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**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

ALICE MITCHELL

APPELLANT

V.

SUPREME COURT NO. 2007-CA-01787

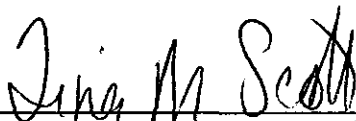
DAVID POYNOR

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons or entities have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Alice Mitchell, Appellant (Plaintiff), 979 Peppertown Rd., Eupora, MS 39744;
2. David Poynor, Appellee (Defendant), Big Creek, MS 38914;
3. Honorable Edwin H. Roberts, Jr., Chancellor, P.O. Box 48, Oxford, MS 38655;
4. George M. Mitchell, Jr., Attorney for Appellant, 209 South Dunn Street, Eupora, MS 39744;
and
5. Tina M. Scott, Attorney for Appellee, P.O. Box 167, Houston, MS 38851.



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STATEMENT OF THE ISSUES

1. Did the trial court err in finding the decedent, Mr. Robert Hall, possessed testamentary capacity when he executed his Last Will and Testament on January 14, 2003?
2. Did the trial court err when it found that the proponent of the will, Mr. David Poynor, had presented sufficient and credible evidence to clearly and convincingly overcome the presumption of undue influence within the context of a confidential relationship with the testator, Mr. Robert Hall?

STATEMENT OF THE CASE

Mr. Robert Hall departed this life May 5, 2003, at 56 years of age as the result of cancer.

Aware of the gravity and his life-threatening diagnosis of a brain tumor on January 9, 2003, and imminent surgery scheduled for the tumor on January 16, 2003, Mr. Robert Hall, at the urging of his doctor, attempted to get his final affairs in order. Robert Hall executed a Power of Attorney appointing his long-time friend, David Poynor, on January 10, 2003. (R18-22; RE45-49) Likewise, he executed his Last Will and Testament on January 13, 2003, naming David Poynor as the sole beneficiary of the worldly goods within his sole possession. (R15-17; RE42-44)

In Robert Hall's meeting with Charlie Brown, paralegal to Attorney Terry T. James, Robert Hall acknowledged his only full-blood sibling and heir, Alice Mitchell, as being on his bank account as well as the beneficiary to a \$55,000 life insurance policy. (See Mr. Brown's notes, Record Exhibit 9; RE132)

Following the passing of Mr. Robert Hall on May 5, 2003, on June 24, 2003, Alice Mitchell caused to be filed her Petition for Grant of Letters of Administration, Appointment of Administratrix, and Other Relief AND Caveat to Last Will and Testament of Robert Wayne Hall Prior to Filing for Probate, AND Complaint for Determination of Ownership of Assets in Joint Bank Account and Recruitment of Assets Until Ownership Adjudicated. (R007-014; RE34-41)

The next day on June 25, 2003, David Poynor caused to be filed his Petition for Probate of Last Will and Testament and for Letters Testamentary; Motion to Revoke Letters of Administration; and Affidavits of the two (2) subscribing witnesses to Robert Hall's Will. (R026-040; RE50-64)

Then on June 26, 2003, the Court entered an Order by agreement of the parties wherein:

(1) the Letters of Administration were suspended; (2) neither party was to take any further action in or with the estate; (3) the assets of Robert Hall's estate were frozen; (4) funds transferred from Robert Hall's account by David Poynor were frozen, all until the matter could be fully and finally heard. (R041-042; RE65-66)

Following discovery and substitution of counsel for David Poynor, this matter was fully heard on January 30 and 31 of 2007.

Following submission of Findings of Facts and Conclusions of Law by the parties, the Court issued a thorough analysis in its nineteen (19) page Opinion, filed with the clerk on August 13, 2007. (R140-158; RE6-24) The Order followed and was filed with the clerk September 24, 2007. (R159-162; RE25-28)

The Opinion and subsequent Order of the Court found: (1) that Robert Hall possessed the requisite mental capacity when he executed his Durable Power of Attorney; (2) that Robert Hall did indeed have testamentary capacity at the time he executed his Last Will and Testament; (3) that David Poynor was in a confidential relationship with Robert Hall; (4) that, therefore, the presumption of undue influence arose; (5) that David Poynor rebutted the presumption of undue influence by clear and convincing evidence; (6) that Robert Hall's Durable Power of Attorney and Last Will and Testament were in fact valid.

It is from this Opinion and Order that Ms. Alice Mitchell filed her appeal on October 4, 2007. (R163-164; RE29-30)

On October 11, 2007, Alice Mitchell filed her Motion for Supersedeas Bond, Amount of Bond and Other Relief. (R169-171; RE31-33) That notwithstanding, Alice Mitchell never set her motion for hearing and never posted Supersedeas Bond.

STATEMENT OF THE FACTS

The two day trial on January 30 and 31, disclosed a number of uncontroverted facts helpful to the issues and understanding of the matter as a whole.

I. RELEVANT GENERAL FACTS

Both of Mr. Hall's parents were deceased. Alice Mitchell was Mr. Hall's only full-blood sibling; he had one half-blood sister, who never made an appearance via the pleadings or otherwise.

At the time of his death on May 5, 2003, Mr. Hall was 56 years of age, having been born January 29, 1946.

Mr. Hall had lived with Ms. Judy Spears for about 9 years, through about March of 2001. Prior to that, Mr. Hall had been married to Judy Heair Hall. Throughout his adult life, he had also at times stayed with Alice and her family, either in their house or next door to them in a house built for his mother prior to her death in March 2002.

Alice received the 10 acres and home of her parents' via a deed prior to her father's death. She sold the property and, thereafter, had her mother a small house built on her property. (T149)

For most of his adult life, Mr. Hall had worked on the river boat. He had worked as an assistant to and as the chief engineer on the boat.

In March of 2001, Mr. Hall was taken off the river boat in Natchez, Mississippi, and admitted to the hospital. It was at that time that Mr. Hall was diagnosed with cancer. He would never return to the boat.

Mr. Hall left the hospital in Natchez and moved from his residence with Judy Spears to the home on Alice's property built for their mother. While residing there, Mr. Hall drove himself to Tupelo for his regular cancer treatments.

In August 2001, Mr. Hall bought a mobile home and moved it onto David and Lisa Poynor's property in Big Creek, Mississippi, where he would remain until his death on May 5, 2003. While living on the Poynor's property, David saw Mr. Hall on a daily basis, as did the rest of David's family. It was well established that as long as Mr. Hall was well enough, he walked out to the Poynor's home each day for the evening meal. Also, as long as Mr. Hall was able, he would prepare his own breakfasts and noon meals. As Mr. Hall's health deteriorated and he was physically weakened, meals were carried from the Poynor's to Mr. Hall's home.

While there was conflicting testimony about the frequency of visits, Alice Mitchell and her sons did visit Mr. Hall some after he moved to Big Creek and while he was in the hospital in Tupelo from January 9 - 24, 2003.

Alice did not visit with Mr. Hall for Thanksgiving or Christmas in 2001 or 2002. After Mr. Hall moved to the Poynor's, Alice never assisted with the transportation of Mr. Hall to his appointments and treatments. Alice was the sole beneficiary of a \$55,000.00 life insurance policy Mr. Hall maintained on his life. (See T158; 159; 163-165; 168; 177; 178; 180)

After Mr. Hall moved to the Poynor's property in August 2001, Lisa Poynor usually drove him to his medical appointments and cancer treatments, especially after one particular time when he had driven himself and the hospital called requiring someone to drive him home.

However, after moving to the Poynor's property in August 2001 and even following his surgery in January 2003, Mr. Hall continued to drive himself for all other errands and visits. Mr. Hall would drive to town to pay his bills, would go by and visit Mr. Bobby Harrison at his upholstery shop in Big Creek about two to three times per week, and even drove himself to Eupora and visited with Mr. James McCain a couple of times. (See T359-361; 365; 378)

Bobby Harrison had known Robert for some time, having gotten to know him a number

of years ago when Mr. Hall also had a business in Big Creek. After Mr. Hall moved onto David and Lisa's property in August 2001, Bobby Harrison saw him regularly. Mr. Hall was a good mechanic and had at times assisted with work on the Big Creek fire truck.

In October 2006, Bobby Harrison was hospitalized and underwent open heart surgery. During that time, Bobby related that he gave considerable thought to the seriousness of the situation and possible impending death. It was with such serious thoughts on his mind that he discussed the disposition of various pieces of personal property with his wife. It was Bobby's adamant feeling that it was quite normal for one facing such dire circumstances to give thought to getting one's affairs in order. (See T362, 363, 365)

Bobby testified that Mr. Hall never mentioned his headaches to him.

It was Bobby Harrison's opinion that Mr. Hall was lucid and fully competent each time he saw him, even following his January 16, 2003, surgery. Finally, Bobby was of the opinion that Mr. Hall knew what he was doing and freely and voluntarily did what he wanted relative to the disposition of his worldly goods and property. (See T362, 365)

It was confirmed by three witnesses, including David Poynor, Bro. Jimmy Vance from the funeral home, and Alice Mitchell herself, that Alice Mitchell refused to assist in the funeral arrangements for her brother. And although she was the sole beneficiary of a life insurance policy maintained and paid by Mr. Hall and had withdrawn approximately \$6,500 from Mr. Hall's account without consulting him, Alice Mitchell also refused to assist in paying the funeral expenses of her brother. That is, though she effectively had about \$61,500 of Mr. Robert Hall's money, to which she had made no contribution whatsoever, she adamantly and openly refused to pay any portion of her brother's final expenses. (See T116, 171-172, 368)

Charlie Brown, Bobby Harrison, Bro. Jimmy Vance and Bro. Chris Connelly all testified

of David Poynor's reputation in the community for truth and veracity. Bro. Jimmy Vance had formerly served as Justice Court Judge and Municipal Judge in Big Creek, where David had served as a part-time police officer. Bro. Jimmy testified that he had always believed David when he testified and had never had any reason to doubt David's honesty and forthrightness.

II. FACTS RELATED TO THE POWER OF ATTORNEY AND BANK ACCOUNT OF MR. HALL

From the January 10, 2003, execution of the Power of Attorney until about April 23, 2003, David conducted no business for and on behalf of Mr. Hall. However, on about April 23, 2003, David transferred \$35,000 from Mr. Hall's account on which Alice was listed, to a joint account in the names of Robert Hall, David Poynor and Lisa Poynor. (See Exhibit 4B)

This left a balance of approximately \$6,500 in the Robert Hall and Alice Mitchell account. Alice's last visit to Mr. Hall's was around the same time as the transfer, as she testified she saw something from the bank reflecting the transfer at Robert's home. However, instead of asking Robert about it, she checked with the bank. (T179-184; RE134-139)

On May 1, 2003, Alice withdrew \$5,966.65 from the account and a couple of days later wrote a check to "Cash" for \$490.00, thereby effectively withdrawing the remaining balance in the account. (See Exhibit 4E) She testified that she made no inquiry regarding outstanding checks or drafts; she made no inquiry of Robert or David regarding the \$35,000 transfer or her \$6,500 withdrawal; she did not inform Robert of the withdrawal or attempt to make sure there were no outstanding drafts. (T179-184, 195-196, 230-231; RE134-139, 142-143, 145-146)

Interestingly, a close review of the BancorpSouth document originally setting up Mr. Hall's account on March 19, 2001, has the account ownership checked as "Individual." However, the BancorpSouth document which is signed by Alice Mitchell does not designate the ownership type, but does indicate that it is an existing checking account. (See Exhibit 4A)

Alice further testified that although Robert had made all deposits to the account, she considered the money equally hers. (T229)

David testified that he at all times considered the \$35,000 transfer at Robert's request to be solely Robert's money until his death. In fact, David promptly paid Robert's funeral expenses from those same monies. (T136)

Upon learning of the return of the brain tumor and transfer of \$35,000 in the latter part of April 2003, Alice did not visit her brother again, not even after being called and informed of the probable imminence of death.

While it was Alice Mitchell's testimony that she withdrew the approximate \$6,500 from her brother's account without making inquiry or conferring with him, it was David Poynor's testimony that he transferred the \$35,000 to a joint account bearing David's, Lisa's and Robert's names solely at the direction of Robert himself. And this being only after Robert Hall had been told the cancer had returned and it was uncertain how long he would live. It was David's and Lisa's testimony that Robert wanted to make sure they (David and Lisa) had access to his (Robert's) money to help take care of him without having to spend their money. David further testified that Robert had specifically instructed him on the amount to transfer and to leave the remaining amount in the existing account, and to leave the account open. (T99-100, 128-130)

III. FACTS REFLECTED IN THE MEDICAL RECORDS

The medical records of Mr. Hall's January 9 - 24, 2003, hospital stay, even after his January 16 surgery to remove the brain tumor, reflect unequivocally that Mr. Hall was at all times lucid, coherent and oriented to person, place and time.

Particularly notable are the Physician's Admission/Discharge Records, Exhibit 3B in the record, which indicate the physician's dictation re: History & Physicals, Consults, Operative

Reports and Discharge Summary. Specifically, on January 9, 2003, the date of Mr. Hall's admission, Dr. Cannella explicitly stated that he had had a "lengthy discussion" with Mr. Hall and Lisa Poynor and whomever else was there. Dr. Cannella explained in detail the seriousness of Mr. Hall's situation and possible outcomes of surgery. Dr. Cannella further clearly indicated the understanding of everyone present, Robert Hall included. (Exhibit 3B, "History & Physicals," page 001 and 002; RE92-93)

Also noteworthy, and contrary to Mrs. Mitchell's assertions in her Complaint, specifically in Paragraph XIII, Mr. Hall's "Past Medical History" indicates that he was "on no regular medications." (Exhibit 3B, "History & Physicals," page 002; RE93) However, Mr. Hall was taking Decadron and Zantac as needed. (Exhibit 3B, "Consults 10CNPWOB," page 002, Dr. Montgomery; RE89)

It is also noteworthy that Dr. Cannella indicated specifically that Mr. Hall was "awake, alert and coherent[,] [s]peech, memory and affect [were] normal[,]" on January 9, 2003, the day he was admitted to North Mississippi Medical Center. (Exhibit 3B, "History & Physicals," page 003; RE94)

Dr. Cannella again in the "Operative Reports" noted that he had "numerous lengthy discussions with [Mr. Hall], his sister, and his two close friends who have power of attorney. . . the complications associated with surgery versus a nonoperative approach...." (Exhibit 3B, "Operative Reports," page 002; RE98)

Additionally, in Exhibit 3B, "Discharge Summary," page 002, Dr. Cannella indicated that Mr. Hall had "made a good neurosurgical recovery. . . . He remains stable and intact neurologically except for decreased visual acuity from the right eye following surgery. . . . [H]e appears essentially intact neurologically." (RE130)

Exhibit 3A, "Adult Admission Profile," indicates that Mr. Hall admitted himself as well as being a source of the information provided. On the bottom of page 002, it is noted that Mr. Hall had **no communication limitations** (emphasis added). Page 003 indicates that Dr. Cannella had provided information to Mr. Hall re: Advance Directive. That is, on the medical records and Lisa Poynor's testimony, Dr. Cannella had admonished Mr. Hall of the urgency of the situation and need to get his affairs in order. Page 003 also indicates that Mr. Hall was in little to no pain at the time of admission and that he only took pain medication as needed (Record Exhibit 3A; T291-293; RE80)

Page 004 of the "Adult Admission Profile" reflects that Mr. Hall had recent and remote memory. Finally, page 005 reflects that Mr. Hall's preferred learning methods were verbal and written instruction and that **he had no barriers to learning** (emphasis added). (Record Exhibit 3A; RE83)

Suffice it to say that the medical records are replete with clear and unambiguous notations that Mr. Hall was at all times lucid and coherent. Rather than to continue to belabor the Court with further recitations from Mr. Hall's medical records, we respectfully include a list of the Exhibit and page numbers wherein such notations are made: Exhibit 6, "Patient Record," distinguished by number in top left corner M4W1-6537, date 1/24, page 001, 002; distinguished by number in top left corner of page 001, M4W1-6472, date 1/23-1/24, page 002; number M4W1-5951, date 1/22 & 1/23, page 002; number M4W1-5526, date 1/21-1/22, page 002; number M4W1-5057, date 1/20-1/21, page 002; number M4W1-4579, date 1/19-1/20, page 002; number M4W1-4188, date 1/18-1/19, page 003; number MS1C2-7312, date 1/18, page 001; number MS1C2-6935, date 1/17-1/18, pages 001, 002, 012; number MS1C2-2239I, date 1/16-1/17, page 002; number M4W1-2470, date 1/14-1/15, pages 001, 002; number M4W1-2001, date

1/13-1/14, pages 001, 002; number M4W1-1518, date 1/12-1/13, pages 001, 002; number M4W1-1134, date 1/11-1/12, pages 001, 002; number M4W1-0794, date 1/10-1/11, pages 001, 002; number M4W1-0353, date 1/9-1/10, page 002; RE102-128.

Additionally, Exhibit 8, Mr. Hall's pharmacy profile, as reviewed by Ms. Pannell Gibson, a registered nurse assisting with the treatment of Mr. Hall and an attesting witness to his Will, reflects that Mr. Hall did not take any medication that would have altered or interfered with his lucidity or cognitive abilities. (RE77-78)

Finally, Exhibit 6, the nurses' notes made an exhibit to Mrs. Pannell Gibson's testimony, clearly and unequivocally reflect that Mr. Hall's regular 4 hour neurochecks on the 14th of January 2003, the date of the execution of the Will, showed him to be alert and oriented. (RE68-76)

IV. FACTS RELATIVE TO DRAFTING AND EXECUTION OF POWER OF ATTORNEY AND WILL

Charlie Brown, paralegal for Attorney Terry James, actually prepared the Power of Attorney and interviewed Mr. Hall relative to his Will. Although Charlie Brown rode with David Poynor to North Mississippi Medical Center in Tupelo on the evening of the 13th, he and David both testified that they did not discuss Mr. Hall's Will or Charlie Brown's discussion with Mr. Hall relative to his Will. (See T106, 107 & 342)

Charlie Brown testified of his 30 year work history, which included extensive experience in interviewing clients and witnesses, as well as drafting and assisting with legal documents, including Powers of Attorney and Wills. Mr. Brown's work history included working with the Mississippi Attorney General's office; the Mississippi Ethics Commission; the Farese Law Firm in Ashland; and with Attorney Terry James since 1994. (See T334-335)

Mr. Brown prepared the Power of Attorney pursuant to a conversation with David Poynor

and using the form on the office computer system. Mr. Brown was apprised by David that Mr. Hall was in the hospital and facing a very serious and life threatening surgery. (See T336-337)

Mr. Brown further testified that David Poynor picked up the Power of Attorney, at which time he explained to David the process for execution , i.e., that Mr. Hall's signature had to be witnessed and notarized. (See T336-337)

David and his daughter, Kristy, confirmed that they took the Power of Attorney to Mr. Hall at NMMC. Kristy recalled Mr. Hall asking if they brought the papers he had asked for. Kristy also recalled Mr. Hall reviewing the Power of Attorney and signing it in her presence. Kristy testified that she had no reason to believe that Mr. Hall had not reviewed and understood the document. Whereupon, Kristy duly notarized Mr. Hall' signature. The Power of Attorney was executed on January 10, 2003, the day following Mr. Hall's admission to the hospital.

Mr. Brown went within a day or two, believed to be the 13th, to NMMC with David where he spoke with Mr. Hall alone. Mr. Brown testified that he spent at least 20 minutes alone with Mr. Hall discussing the details of Mr. Hall's testamentary wishes with regard to his material possessions. (See T337-349; RE147-151)

Mr. Brown had met Mr. Hall previously at various local functions, such as volunteer fire department meetings. Mr. Brown testified that prior to David excusing himself from Mr. Hall's hospital room, that David and Mr. Hall engaged in a conversation about hunting. Upon Mr. Brown inquiring of Mr. Hall about his desire to have a Will done, David excused himself, left the room and was not present during the discussion. (See T337-349; RE147-151)

Mr. Brown testified that Mr. Hall was very alert and coherent, making good eye contact, and provided very specific and straightforward information relative to his possessions and wishes for disposition. (T343-344; RE150-151)

Before getting the information directly from Mr. Hall, Mr. Brown had no previous knowledge of Mr. Hall's material possessions, bank accounts or life insurance. (See Exhibit 9, Mr. Brown's notes from interview with Mr. Hall, & T338, 344; RE147, 151)

Mr. Brown drafted the Will pursuant to his conversation with and notes from Mr. Hall. He presented the draft to Mr. James, who suggested that serial numbers and VIN numbers be added for clarification. The said numbers for the mobile home and truck VIN numbers were obtained from the Calhoun County Tax office and incorporated into the Will.

David picked up the Will and Charlie Brown recalled giving him very explicit instructions about the proper execution of it, even suggesting that the hospital generally had social services people on staff that could witness the Will. Mr. Brown detected nothing in David's actions, statements or demeanor to imply that David was acting in any way other than at the request and in compliance with the intentions of Robert Hall. (T344; RE151)

Mr. Brown also specifically recalled Mr. Robert Hall telling him of the provisions for his sister via life insurance beneficiary (T341; Record Exhibit 9; RE149, 132)

Mr. Hall's Will was executed and witnessed on January 14, 2003, by two of his attending nurses, Ms. Gwen Pannell, RN (Gibson at the hearing), and Ms. LaDonna Miller, LPN (RN at the hearing). Both nurses had independent recall of witnessing Mr. Hall's Will and the subsequent Affidavits following Mr. Hall's death.

Kristy recalled specifically going to the hospital with her mom and dad after Mr. Hall passed away and having the Affidavits read and executed by Ms. Pannell Gibson and Ms. Miller.

SUMMARY OF THE ARGUMENT

The learned chancellor below explicitly set out the facts and applied the appropriate law thereto in his thorough opinion following the two (2) day trial of this matter.

As the finder of “ultimate fact or of evidentiary fact,” with more than “substantial evidence [to] support [] [his] findings[.]” the findings of the chancellor below warrant affirmation from this Honorable court.

The medical records and the essence of almost all testimony in the two (2) day trial below provided overwhelming evidence that Mr. Robert Hall was at all relevant times lucid, clear thinking and in fact, quite independent. That is, excluding the immediate days following his surgery and the immediate days before his death, Mr. Robert Hall more than retained sufficient metal capacity to execute his Power of Attorney and Last Will and Testament.

Being in a trusted relationship with Mr. Robert Hall for some time, David Poynor was afforded more than enough opportunity to take advantage of his friend Mr. Robert Hall, if that had in fact been his intent. Although David Poynor had been appointed by Mr. Hall as his attorney-in-fact on January 10, 2003, the record was clear that he conducted no business whatsoever in that capacity until Mr. Hall’s final diagnosis with the return of the cancer. In April 2003, Robert Hall knew that, barring a miracle, his health would deteriorate until finally, death would arrive. Robert Hall did not know how long he would linger. He did, however, know his friends, David and Lisa Poynor, would assist in caring for him. He knew there would likely be expenses incurred in caring for him and that he had funds that would hopefully take care of those expenses. He knew that David and Lisa Poynor needed to have access to his money if they were not going to have to be out any of his expenses from their personal funds.

The evidence below was totally lacking that David Poynor acted in any way contrary to

(citing Culbreath v. Johnson, 427 So.2d 705, 707-708 (Miss. 1983)); Bullard v. Morris, 547 So.2d 789, 791 (Miss. 1989); Johnson v. Hinds County, 524 So.2d 947, 956 (Miss. 1998).

And the chancellor, being the only one to hear the testimony of witnesses and observe their demeanor, is to judge their credibility. He is best able to determine the veracity of their testimony, and this Court will not undermine the chancellor's authority by replacing his judgment with its own. See Mullins v. Ratcliff, 515 So.2d 1183, 1189 (Miss. 1987); Hall v. State ex rel. Waller, 247 Miss. 896, 903, 157 So.2d 781, 784 (1963).

Madden v. Rhodes, 626 So.2d 608, 616 (Miss. 1993). See also In Re: Estate of Crutcher, 911 So.2d 961, 966 (Miss. App. 2004).

The learned chancellor below was the trier of facts. He observed all witnesses, testimony and evidence presented at the two (2) day trial of the matter.

Following the trial, the chancellor ordered respective counsel for the parties to submit proposed findings of facts and conclusions of law.

Thereafter, the chancellor entered a lengthy opinion in which he meticulously set out the facts, applicable law and analysis of the facts within the appropriate law.

Essentially, Mrs. Mitchell asserts that the learned chancellor erred in his findings of facts, i.e., in the weight and credibility he appropriated the testimony and evidence.

Clearly, the chancellor was in the best position to weigh the evidence and credibility of the testimony and evidence. He did so in his thorough nineteen (19) page opinion.

In considering "the entire record", accepting "all those facts and reasonable inferences therefrom which support the chancellor's findings[.]" it is clear that the learned chancellor below did not "abuse[] his discretion, was [not] manifestly wrong or clearly erroneous," and did not apply "an erroneous legal standard[.]" See Madden, supra.

II. TESTAMENTARY CAPACITY

The Supreme Court of Mississippi has clearly set forth the analysis to assist in determining the mental capacity of a testator at the time of execution of a will. In summary, the test is set forth as follows:

[T]he test of one's capacity to execute a will "is the ability of the testator at the time to understand and appreciate the nature and effect of his act, the natural objects or persons to receive his bounty, and their relation to him, and is capable of determining what disposition he desires to make of his property."

In Re: Estate of Isaac Crutcher, Deceased: 911 So.2d 961, 966 (Miss. App. 2004) (citing, In Re: Estate of Byrd, 749 So.2d 1214, 1217 (Mis. Ct. App. 1999); Matter of Estate of Edwards, 520 So.2d 1370, 1372 (Miss. 1988) (quoting, Humes v. Krauss, 221 Miss. 301, 310, 72 So.2d 737, 739 (1954))).

The Crutcher court went on to reiterate the well settled maxim in Mississippi law that "[t]estamentary capacity 'is to be tested as of the date of the execution of the will.'" Crutcher at 966, (citing Byrd, 749 So.2d at 1217 (citations omitted)). "The proponents of a will "must prove the testator's testamentary capacity by the preponderance of the evidence.'" Id. (citations omitted).

The contestant of Mr. Robert Hall's Will, Ms. Alice Mitchell, only offered vague, unspecific testimony that Mr. Robert Hall lacked testamentary capacity at the time he executed his Will on January 14, 2003. In fact, the overwhelming weight of the evidence showed that Mr. Hall was lucid, coherent and fully capable of understanding the nature of his act, the persons receiving his bounty and the disposition of his gift. The medical records are replete with regular neurochecks, as well as the indications of lengthy and very serious conversations with the doctor. Just five days earlier, Mr. Hall admitted himself to the hospital and provided the necessary

admissions information. Additionally, the subscribing witnesses, Ms. Pannell Gibson, a registered nurse on the neuro floor during Mr. Hall's stay and Ms. LaDonna Miller, an LPN on the neuro floor during Mr. Hall's hospital stay, both testified that though it had been some time and their memory was a bit foggy, they recalled seeing nothing in Mr. Hall or in his medical records to indicate that he was not lucid, coherent and aware of what was going on around him and capable of making decisions.

In fact, Charlie Brown who interviewed Mr. Hall relative to his Will, testified that Mr. Hall was very alert, very coherent, direct and to the point about his wishes for the disposition of his property if and when he passed away. He knew the property he had, from the personal property of his mobile home, his trucks, dogs, guns, as well as money that he had in a bank and a life insurance policy to which his sister was the beneficiary. (T340; RE148)

Although Ms. Mitchell alleged in her pleadings that Mr. Hall had been "under the influence of strong medications due to his terminal illness[,] [f]urther, [h]e had been under this type of medication for some period of time[.]" she produced no evidence that Mr. Hall had been under a regular regime of prescription and/or narcotic pain medication. On the contrary, Mr. Hall's prescription profile, Exhibit 8 in the Record and RE77-78, revealed that Mr. Hall indeed was not taking any regularly prescribed pain medication, as did the hospital records. In fact, as Alice Mitchell's testimony progressed, she herself expressed that she was concerned about the amount of Tylenol her brother was taking. That is, she testified she saw a number of Tylenol bottles on his coffee table, her concern notwithstanding, she made no inquiry of her brother regarding the consumption of Tylenol or what was actually in the bottles. Neither did she ask David or Lisa Poynor about the Tylenol. (T22-23) In fact, it turned out that Robert Hall saved quarters in the bottles. (T299)

Additionally, Ms. Mitchell offered no expert testimony to support her proposition that her brother was incapable of making a will on January 14, 2003.

The Crutcher court also clarified that “[t]he proponents of a will “must prove the testator’s testamentary capacity by the preponderance of the evidence.”” Crutcher at 966 (citing, Matter of Estate of Edwards, 520 So.2d 1370, 1373 (Miss. 1988)).

Crutcher went on to note that “while the proponents may have to carry the burden of proof at trial, “the burden of going forward with proof of testamentary incapacity shifts to the contestants, who must overcome the prima facie case.”” Crutcher at 966 (citing Edwards at 1373).

Also, the Crutcher court noted that “[t]he Supreme Court has held that “the testimony of subscribing witnesses is entitled to greater weight than the testimony of witnesses who were not present at the time of the will’s execution or did not see the testator on the day of the will’s execution.”” Crutcher at 966, (citing Edwards at 1373). David Poynor would respectfully submit that Charlie Brown’s testimony is likewise entitled to greater weight, given Mr. Brown’s lengthy and extensive experience, and the time he spent alone with Mr. Hall solely for the purpose of determining whether in fact Mr. Hall even desired a will and if so did he appear competent, aware of his possessions, natural heirs and clearly express his wishes and intentions for the disposition of worldly goods upon his death. Charlie Brown unequivocally testified that he was convinced of Mr. Hall’s testamentary capacity. (T343; RE150)

Based on the uncontroverted facts set forth herein, Ms. Mitchell offered nothing substantive to overcome the plethora of evidence that Mr. Hall was possessed of testamentary capacity on January 14, 2003.

There simply was no substantive or credible evidence that Mr. Hall lacked testamentary

capacity on the day he executed his Will. That is, the evidence offered in an attempt to overcome the evidence of Mr. Hall's testamentary capacity was totally lacking.

III. CONFIDENTIAL RELATIONSHIP

The factors set forth by the Mississippi Supreme Court in determining whether or not a confidential relationship exists between a testator and beneficiary are well settled. They include, inter alia, "whether one person maintains joint accounts with another," and "whether there exists a power of attorney between the one and the other." See In Re: Estate of Thornton, 922 So.2d 850, 852 (Miss. App. 2006). From the evidence presented at trial, including testimony and exhibits, it is clear that concession must be made that pursuant to the Power of Attorney executed on January 10, 2003, a confidential relationship existed between David Poynor and Mr. Robert Hall. Likewise, we would respectfully point out to the Court that a confidential relationship existed between Alice Mitchell and her brother, Robert Hall, via a purported joint account at BancorpSouth.

It is well settled law in Mississippi that "there is a presumption of undue influence where there is a bequest by a testator to one in fiduciary relationship with the testator if the fiduciary has any involvement in the preparation of the will." In Re: Estate of Smith, 827 So.2d 673, 678 (Miss. 2002). The Mississippi Supreme Court has set out factors and analysis of the same that the proponent of the will, that is, a fiduciary of the testator, must show by clear and convincing evidence to overcome this presumption. The three factors and attending analyses are as follows:

1. The beneficiaries must have acted in good faith.
 - a. Who initiated the procurement of a will?
 - b. Where was the will executed and in whose presence?
 - c. What consideration was paid?

- d. Who paid the consideration?
 - e. Was there secrecy or openness in the execution?
2. The [testator] must have had full knowledge and deliberation in the execution.
- a. Was the [testator] aware of [his] total assets and their general value?
 - b. Did the [testator] understand who [his] natural inheritors were?
 - c. Did the [testator] understand how the change would legally effect prior wills?
 - d. Did the [testator] know that non-relative beneficiaries would be included?
 - e. Did the [testator] know who controlled [his] finances and by what method?
- [I] How dependent is the [testator] on those handling [his] finances?
 - [ii] How susceptible is [he] to influence by those handling [his] finances?
3. The [testator] must have exhibited independent consent and action.

In Re: Estate of Smith, 722 So.2d 606, 612 (Miss. 1998).

Providing further illumination on the legal concept of “presumption of undue influence,” is in In Re: Estate of Crutcher, where the court elaborated that “[a] presumption of undue influence is not raised merely because a beneficiary occupies a confidential relationship with the testator; something more is required, such as active participation by the beneficiary in the procurement, preparation or execution of the will or mental infirmity of the testator.” Crutcher at 968 (citing Croft v. Alder, 237 Miss. 713, 115 So.2d 683 (1959)). “In other words, there must be some showing that [the beneficiary] **abused** the relationship either by asserting dominance over the testator or by substituting her intent for that of the [testator].” Id., (citing, Matter of Will of Wasson, 562 So.2d 74, 78 (Miss. 1990)(citation omitted)). (emphasis added).

A. In considering whether or not David abused his fiduciary relationship with Robert, either by asserting dominance over Robert or substituting his will for that of Robert’s, that is,

whether or not he exhibited good faith in his relationship with Robert, one piece of evidence would include Alice's own testimony. Alice testified that she was not accusing David of abusing his relationship with Robert or taking advantage of Robert, rather she merely did not understand why Robert would change his mind after having told her some time before that when he died she and the boys would get what he had. (T198; RE144) In fact, while in a confidential relationship by virtue of a purported joint account with Robert herself, Alice testified she made a special trip to see Robert and twice attempted to discuss with him making a will and in effect getting his affairs in order. (See T168; RE133) Robert's unwillingness to discuss this with Alice is clear and convincing evidence of his unwillingness to be influenced or dominated by someone else's intent.

As to the initiation of the January 14, 2003, executed Will of Robert Hall, it was David's testimony that Robert asked him to contact Terry James' office in an effort to have a will prepared before his January 16, 2003, scheduled brain surgery. Robert, as indicated in the medical records, and other testimony, was acutely aware of the seriousness of the operation and the potential for death and any other number of possible poor outcomes.

Although the Will was executed in David's presence, it was witnessed by two disinterested medical personnel, that being, an RN and an LPN on duty at the time, and who were familiar with Mr. Robert Hall. Mr. Hall was to undergo brain surgery in less than 48 hours from the time his Will was executed, thereby clearly rendering these to be exigent circumstances. It is not as though Mr. Hall could simply excuse himself from the hospital, go see an attorney and tend to what could have very well been his final affairs of life.

Inasmuch as David was the one to pick up the Will, as well as the Power of Attorney, and knowing his friend was in the hospital facing such a serious and life threatening disease and

operation, it does not defy common courtesy for him to have paid what would actually amount to a nominal price for the Will and Power of Attorney, as it was estimated by Terry James and/or Charlie Brown that the consideration paid was probably \$100 or less for both documents, as neither had clear recall as to the price.

A textbook example of a will being sought to be executed in secrecy is provided in In Re: Estate of Evans, 830 So.2d 699 (Miss. 2002), wherein the sole beneficiary of the purported will was an elderly woman claiming that she and decedent had conducted themselves as a married couple over the last fifteen years, even though they lived about a quarter of a mile apart. In that case, the beneficiary took handwritten instructions to an attorney, from which the will was drafted and the beneficiary picked up the will and carried it around in her purse for three days before it was executed. Evans at 700. In fact, the beneficiary waited until her brother and daughter-in-law could accompany her to the hospital to serve as witnesses for the will. Id. at 700, 701.

In this matter regarding Mr. Hall's Will, David did no such thing. In fact, on learning of the gravity of the situation and even being advised by his doctors to get things in order, Mr. Hall sought the assistance of a trusted friend, David Poynor. David promptly complied with Mr. Hall's wishes and secured a Power of Attorney and had Charlie Brown come to the hospital to discuss testamentary wishes with Mr. Hall. David then picked up the Will, delivered it to the hospital and it was duly executed and witnessed in compliance with Mr. Hall's wishes so as to give him peace of mind before he underwent this life-threatening surgery.

All relevant testimony, even that of Alice Mitchell and her sons, reflected that it was Robert's idea, wish and initiation to move onto David Poynor's property following the diagnosis of his cancer. It was Robert who picked out the mobile home, paid for the mobile home and

chose the specific place on which he wanted his mobile home situated. Naturally, along with him he moved his trucks, dogs, boat and other worldly belongings.

There was no testimony or evidence offered that even intimated that David had attempted to abuse his relationship with Robert or to assert dominance over him by substituting his, David's, intent for that of Robert's.

That David was present when the Will was executed is certainly not determinative. In In Re: Estate of Crutcher, the executrix and one of the primary beneficiaries of the will was found to be in a confidential relationship with the testator, chose an attorney with whom she had attended school, provided the transportation to the attorney's office, and was there when the will was executed. It is also noteworthy that the testator in Crutcher, whose will was upheld, had suffered two strokes prior to the execution of the most recent will.

No one consideration of the analyses is determinative. Given the totality of the circumstances and the overwhelming evidence in support thereof, it is clear that David exhibited good faith in assisting his friend, at his request, in an attempt to get his final affairs in order and as he wished them to be in anticipation of potential imminent death or disability.

Further evidence that David as a fiduciary acted in good faith on behalf of Robert includes the fact that the Power of Attorney was executed on January 10, 2003, the day after Robert's admission to the hospital for brain surgery, scheduled for January 16, 2003. From that time until the April 23, 2003, transfer of \$35,000.00, David conducted no business on Robert's behalf. Rather, the testimony was overwhelming from Bobby Harrison, David and Lisa Poynor, Helen Lowrimore, and Kristy Poynor that until just a couple of weeks before his death Robert tended to his own business.

Upon learning of the return of the cancer on or around April 21, 2003, and fully realizing

and understanding his situation, i.e., that he moved onto David's and Lisa's property to be near a long-time friend and hunting buddy during a difficult and troubling time, and that he was certain to become less and less able to care for himself, he asked David to transfer \$35,000 and to leave the remaining amount in the existing account on which Alice's name was included, so as to insure that he would not become a financial burden to David and Lisa as his health deteriorated. This follows common sense and courtesy.

With regard to the attorney of choice, that is, the office of Terry James, Esquire, that David knew them and had told Robert about them does not defeat the element of good faith. In In Re: Estate of Crutcher, the executrix chose an attorney at the request of the testator, the attorney being someone she had known from high school and whose office was nearby. Terry James was a local attorney and a reasonable choice. He had not done extensive work for David, as David was primarily familiar with Charlie Brown via voluntary fire department work.

However, the good faith of Alice is questionable, inasmuch as she conceded that all of the funds in the account were the result of her brother's income and deposits. That notwithstanding, she considered the funds in the account to be equally hers and upon learning of the \$35,000 transfer, she immediately withdrew the remaining balance without regard to outstanding drafts or balances. She made no inquiry of her brother about the money, nor did she inform him of her withdrawal of the balance. That is, Alice demonstrated no concern whatsoever for her brother but rather only for herself. Thereby, certainly bringing her motives into question concerning her brother. It defies logic and reason to see how that could have been in the best interest of Robert, for indeed, if it was a joint account with rights of survivorship, upon his passing those funds would immediately have vested by law in Alice anyway.

Additionally, Alice Mitchell, like everyone else, did not know how long her brother

would survive or what kind of expenses would be incurred for his care and comfort until his passing. Therefore, should Robert Hall have lingered in more slowly deteriorating health, surely the money would have been necessary to provide for his care and comfort.

B. In determining whether Robert acted with knowledge and deliberation in executing his January 14, 2003, Will, we consider the factors enumerated in the analysis above. Clearly through the interview with Charlie Brown, as evidenced through his notes and his testimony, Robert Hall was well aware of his assets and their general value. He knew he had the mobile home that was paid for and in his name, the two pickups that were paid for and titled in his name, dogs, a boat, guns and other small items of personal property. Furthermore, he knew he had an account on which his sister was included, as well as a life insurance policy to which his sister was the sole beneficiary. There was no evidence offered that Robert Hall possessed any other assets.

Additionally, Mr. Hall clearly knew that his full-blood sister was his natural inheritor and knew the Will would have a legal effect on that. Without a doubt, Robert and David had been friends for many years. Further, there was no evidence or testimony offered indicating that anyone but Robert controlled his finances up until about April 23, 2003, when the \$35,000 was transferred, and shortly thereafter Alice withdrawing the remaining balance for herself from the existing account. There was absolutely no evidence submitted that Robert did not have full knowledge of his assets and their general value. There was only a conclusory allegation by Alice that Robert lacked testamentary capacity. However, there simply was no evidence to substantiate that conclusory statement. In fact, besides the testimony of Charlie Brown, David and Lisa Poynor, Kristy Poynor, there was Bobby Harrison, a neighbor and long time resident of Big Creek, who was very familiar with Robert Hall and asserted that Robert was fully lucid and

capable of making his decisions. There simply was no evidence or testimony from which one could conclude that Robert Hall lacked full knowledge and understanding of his actions.

C. In determining whether or not Robert Hall acted with independent consent and action, “[t]his consideration has changed somewhat as the case law has developed, such that the factors that had initially been outlined for “independent advice” are no longer to be applied in determining whether a presumption of undue influence has been rebutted. The only analysis required is whether the grantor, [], exhibited independent consent and action.” In Re: Conservatorship of Cook, 937 So.2d 467, 473 (Miss. App. 2006) (citation omitted).

Charlie Brown, with over thirty years of experience in interviewing clients, witnesses, etc., as set forth above, testified that his interview with Robert Hall on January 13, 2003, was out of the presence and hearing of David Poynor. Charlie Brown testified that Mr. Hall was straightforward and to the point and answered all questions lucidly, coherently and sensibly. Charlie Brown questioned Mr. Hall about any assets or potential assets he had, to which he provided very specific answers in the disposition he wanted of them. Charlie Brown was fully satisfied that Mr. Hall was acting voluntarily and on his own free will, that is, with independent consent and action.

Also supportive of Mr. Hall’s knowledge and deliberation, as well as his acting with independent consent and action, is the fact that following his January 16, 2003, surgery and January 24, 2003, discharge from the hospital, Mr. Hall resumed his driving, visiting and own bill paying. Bobby Harrison recalled Mr. Hall continuing to come by his shop after the surgery, and all times being as lucid and coherent as before. That is to say, if Mr. Hall had wished or intended his testamentary dispositions or Power of Attorney to be different, he had more than ample opportunity to do so. Not being acclimated to the law, and having no reason to be, surely

it would not have occurred to Mr. Hall to have the documents re-prepared, re-executed and paid for again out of the presence and without the knowledge of David Poynor. That is, obviously Mr. Hall was convinced he had legally made his intentions known and would have simply seen no benefit to doing it again, unless he had wanted things done differently.

CONCLUSION

In March of 2001, Robert Hall was taken off a river boat on which he had worked for years and sadly diagnosed with cancer. Soon thereafter, he underwent various chemotherapy and radiation treatments. In August of 2001, Robert freely and voluntarily, of his own volition and on his own initiative moved from the home that was previously his mother's, right next to his sister, Alice Mitchell, to a mobile home that he purchased and at his specific request had placed on the property of his good friends, David and Lisa Poynor. Robert Hall continued his battle with cancer and on January 9, 2003, it was discovered that he had a cancerous brain tumor. He was immediately admitted to the hospital and admonished by the doctors of the seriousness of the situation. With surgery, there was hope that he would get relief and prolong his life, without surgery death was imminent. However, the surgery itself, as with all surgeries, posed very real and significant threats of less than an ideal outcome. Robert could die during the surgery or suffer any number of debilitating problems. To say that it was a sobering time would certainly be an understatement.

The doctor admonished Robert to get his affairs in order and indicated that he would give him a few days prior to the surgery to do just that. Robert turned to his long-time trusted friend and hunting buddy, David Poynor, and asked his help in procuring the Power of Attorney that would allow David to make any necessary medical decisions pursuant to his wishes and tend to any business that might be necessary should the surgery not produce positive results. Likewise,

he requested David assist him in procuring a will. Robert had lived on David's property rent free for about sixteen months by this time. Robert had known David and his brothers for more than 35 years. Giving the exigency and totality of the circumstances, it would defy reason, common courtesy and human compassion if David Poyner had acted in any other way but in compliance with his friend's request. Time was of the essence and there was none to spare.

There was no affirmative evidence or testimony to support that David acted other than in good faith and at his friend's request. Robert had lived on David's property for over a year by January 2003, the entire time either receiving treatment for cancer or going for followup visits relative to the cancer. Had David had any desire to take advantage of Robert, certainly he would have had more than ample time prior to and subsequent to the January 2003 hospitalization.

Furthermore, there was testimony by Charlie Brown, Bobby Harrison, Bro. Jimmy Vance and Bro. Chris Connelly regarding David's reputation in the community for truth and veracity. Additionally, all four of the aforementioned testified that it was their opinion that David did not and would not take advantage of Robert Hall.

Following Robert's January 16, 2003, surgery, he seemed to do quite well. He returned home and to a large extent resumed what had become his normal routine, i.e., driving to pay his bills and visit neighbors, specifically Bobby Harrison, on a regular basis. Bobby Harrison testified that, even after his surgery and prior to his death, Robert made regular visits to Bobby's shop. Additionally, Mr. McCain testified that Robert had been to Eupora at least twice since moving to Big Creek.

Alice and both of her sons testified that they had visited Robert following his surgery. Though she still attempted to maintain that he was not competent, her testimony was that he really just didn't talk a lot when she would visit, and that he refused to discuss a will, power of

attorney or other such things with her, merely dismissing the idea as unnecessary.

Additionally, the Chancery Clerk of Calhoun County, Ms. Martha Ann Martin, testified that when she and Bill Malone, the Tax Assessor/Collector, visited Robert, though it was obvious that he was not real well, he did lucidly and rationally inform them that he was taking cancer treatments, and that he was fully aware of their reason for being there. That is, they were there relative to a house in Big Creek that was about to mature for the taxes in which his exwife had previously lived. Robert explained his reasoning for letting the property mature and appeared lucid and coherent to Ms. Martin. (T411; RE152)

Even after his surgery and for approximately three months before succumbing to the cancer, Mr. Robert Hall was lucid and coherent. That is, there was more than ample time for him to cancel the Power of Attorney and change his Will if that would have been his intent. Mr. Hall was not acclimated in the law, therefore, the only reasonable inference to draw from his not making any changes is that it was settled in his mind that things had been tended to according to his intentions.

While Mrs. Alice Mitchell makes conclusory statements in her pleadings relative to Robert's testamentary capacity or lack thereof and David's undue influence on Robert, her testimony showed that her only real reasoning for contesting the Will is that she just didn't understand why he would do what he had done. Additionally, her testimony revealed potential repressed feelings of hurt and resentment in that she stated in years gone by Robert would come to visit and go off drinking with her husband. She indicated that Robert would let her husband buy the beer when Robert knew he had more money than her husband. Additionally, Ms. Mitchell testified that when Robert lived with her, although he gave her unfettered access to his checking account and encouraged her to buy groceries or other household necessities using his

money, she would not. Robert did not pay her rent, and she felt it was his responsibility to go and buy the groceries and bring them home. Although at first blush, this part of Mrs. Mitchell's testimony might appear to be irrelevant, it certainly sheds some light on her potential motives and driving force in contesting her brother's Will. (T198, 183, 187-188; RE144, 138, 140-141)

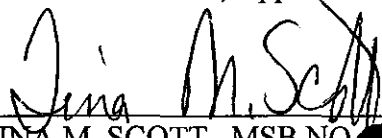
In sum, based on the totality of the circumstances, i.e., the pertinent facts as disclosed in the trial and set forth above, applied to the relevant law, David Poynor, by and through undersigned counsel respectfully submits the following:

- 1) That on January 9, 2003, Mr. Robert Hall was admitted to North Mississippi Medical Center with a cancerous brain tumor, for which he was scheduled for surgery on January 16, 2003;
- 2) That on January 10, 2003, Mr. Robert Hall was competent to and did duly execute a valid Power of Attorney naming his long-time trusted friend, David Poynor, as his Power of Attorney;
- 3) That pursuant to that Power of Attorney, a confidential relationship existed between David Poynor and Robert Hall;
- 4) That all times relative hereto, David Poynor acted in good faith and in the best interest of Robert Hall as his duly named Power of Attorney;
- 5) That all funds in the accounts bearing Robert Hall's name were from the exclusive efforts and property of Robert Hall, any other persons owing a fiduciary duty to Robert Hall;
- 6) That if in fact the account also bearing Mrs. Alice Mitchell's name was a joint account with rights of survivorship, any and all funds remaining therein vested in her at Robert Hall's death;

- 7) That, inasmuch as David Poynor at all times relative hereto acted in good faith and in compliance with the requests of Robert Hall, any and all funds remaining in the joint account with rights of survivorship bearing the names of: Robert Hall, David Poynor and Melissa (Lisa) Poynor, vested in David and Lisa Poynor upon Robert Hall's death;
- 8) Any subsequent funds inuring to the benefit of the estate pass through Robert Hall's testamentary disposition to David Poynor;
- 9) That on January 14, 2003, Mr. Robert Hall, being competent and possessed of testamentary capacity, freely and voluntarily, with full knowledge and deliberation, exhibiting independent consent and action, did duly execute his Last Will and Testament;
- 10) That David Poynor, clearly and convincingly overcame the presumption of undue influence relative to Mr. Hall's Last Will and Testament;
- 11) Therefore, the January 14, 2003, Last Will and Testament of Robert Hall should be found and held to be valid as reflecting the intentions of Mr. Hall.
- 12) Accordingly, the Opinion and Order of the Calhoun County Chancery Court should be affirmed, and Appellee, David Poynor, respectfully requests the same.

Respectfully submitted,
DAVID POYNOR, Appellee

By:


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**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

ALICE MITCHELL

APPELLANT

V.

SUPREME COURT NO. 2007-CA-01787

DAVID POYNOR

APPELLEE

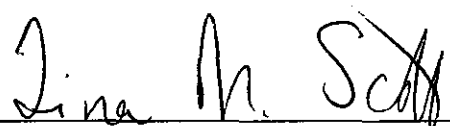
CERTIFICATE OF SERVICE

I, Tina M. Scott, attorney for Appellee, do hereby certify that I have this day mailed, postage prepaid, a true and correct copy of the foregoing Brief of Appellee to the following parties:

**Honorable Edwin H. Roberts, Jr.
Chancellor
P.O. Box 48
Oxford, MS 38655**

**George M. Mitchell, Jr.
Attorney at Law
P.O. Drawer J
Eupora, MS 39744**

So certified on this the 9th day of August, 2008.



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APPELLEE

CERTIFICATE OF HAND-DELIVERY

I, Tina M. Scott, certify pursuant to Rule 25(a) of the Mississippi Rules of Appellate Procedure that on the 9th day of August, 2008 I hand-delivered to the Mississippi Supreme Court Clerk the original and three copies of the Brief of Appellee.

SO CERTIFIED, this the 9th day of August, 2008.



TINA M. SCOTT