines 2–16). His fingernails were long and dirty. (Tr. p. 576, lines 17–25).
433. Mr. Rice saw a very dusty and dirty bedroom and bathroom where Ian stayed. There were used condoms on the sink, in the toilet, and on the bed. The toilet needed to be flushed. (Tr. p. 577, lines 1–7).
434. In the rest of the house, Mr. Rice saw approximately ten empty beer bottles and cans in the bedroom and bathroom. (Tr. p. 577, lines 8–11). There were numerous bags of cigar tobacco that had been taken out of cigars. (Tr. p. 577, lines 19–21). There were empty beer bottles in the refrigerator. (Tr. p. 577, line 22–p. 578, line 5).
435. Mr. Rice was never able to determine how much money Mr. Heyward made. (Tr. p. 578, lines 6–8). Mr. Heyward's case was substantiated for possible self neglect. (Tr. p. 578, lines 9–12).

436. Mr. Rice did not take further action because Mr. Heyward was uncooperative and due to the ongoing involvement of the Richland County Sheriff's Department. (Tr. p. 579, lines 14–22).

Roofer, William McGhee

437. William McGhee testified that he was employed at McGhee's home improvement doing roofing and general remodeling. (Tr. p. 582, lines 3–6).
438. Mr. McGhee received a call in about March 2001 about doing a roof estimate at Mr. Heyward's house, but could not remember who called. (Tr. p. 582, lines 11–19). He gave Mr. Heyward an estimate on the roof job. (Tr. p. 583, lines 3–8). He called Mr. Heyward and set up an appointment. (Tr. p. 583, lines 19–23).
439. Mr. McGhee and Mr. Heyward rode around in Mr. McGhee's truck, looked at the shingles on another house, and Mr. Heyward decided to put those on his house. (Tr. p. 584, lines 8–10). Mr. Heyward had long hair at the time. (Tr. p. 584, lines 15–17; p. 585, lines 12–13).
440. Mr. Heyward showed Mr. McGhee the leaks in the roof. There were two or three main leaks. (Tr. p. 584, lines 19–23). Mr. Heyward discussed replacing all of the wood shingles on his house with "black architect shingles." (Tr. p. 585, lines 21–23).
441. Mr. McGhee received another call from Mr. Heyward and took an estimate for the roof job to him. (Tr. p. 586, lines 7–19).
442. Mr. McGhee did not recall what Mr. Heyward said about the estimate. (Tr. p. 587, lines 17–19). Mr. Heyward said that he had two other estimates which were both higher than Mr. McGhee's estimate. (Tr. p. 587, line 21–p. 588, line 4). Mr. Heyward asked how long the job would take. (Tr. p. 588, lines 9–11).
443. Mr. Heyward called Mr. McGhee, told him that he wanted Mr. McGhee to do the roof job, and arranged for Mr. McGhee to meet him at Wachovia bank to draw a check for the down payment. (Tr. p. 589, lines 2–15). Mr. McGhee met Mr. Heyward at the bank, and the manager of the bank drew a check for the down payment to Mr. McGhee. (Tr. p. 589, line 14–p. 590, line 10).
444. Mr. McGhee started the job within two days and the job took approximately five-and-a-half weeks. (Tr. p. 590, lines 18–23). When Mr. McGhee was working on the job, he would see Mr. Heyward leave about 9:00 or 9:30 in the morning. Sometimes he would return about 5:30 p.m., and sometimes he would not return before the roofers left. (Tr. p. 591, lines 13–21). Mr. Heyward would speak when he came out of the house and ask how things were going. (Tr. p. 591, lines 22–24).
445. Mr. McGhee testified that Mr. Heyward was an "eccentric gentleman and he had his own way" (Tr. p. 593, lines 14–16), but that he did not recall Mr. Heyward's saying anything that did not make sense (Tr. p. 593, lines 17–19).
446. The Richland County Sheriff's Deputies and a DSS case worker came to the house about the third week into the job. (Tr. p. 593, lines 22–24).
447. Mr. McGhee did not receive the last payment for the job. (Tr. p. 594, lines 11–14). Mr. Heyward told Mr. McGhee that he was "waiting for a trust to come in or a bond to mature." (Tr. p. 594, lines 16–18). Mr. McGhee told Mr. Heyward that

- he needed his final payment. (Tr. p. 595, line 1). Mr. Heyward kept insisting that he was waiting for a bond to mature. (Tr. p. 595, lines 4–6). Mr. McGhee never got paid. (Tr. p. 595, lines 1–12).
448. Mr. McGhee retained an attorney with regard to the payment. (Tr. p. 595, lines 13–18).
449. Mr. McGhee observed three or four cars in Mr. Heyward's driveway. (Tr. p. 596, lines 15–16). A young man named Ian was staying in the house. (Tr. p. 596, lines 21–24).
450. Mr. McGhee testified that his company, McGhee Home Improvements, was not incorporated and was actually a sole proprietorship. (Tr. p. 597, line 20–p. 598, line 2).
451. Mr. McGhee was confronted with Richland County Sheriff's Department Investigator Howard Foy's report, which stated, "One of the boys who parties there, his daddy did roofs, and the kids were saying he was bragging, bragging that his father made like (\$40,000) dollars on roofing this guy's house when it could have been done for seven or eight." (Tr. p. 599, line 17–24). Mr. McGhee responded that he would not answer anything without his attorney present involving the collection action about the roofing job payment which was currently pending in Probate Court. (Tr. p. 600, lines 4–18).
452. Mr. McGhee testified that he charged Mr. Heyward \$32,000 or \$34,000 for the roofing job. (Tr. p. 602, lines 5–8). In response to a question about whether he had overcharged Mr. Heyward, Mr. McGhee pled the Fifth Amendment. (Tr. p. 603, lines 19–21). After some explanation of the proceedings and an opportunity for Mr. McGhee to try to contact his attorney, he proceeded with his testimony. (Tr. p. 609, lines 5–7).
453. Mr. McGhee testified that he was not licensed as a residential builder. (Tr. p. 610, lines 6–7). He did have a business license with Richland County to do roofing in the name of McGhee and Sons Roofing. (Tr. p. 610, lines 14–20).
454. Mr. McGhee discussed the permit with Mr. Heyward. Mr. McGhee testified that if any permit was needed, then Mr. Heyward would get the permit. (Tr. p. 611, lines 3–5). As far as Mr. McGhee knew, no permit was ever obtained. (Tr. p. 611, lines 6–7). Mr. McGhee testified that he did a \$32,000 roofing job with no permit. (Tr. p. 611, lines 8–11). He denied having ever bragged to anyone that he charged Mr. Heyward too much money and that the job could have been done for seven or eight thousand dollars. (Tr. p. 611, lines 12–16). Mr. McGhee said that one could not buy the materials for that. He did not have any records of the actual cost with him. (Tr. p. 611, lines 18–21).
455. Mr. Heyward told Mr. McGhee that it was his house. (Tr. p. 612, lines 18–19). He never told Mr. McGhee that he had sold the house for five dollars. (Tr. p. 612, lines 20–22). Mr. Heyward also told Mr. McGhee that he owned a boat. (Tr. p. 613, lines 4–7). He showed Mr. McGhee a picture of the boat on the wall but did not tell him that he had sold the boat to Mr. Kem. (Tr. p. 613, lines 4–22).
456. Mr. McGhee testified that, at the time, he had a son who was high school age or right out of high school, but, to Mr. McGhee's knowledge, did not party at Mr. Heyward's house. (Tr. p. 614, lines 5–10). Mr. McGhee's son attended Ridgeview High School. (Tr. p. 614, lines 22–25). He testified that his son attended high school with Ian Desportes, the young man who stayed in Mr. Heyward's house, that he saw him with Ian, but that they were not friends. (Tr. p. 615, lines 1–8). Mr. McGhee said that there were allegations that Ian Desportes invited his son over to Mr. Heyward's house, but that

"was never proven." (Tr. p. 615, lines 9 – 12). Mr. McGhee testified that he had "no clue" how Mr. Heyward got his name or telephone number. (Tr. p. 615, lines 16 – 22).

457. The contract proposal Mr. McGhee made on the house was dated September 8, 2001. (Tr. p. 616, lines 2 – 9). The terms of the proposal were \$17,212.50 down and the balance on completion. (Tr. p. 616, lines 21 – 22).

458. Mr. McGhee testified that with every customer, he gets a down payment, but he does not go to the bank to get the down payment with every customer. (Tr. p. 617, lines 2 – 3).

459. Mr. McGhee testified that he had done residential roofs that cost that much in Charleston, "bigger houses of that nature." (Tr. p. 618, lines 7 – 8). He testified that he had done three or four over twenty-five years. (Tr. p. 618, lines 11 – 15).

460. Mr. McGhee admitted that he was aware of a requirement in the law that he have a residential building license to do a job over ten thousand dollars (Tr. p. 618, lines 16 – 19), and he did not have that at the time he did the job on Mr. Heyward's house (Tr. p. 618, lines 20 – 21).

Mortgage Closing Attorney, Nicholas D. Atria

461. Nicholas D. Atria was an attorney in Columbia, South Carolina, licensed to practice law, and the majority of his practice was real estate loan closings. (Tr. p. 620, lines 5 – 12).

462. Mr. Atria closed two transactions for Stephen Kern. (Tr. p. 620, lines 12 – 15). For the February 2002 closing statement, the borrower was Stephen Kern and the lender was Luthi Mortgage. (Tr. p. 620, lines 22 – 25).

463. Mr. Atria testified that it is his regular practice to reflect the funds which came through his hands during a real estate transaction closing on the HUD-1 statement unless it showed "P.O.C.," paid outside of closing. (Tr. p. 621, lines 13 – 15).

464. Mr. Atria identified a document as a refinance on the 14 Glenlake Road house showing the borrower as Stephen Kern and the lender as Eastern Savings Bank. (Tr. p. 621, line 18 – p. 622, line 24). The funds from that refinance paid off Luthi Mortgage and a loan servicing center. (Tr. p. 623, lines 1 – 2). The funds came from the lender, Eastern Savings Bank. (Tr. p. 623, lines 6 – 9). The Luthi mortgage was paid. (Tr. p. 623, lines 12 – 14).

465. Mr. Atria never met with Mr. Heyward and would not know him. (Tr. p. 623, lines 15 – 17). Mr. Atria's contract was with Mr. Kern and Nealie Cook, who brought the closing to Mr. Atria. (Tr. p. 623, lines 18 – 21).

466. Mr. Atria had a title examination done. (Tr. p. 624, lines 5 – 7). There was a judgment against a property owner named George Heyward, and Mr. Atria prepared an affidavit that this was not the same George Heyward. (Tr. p. 624, lines 11 – 18). Mr. Atria was not present when the affidavit was signed. (Tr. p. 624, lines 19 – 20). Mr. Atria gave the affidavit to Nealie Cook to get it signed. (Tr. p. 624, lines 21 – 22).

467. Mr. Atria testified, "Mr. Cook is very inventive and ingenious for financing, and it would be best to go slowly and carefully with Mr. Cook." (Tr. p. 626, lines 2 – 5). He testified that as of that date, he did not have concerns about Mr. Cook's taking advantage of elderly people, but subsequently he did have such concerns. (Tr. p. 626, lines 10 – 12).

468. Mr. Atria testified that, rather than a quitclaim deed, he would normally expect a fee simple or general warranty deed. (Tr. p. 627, lines 19 – 21). He testified that he did not believe that he provided the quitclaim deed form to Mr. Kern. (Tr. p.

627, lines 22 – 24). The General Warranty Deed and the Quitclaim Deed appeared to be on the types of forms previously used by his office, but Nealie Cook also had copies of those forms. (Tr. p. 628, lines 3 – 11). Mr. Atria's office had already started using computer forms. (Tr. p. 628, lines 17 – 20).

469. No one ever gave Mr. Atria any indication that both witnesses on the deed were not present at the time Mr. Heyward signed. (Tr. p. 628, line 24 – p. 629, line 3).

LLC Member, Bradley G Fludgate, Jr.

470. Bradley "Brad" G Fludgate, Jr., testified on March 11, 2005. He lived in Charleston, South Carolina (3/11/05 Tr. p. 4, lines 18 – 20) and was employed at Channel 2, the NBC station in Charleston (3/11/05 Tr. p. 4, lines 21 – 22). In the Fall of 2002, Mr. Fludgate was starting to get to know Randy and Dusty Harbeson as friends.

471. Mr. Fludgate discussed the year 2002, but it was clear, in light of the other evidence in the case, that he was actually referring to 2001 rather than 2002.

472. In 2001, Mr. Fludgate began discussing a business idea with the Harbesons which would use Mr. Heyward's boat. (Tr. p. 6, lines 4 – 21). Mr. Fludgate testified that the business partners wanted to "make sure that everything is legal, get a lawyer, we'll get a business – make a business out of it, and make it legitimate." (3/11/05 Tr. p. 6, lines 17 – 20).

473. Mr. Fludgate had never heard of Mr. Heyward prior to the Fall of 2001. (3/11/05 Tr. p. 7, lines 2 – 4). Randy Harbeson, Dusty Harbeson, and Mr. Fludgate traveled to Columbia, South Carolina, to discuss the business idea with Mr. Heyward at his house. (3/11/05 Tr. p. 7, lines 15 – 20). Mr. Heyward was in "bummy" clothes, a pair of slacks, a shirt, and a sweater. (3/11/05 Tr. p. 8, lines 20 – 23).

474. Mr. Fludgate testified that he stayed at Mr. Heyward's house a couple of hours. (3/11/05 Tr. p. 8, line 24 – p. 9, line 1). This included some time in which Mr. Heyward showed Mr. Fludgate and Dusty Harbeson a new car he had bought. (3/11/05 Tr. p. 24, line 23 – p. 24, line 1). Mr. Heyward told Mr. Fludgate that it was his lifelong dream was to travel to the Florida Keys, and he had the boat WELL PLEASED. (3/11/05 Tr. p. 9, lines 13 - 19). Mr. Heyward was excited about seeing Dusty Harbeson and Dusty's dog. (3/11/05 Tr. p. 9, line 23 – p. 10, line 2).

475. Mr. Fludgate and Mr. Harbeson discussed the business with Mr. Heyward. They planned to come to Columbia, get the boat, and take it to Charleston, South Carolina, and then they would bring Mr. Heyward down and take him out on the boat. (3/11/05 Tr. p. 10, lines 5 – 11). Mr. Fludgate testified that they told Mr. Heyward that they would pay the expenses related to the boat and split the profits from chartering it with him. (3/11/05 Tr. p. 10, lines 12 – 23). Mr. Fludgate testified that Mr. Heyward appeared to understand what he was talking about. (3/11/05 Tr. p. 10, line 24 – p. 11, line 1).

476. Mr. Fludgate was warned that Mr. Heyward had Tourette's Syndrome, and that every once in awhile, Mr. Heyward would blurt out something abnormal. (3/11/05 Tr. p. 11, lines 4 – 12). This would happen sporadically. (3/11/05 Tr. p. 11, lines 14 – 19).

477. Most of Mr. Fludgate's conversation with Mr. Heyward occurred in Mr. Heyward's living room. (3/11/05 Tr. p. 11, line 20 – 22). He testified that it looked like someone was sleeping on the couch, because there was a blanket and a pillow on the

- couch. (3/11/05 Tr. p. 12, lines 1 – 3). There were a bunch of bills in front of a recliner, like Mr. Heyward had sat in the recliner and threw all of the bills on the floor, and was “just kind of going through them.” (3/11/05 Tr. p. 12, lines 3 – 6).
478. Mr. Fludgate testified that he went into the kitchen to get water, and it had a couple of dirty dishes in the sink but nothing out of the ordinary. (3/11/05 Tr. p. 12, lines 9 – 12).
479. Mr. Fludgate planned to have a lawyer start a limited liability company and start transferring the boat once the paperwork was done. (3/11/05 Tr. p. 12, lines 15 – 21). He felt satisfied that Mr. Heyward wanted to go forward with the plan and understood what he was doing. (3/11/05 Tr. p. 12, line 22 – p. 13, line 4). At the time Mr. Fludgate met with Mr. Heyward, Mr. Heyward did not mention that he had already sold the boat or that he given it to Mr. Kern. Rather, Mr. Heyward believed he still owned the boat. (3/11/05 Tr. p. 23, lines 11 – 15; p. 24, lines 4 – 6).
480. Later Mr. Fludgate met with an attorney in Columbia, Alex Weatherly, but that Mr. Heyward was not present at that meeting. (3/11/05 Tr. p. 13, line 23 – p. 14, line 14; p. 27, lines 14 - 24). Everyone else was there, and they all signed the L.L.C. documents. (3/11/05 Tr. p. 27, line 25 – p. 28, line 2). Mr. Fludgate did not see Mr. Heyward sign the L.L.C. papers. (Tr. p. 28, lines 13 – 14).
481. Mr. Fludgate testified that he had a phone conversation with Mr. Heyward, possibly on the way to the attorney’s office in which Mr. Heyward conversed in a rational way. (3/11/05 Tr. p. 15, line 25 – p. 16, line 3). This conversation lasted a couple of minutes at the most. (3/11/05 Tr. p. 22, lines 6 – 11).
482. Mr. Fludgate was not aware that Mr. Weatherly sent a letter to Mr. Heyward stating that he was not representing Mr. Heyward. He did not know why Mr. Weatherly would do that. (3/11/05 Tr. p. 29, line 16 – p. 30, line 2).
483. Mr. Fludgate testified that he and others sent a transporter to Columbia to pick up the boat at Lake Murray between Christmas and New Years, but the boat was not there. (3/11/05 Tr. p. 17, lines 7 – 17). When they discovered that the boat was missing, they went to a lawyer to fix the situation because Mr. Heyward was very upset that his boat was missing. (3/11/05 Tr. p. 18, lines 3 – 9).
484. Mr. Fludgate, Randy Harbeson, Dusty Harbeson, Mr. Cooper, and Mr. Heyward met at Randy Harbeson’s house. (3/11/05 Tr. p. 18, lines 13 – 16). Mr. Fludgate testified that, at that meeting, Mr. Heyward was “more forgetful, he didn’t seem to remember the process, which kind of scared me, of us going and getting the boat. I mean, he remembered, and then he didn’t remember some of the key elements to it, but -- it was a little odd to me.” (3/11/05 Tr. p. 19, lines 1 – 6). After the meeting at Randy Harbeson’s house, Mr. Fludgate did not see Mr. Heyward again. (3/11/05 Tr. p. 20, lines 23 – 25).
485. At the meeting at Mr. Harbeson’s house, there were a couple of times when Mr. Heyward would not remember what was discussed thirty minutes before. (3/11/05 Tr. p. 26, line 22 – p. 27, line 4; p. 27, lines 5 - 7).
486. Mr. Fludgate testified that at the time he agreed to go into the business, he was not aware that Randy Harbeson had obtained a check from Mr. Heyward for \$400,000 or that Dusty Harbeson had gotten thousands of dollars from Mr. Heyward. (3/11/05 Tr. p. 30, lines 6 – 13).

Part II: Analysis

Eastern Savings Bank's Factual Arguments

487. ESB argues that certain testimony supports its contention that Mr. Heyward was mentally competent. Nevertheless, the evidence considered as a whole, after weighing conflicting evidence, is that Mr. Heyward was not mentally competent at the time he signed the two deeds. The argument that Mr. Heyward was competent relies largely on the testimony of witnesses who received substantial monetary benefits from him. Ian Desportes received lodging and partying accommodations. Randy Harbeson received a check for \$400,000. Chris Moses received a \$60,000 Jaguar for \$5,000, a \$27,000 LaSabre for no charge, and commissions on forty-five car sales. Mr. McGhee received a \$34,000 roofing contract. Stephen Kern received Mr. Heyward's house and yacht.
488. Additionally, some of these witnesses made admissions undermining the contention that Mr. Heyward was mentally competent. Mr. Desportes admitted that Mr. Heyward was never able to remember what he had for breakfast or dinner. (Tr. p. 365, lines 8 – 11; p. 369, lines 15 – 16). Mr. Harbeson admitted that he filed a Petition for Appointment of a Guardian due to Mr. Heyward's short term memory loss and other difficulties, and he testified that Mr. Heyward had no right to sign documents. (Tr. p. 428, lines 7 – 18). Mr. Fludgate admitted that during a meeting at Mr. Harbeson's house, Mr. Heyward was "more forgetful" and could not remember what had been discussed thirty minutes earlier. (03/11/05 Tr. p. 19, lines 1 – 6; p. 26, line 22 – p. 27, line 4; p. 27, lines 5 – 7). Mr. Kern admitted that Mr. Heyward was not mentally competent to handle any type of legal affair or business decision requiring responsible thought. (Tr. p. 199, lines 11 – 13).
489. Additionally, Mr. Moses admitted that he sold Mr. Heyward numerous automobiles despite knowing that Mr. Heyward's driver's license was suspended and that the cars were not being titled. (Tr. p. 500, lines 6 – 17). Mr. McGhee admitted that he did the roofing job without a permit and without the required residential building license. (Tr. p. 611, lines 6 – 11).
490. ESB cites the testimony of DSS case manager Desmond Rice; however, Mr. Rice was not able to obtain information regarding Mr. Heyward's financial transactions. (Tr. p. 572, lines 14 – 24). He also substantiated Mr. Heyward's case for possible self neglect. His file notes indicated that DSS's discontinuance of its second investigation was at least partly due to Mr. Heyward's apparent ability to purchase necessities for himself. (Tr. p. 565, lines 1 – 4).
491. There was conflicting evidence about whether Mr. Heyward was alert and oriented. DSS case worker Desmond Rice noted that Mr. Heyward was "alert and oriented." Dr. Waid testified that appearing alert was not unexpected with Alzheimer's. (Tr. p. 163, lines 15 – 22). At the time of his evaluation of Mr. Heyward in March 2004, Mr. Heyward appeared alert but scored only a 17 out of 30 on the mini-mental status exam, indicating serious impairment. Additionally, in his examination, for his age group, Mr. Heyward scored in the lower second percentile for ability to recall stories read to him, the lower first percentile for ability to draw pictures shown to him, and in the lower second percentile for memory function. Further, house visitor Avery Russell noted that Mr. Heyward was "not alert and oriented at all" in the Summer of 2001. (Tr. p. 142, lines 25 – p. 143, line 1). Judy Smith-Irvin testified that, in 1999, Mr. Heyward was not coherent and did not understand what she was saying. (Tr. p. 68, lines 5 – 7; p. 81, lines 13 – 16). Millie Allison testified that, in the Summer of 2001, Mr.

Heyward did not clearly understand his banking transactions or what she was saying to him. (Tr. p. 38, lines 3–9; p. 35, lines 10–12). On September 19, 2001, Investigator Howard Foy noted in his report that Mr. Heyward appeared “very sickly and disoriented.” (Tr. p. 100, lines 20–21). Trooper Dennis Reeder testified that Mr. Heyward was babbling and not making sense during his arrest on November 1, 2001, and that he was screaming like he was scared and confused. (Tr. p. 50, line 12–15; p. 51, lines 19–21; p. 51, lines 14–17). Thus, the weight of the evidence is that in the year 2001, Mr. Heyward was not able to understand the nature or effect of signing the two deeds.

492. ESB’s witnesses Randy Harbeson and Chris Moses testified that Mr. Heyward appeared to understand various conversations when he was at the assisted living facility. Nonetheless, Mr. Heyward was at the assisted living facility after he had been diagnosed with dementia at Baptist Medical Center and after he had been adjudicated incompetent by the Richland County Probate Court. His I.Q. at that point was 71 or less. (Tr. p. 168, lines 1–5).

493. ESB argues that Mr. Heyward made substantial gifts dating back to the early 1990s. The court has not been asked to determine Mr. Heyward’s competence at that time, but his making these gifts does not appear to either preclude Mr. Heyward’s mental incompetence at that time or make it less likely that he was mentally incompetent in the year 2001.

Eastern Savings Bank’s Expert

494. ESB’s expert Dr. Berg admitted that, in forming her opinion, she primarily relied on the medical records and Exhibit 51. (Tr. p. 472, lines 4–9). Exhibit 51 was a printed version of the PowerPoint presentation ESB showed during its opening statement. Dr. Berg admitted that she did not review any portions of the deposition transcripts or the DSS file other than those quoted in Exhibit 51. (Tr. p. 472, line 24–p. 473, line 3). She did not interview any witnesses, investigate Mr. Heyward’s finances, examine Mr. Heyward, or interview any of Mr. Heyward’s relatives. (Tr. p. 453, lines 4–15). She did not read the depositions of Millie Allison, Judy Smith-Irvin, Howard Foy, Chris Lewis, Avery Russell, Dr. Randy Waid, Stephen Kern, Jerry Verdino, Flo Heyward, Laura Edwards, Ian Desportes, Desmond Rice, or Chris Moses. (Tr. p. 470, lines 20–25; p. 471, lines 4–8, p. 471, lines 11–13). She did not interview Trooper Dennis Reeder, attorney John McLeod, CPA David Scheffield, or Dr. Harmon Patrick. (Tr. p. 471, lines 17–23). With regard to the depositions of Randy Harbeson and Brad Fludgate, and with regard to the DSS file, Dr. Berg reviewed only the excerpts of those documents in Exhibit 51.

495. Dr. Berg testified that important to her opinion were the DSS findings, Dr. Harmon Patrick’s letter, and Mr. Heyward’s attempt to convey the WELL PLEASED to the LLC. (Tr. p. 449, lines 20–25; p. 450, lines 20–24; p. 451, lines 1–6). Nonetheless, she relied on the portions of the DSS transcripts and DSS files quoted in ESB’s PowerPoint presentation and did not read Judy-Smith Irvin’s deposition or Desmond Rice’s deposition. Further, she did not review the entire DSS file. (Tr. p. 470, lines 20–25; p. 473, lines 1–3). Moreover, as Dr. Waid testified, DSS never conducted the neuropsychological evaluation necessary to determine Mr. Heyward’s cognitive functioning. (Tr. p. 171, lines 16–24). Dr. Patrick’s letter did not negate incompetence and in fact stated, “I would think if there is a significant concern about how Mr. Heyward is handling his money that a competency hearing would be in order.” (Tr. p. 84, lines 2–10; p. 97, lines 13–16). Further, Dr. Berg was not aware when forming her opinion that, at the time Mr. Heyward obligated himself to place the WELL PLEASED into the

LLC, he had already conveyed it to Mr. Kern. (Tr. p. 488, line 25 – p. 489, line 3). She admitted that at the time Mr. Heyward transferred the WELL PLEASED, which occurred on July 20, 2001, he was not aware of the effect of some of his actions and what was happening to his assets. (Tr. p. 489, lines 7 – 11).

496. Dr. Berg testified that the *first* DSS investigation found that Mr. Heyward was “alert and oriented.” (Tr. p. 462, lines 3 – 6). Nevertheless, “alert and oriented” was a note made by Mr. Rice in the *second* DSS investigation and quoted in ESB’s PowerPoint presentation. (Tr. p. 557, line 25 – p. 558, line 2; Exhibit 51). The first DSS investigation did not contain any reference to Mr. Heyward’s being “alert and oriented,” and that investigation was substantiated for actual exploitation. (Tr. p. 62, lines 6 – 10). Rather than admit that there was no reference to “alert and oriented” in the first DSS report, Dr. Berg testified that those words were not a quote, but, rather, her summary of the first DSS investigation. (Tr. p. 465, lines 13 – 17). She then testified that, regardless, a DSS caseworker would probably not be medically qualified to use those words. (Tr. p. 465, lines 18 – 21). Dr. Berg also questioned whether a DSS caseworker would be competent to diagnose dementia. (Tr. p. 468, lines 21 – 24). Nonetheless, she testified that the DSS findings were a primary basis for her opinion.

497. Remarkably, based on the evidence she had reviewed, Dr. Berg concluded that Mr. Heyward was adequately groomed. (Tr. p. 490, lines 8 – 14).

498. Dr. Berg testified that she was not aware of any change in Mr. Heyward’s pattern of automobile purchases in the years from 1998 to 2001. (Tr. p. 485, lines 23 – 25). She admitted that she did not know how many cars he purchased during those years. (Tr. p. 485, lines 4 – 12). She was unaware of any records pointing to the number of cars. Mr. Heyward bought approximately eighty cars from January 1999 through March 2002. (Tr. p. 21, lines 2 – 4).

499. Dr. Berg was unable to adequately explain how Mr. Heyward could go from being mentally competent to sign a deed on December 13, 2001, to being mentally incompetent to do so less than one year later, when the Probate Court adjudicated him incompetent on September 17, 2002. (Tr. p. 483, lines 13 – 18). She admitted that, regardless of the type of dementing process, absent a serious stroke, it would normally take at least five years to go from competence to incompetence. (Tr. p. 480, lines 19 – 25; p. 482, lines 10 – 23).

500. Dr. Berg testified that Tourette’s Syndrome starts in childhood. (Tr. p. 445, lines 2 – 4). The most credible evidence, as testified by Flo Heyward, was that Mr. Heyward’s outbursts started in the 1990s. (Tr. p. 336, lines 20 – p. 337, line 13). Tourette’s pertains to vocal tics and outbursts. (Tr. p. 172, lines 13 – 17). It does not explain Mr. Heyward’s slurred speech, inability to make sense, or inability to understand what was being said to him.

Chronology of Facts

501. In 1998 Mr. Heyward was not capable of handling his affairs and required the caretaking of Ginger Kern. (Tr. p. 268, line 24 – p. 269, line 2; p. 200, lines 1 – 5).

502. In April 1999, Mr. Heyward gave CPA David Sheffield limited tax information immediately before April 15th and was “astonished” to learn the date. (Tr. p. 315, line 13 – p. 316, line 2).

503. In 1999, Judy Smith-Irvin conducted the first DSS investigation and noted dementia (Tr. p. 63, lines 13 -14) and that Mr. Heyward was confused and incoherent (Tr. p. 81, lines 13 – 16).
504. From January 1999 to March 2000, Mr. Heyward spent approximately \$2.9 million on cars. (Tr. p. 21, lines 1 – 8).
505. For the year 2000, the IRS assessed Mr. Heyward approximately \$2.3 million in taxes for liquidating stock.
506. In 2001, Ian Desportes noted that Mr. Heyward was not very clean and “going downhill.” (Tr. p. 377, lines 1 – 2). Mr. Heyward could never remember what he ate for dinner or breakfast. (Tr. p. 365, lines 8 – 9; p. 369, lines 15 - 16).
507. In 2001, Mr. Heyward could not understand a simple utility bill and required caretaking from Stephen Kern. (Tr. p. 232, line 23 – p. 233, line 19).
508. In the Summer of 2001, Chris Lewis observed Mr. Heyward walking around his house “like he was lost” and like he “didn’t know what was going on.” (Tr. p. 125, line 4 – 6).
509. Also in the Summer of 2001, Avery Russell observed that Mr. Heyward did not appear oriented and was “not very alert at all.” (Tr. p. 142, line 23 – p. 143, line 1).
510. In the Summer of 2001, Mr. Heyward could not understand his banking transactions with Millie Allison. (Tr. p. 35, lines 10 – 12, 17 – 24; p. 35, line 25 – p. 36, line 12).
511. On July 13, 2001, Mr. Heyward gave Mr. Harbeson a check for \$400,000. (Exhibit 4).
512. On July 20, 2001, Mr. Heyward signed the Bill of Sale to the WELL PLEASED for one dollar.
513. On July 20, 2001, Mr. Heyward signed the Quitclaim Deed to his house for five dollars, but he was not mentally competent to do so.
514. In the Summer of 2001, Mr. Heyward returned to Wachovia repeatedly for money after he was told that he did not have any left. (Tr. p. 35, lines 17 – 24; p. 35, line 25 – p. 36, line 12).
515. In 2001, when Mr. Desportes asked Mr. Heyward about the \$400,000 check to Randy Harbeson, Mr. Heyward said that he did not know anything about it. (Tr. p. 387, lines 7 – 11).
516. On September 19, 2001, Richland County Sheriff’s Investigator Howard Foy noted that Mr. Heyward appeared “very sickly and disoriented.” (Tr. p. 100, lines 20 - 21).
517. In September 2001, DSS case worker Desmond Rice conducted an investigation in which he noted that Mr. Heyward appeared unkempt, walked slowly, made grunting noises, and looked like he needed a bath. (Tr. p. 575, lines 17 – 22).
518. On November 1, 2001, Mr. Heyward did not understand what transpired during his arrest by Trooper Dennis Reeder and thought he was in Charleston, SC, when he was actually in Columbia, SC.
519. In the winter of 2001, John McLeod, Esquire, observed that Mr. Heyward was filthy, and he was concerned about Mr. Heyward’s mental situation. (Tr. p. 134, lines 19 – 22).
520. On December 13, 2001, Mr. Heyward signed the General Warranty Deed to his house for five dollars, but he was not mentally competent to do so.

521. In 2001 or early 2002, Mr. Heyward told Ian Desportes that he did not know where the deed to his house was. (Tr. p. 384, lines 9 – 11). As far as Mr. Desportes knew, Mr. Heyward did not know that he had deeded the house away and thought he still owned the house. (Tr. p. 385, lines 10 – 17).
522. In February 2002, when asked by Flo Heyward, Mr. Heyward denied selling the house and said that it was “absolutely not true.” (Tr. p. 332, line 15 – 16).
523. On May 9, 2002, and then on May 17, 2002, Mr. Heyward was admitted to Baptist Medical Center. He was diagnosed with a progressive dementing illness and determined to have an IQ of 71. (Tr. p. 160, lines 2 – 11; p. 168, lines 1 – 5).
524. On May 10, 2002, Randy Harbeson signed a Petition to be filed in the Probate Court for Appointment of a conservator for Mr. Heyward, stating, “He is unable to manage his financial affairs due to short-term memory loss and other difficulties.” (Tr. p. 427, lines 8 – 16).
525. On September 17, 2002, Mr. Heyward was declared mentally incompetent by the Probate Court. (Exhibit 33).
526. On March 15, 2004, Dr. Waid examined Mr. Heyward. Mr. Heyward scored a 17 out of 30 on the mini-mental status exam, suggesting significant impairment. (Tr. p. 163, lines 23 – 25). Mr. Heyward’s abilities to recall stories and to recreate pictures were in the lower second and first percentiles respectively for his age. His memory functioning was in the lower second percentile. (Tr. p. 166, lines 7 – 18). Dr. Waid opined that Mr. Heyward had been suffering from the dementing process since the late 1990s. (Tr. p. 166, lines 22 – 25).
527. This court finds that in 2001, Mr. Heyward could not understand either the nature or the effect of executing the two deeds in question.

Improvvidence of the Transaction

528. The improvvidence of the deed transfers in this case also shows Mr. Heyward’s mental incompetence. ESB argues that the purpose of Mr. Heyward’s deeding his home to Mr. Kern was primarily to pay a federal tax lien and county property taxes. The amount Mr. Heyward owed to the L.R.S. was approximately \$11,000, and the amount he owed to the Richland County Treasurer was approximately \$4,000. (Tr. p. 260, lines 11 – 16). Thus, the total amount Mr. Heyward owed was approximately \$15,000.
529. Mr. Heyward did not know of any way to pay these amounts other than deeding his home to Mr. Kern for five dollars. (Tr. p. 230, lines 5 – 7; p. 526, line 22 – p. 527, line 4). Nonetheless, he could have obtained ten times that amount, over \$150,000, with a telephone call to Morgan Stanley (Tr. p. 355, lines 2 -10), but Mr. Heyward did not know that he had any money. (Tr. p. 23, lines 3 – 6). At the time he deeded the house to Mr. Kern, including the Morgan Stanley account, Mr. Heyward had over \$500,000 worth of cash and bonds he could have used, but he did not know it. (Tr. p. 340, lines 6 – 10). Alternatively, Mr. Heyward could have taken a mortgage himself rather than deeding his home to Mr. Kern to get a mortgage. Mr. Heyward had at his disposal attorney John McLeod, CPA David Scheffield, and banker Millie Allison, but he did not consult with any of these professionals. The improvvidence of transferring his home to Mr. Kern for \$5 to pay \$15,000 worth of debt, considering Mr. Heyward’s assets at the time, indicates that he was mentally incompetent. First, it shows that

he did not know his bounty. Second, in light of his alternatives, the unreasonableness of this transfer showed that Mr. Heyward did not understand its nature or effect.

Improper Probating and Witnessing

530. Neither the Quitclaim Deed nor the General Warranty Deed was properly notarized, because Jerry Verdino was not present when Mr. Heyward signed those deeds. (Tr. p. 286, lines 7–11; p. 289, lines 3–8).
531. Neither the Quitclaim Deed nor the General Warranty Deed was witnessed by two witnesses. Only Larry Williams witnessed Mr. Heyward sign the Quitclaim Deed. (Tr. p. 203, line 21 – p. 204, line 21). Neither Mr. Williams nor Mr. Verdino witnessed Mr. Heyward sign the General Warranty Deed. (Tr. p. 206, lines 1–13).

Part III: Conclusions of Law

Balancing the Interests of Two Innocents

532. The present case involves weighing the interests of two innocent parties, an incompetent person and a mortgagee who had no actual notice of his incompetence. One of the innocent parties must bear the burden of a mortgage created by Mr. Kern. *Shepard v. First American Mortgage Company*, 289 S.C. 516, 347 S.E.2d 118 (Ct. App. 1986), discusses this balancing:

The ancient rule of common law was that a grantee shall not be allowed to defend himself by alleging that he was non compos mentis when he did a solemn act by which he would otherwise be legally bound. As it pertained to deeds of conveyance, the rule rested on the old law relating to estoppel by writing. *Citations omitted*. The courts of South Carolina long ago repudiated this rule as “a relic of barbarism” which is “utterly indefensible.” *Ring v. Huntinging*, 8 S.C.L. (1 Mill) 162, 164, (1817). It is now settled doctrine in this State that the courts of equity take special charge of persons non compos mentis. *Cathcart v. Sugenheimer*, 18 S.C. 123 (1882). Persons of unsound mind, like infants, are under the special protection of the courts of equity with respect to their persons, property, and legal transactions. *Ward’s committee v. Kimbel*, 222 Ky. 517, 1 S.W.(2d) 952 (1928).

At common law, where a person is mentally incompetent at the time he executes a legal instrument, and the person taking the instrument has knowledge of that fact, the transaction is void and third parties claiming under it have no enforceable rights against the incompetent by reason of the instrument. *Elias v. Enterprise Building & Loan Association*, 46 S.C. 188, 24 S.E.2d (1896) (power of attorney). ***Accordingly, where a person lacking mental capacity executes a deed to a grantee with notice of the incapacity, and the grantee in turn executes a mortgage on the property to a third person, the mortgage is not binding on the incompetent, even though the mortgagee is a bona fide purchaser for value without notice.*** (Emphasis added). *Rogers v. Blackwell*, 49 Mich. 192, 13 N.W. 512 (1882); *Tate v. Potter*, 216 Ga. 750, 119 S.E.2d 547 (1961). A person whose mind is so unsound as not to have capacity to contract is incapable of making a binding deed of conveyance. *Woolley v. Gaines*, 114 Ga. 112, 39 S.E. 892

(1901). A deed which is void as between the incompetent grantor and his grantee is not made valid by a subsequent transaction between the grantee and an innocent third party. *Rogers v. Blackwell, supra*. The third party's good faith cannot supply the grantor's want of capacity. *Tate v. Potter, supra*.

533. Thus, the Court of Appeals has balanced the interests of two innocent parties, the incompetent person and the mortgagee without actual notice, and has chosen to favor the incompetent person. In considering this decision, the *Shepard* case evaluates the ability of the two parties to protect themselves:

The third party mortgagee is in a superior position to protect itself. He can take warranties of title from the mortgagor and he can also insure against undisclosed defects in the mortgagee's title by purchasing mortgagee's title insurance. Commercial lenders like [Eastern Savings Bank] commonly protect against the risk of defects in the mortgagee's title in both ways. The incompetent, on the other hand, is incapable of conducting his own affairs or protecting his own interests. His need for protection by the court of equity is correspondingly greater than the mortgagee's.

534. As ESB conceded in its opening statement, the law is clear that if Mr. Heyward lacked mental competence to sign the two deeds, then it does not have a mortgage on 14 Glenlake Road. (Tr. p. 11, line 25 – p. 12, line 4).

535. The burden of proving mental incapacity rests upon the party who asserts incapacity. *Thompson v. Moore*, 227 S.C. 417, 88 S.E.2d 354 (1955).

536. To have the mental capacity to execute a deed, the grantor must have the mental capacity to understand or comprehend the subject of the contract, its nature, and its probable consequences. *Cathcart v. Stewart*, 144 S.C. 252, 142 S.E.2d 498 (1928); *DuBose v. Kell*, 90 S.C. 196, 71 S.E.2d 371 (1911).

537. A transaction may be so improvident and unreasonable as in itself to justify the inference of mental incapacity. *Macaulay v. Wachovia Bank of S.C., N.A.*, 351 S.C. 287, 569 S.E.2d 371 (Ct. App. 2002).

538. ESB cites the case of *DuBose v. Kell*, 90 S.C. 196, 71 S.E.2d 371 (1911), arguing that, in that case, the grantor was found to be mentally competent despite suffering from loss of orientation, forgetfulness, and delusions that her parents were still alive. Nonetheless, those episodes were merely temporary for that grantor. They occurred on isolated and disconnected occasions.

539. In contrast, Mr. Heyward suffered a consistent progressive decline. (Tr. p. 165, lines 19 – 22). While also experiencing instances of delirium, Mr. Heyward's consistent level of mental incapacity rendered him unable to understand the nature or effect of the two deeds in the year 2001.

540. This court finds that the Conservator has met his burden of showing that Mr. Heyward was not competent at the time he signed the July 20, 2001 Quitclaim Deed and that he was not competent at the time he signed the December 13, 2001, General Warranty Deed. Thus, this court concludes that ESB does not have a valid mortgage on the 14 Glenlake Road, Columbia, South Carolina, property.

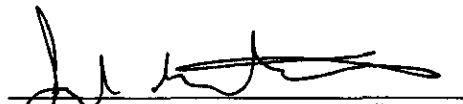
Improper Probating, Improper Witnessing

541. The Conservator argues that the two deeds are void on the additional basis that they lacked proper probating and proper witnessing. ESB disputes this legal argument. The court has made a factual finding that the two deeds were improperly probated and improperly witnessed. Nonetheless, since the court has already found that the two deeds are invalid due to Mr. Heyward's mental incompetence, it does not reach the legal issue of whether the improper probating or the improper witnessing also voids the deeds with regard to ESB's mortgage.

Conclusion

542. WHEREFORE, the mortgage on Eastern Savings Bank, FSB, on 14 Glenlake Road, Columbia, South Carolina, is hereby declared void.

AND IT IS SO ORDERED.



JOSEPH M. STRICKLAND, MASTER
IN EQUITY FOR RICHLAND COUNTY
May 16, 2005