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IN THE SECOND CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
PROBATE DIVISION

IN RE: ESTATE OF MARY N. JOHNSON PRUITT,

Deceased,

and

MARILYN PRUITT,

Petitioner,

v.

RENALDO PRUITT,

Respondent.

Karen Johnson Davidson County
Batch # 1097293 JDGMT
02/02/2024 11:30:58 AM 36 pgs
Fees: $182.00 Taxes: $0.00
20240202-0007508

Case No. 20P-1958

ORDER ON PETITION TO RECOVER

This came to be heard for a bench trial on August 23, 2023 before the Honorable Amanda McClendon, Judge of the Second Circuit Court on Petitioner Marilyn Pruitt's Amended Petition to Recover Misappropriated Funds from the Respondent Renaldo Pruitt. Present in Court were Petitioner Marilyn Pruitt, Respondent Renaldo Pruitt, and counsel for both parties. After a careful consideration of the statements of counsel, testimony of the parties and witnesses, and the exhibits presented at trial, the Court makes the following findings of fact and conclusions of law pursuant to Tenn. R. Civ. P. 52.01.

Findings of Fact

Mary Johnson Pruitt (hereinafter known as "Decedent") drafted a Quitclaim Deed on November 20, 2009 transferring Renaldo Pruitt's interests in the improved real property at 747 Lynwood Avenue in Nashville to herself. Decedent was hospitalized in January 2014 at Vanderbilt due to uterine cancer surgery and treatment. While in the hospital, Decedent suffered acute confusion and symptoms of delirium. She was discharged from the hospital on February 4, 2014.

On March 27, 2014 Decedent's primary care physician referred her to Psychiatrist Dr, William Petrie for an evaluation of her cognitive impairment after the surgery. Decedent's ability to drive a car

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was in question and her primary care physician asked Dr. Petrie to evaluate her and treat her cognitive defects. Decedent was continually treated by Dr. Petrie for her decline in cognitive functioning. She was accompanied on many visits by her son Renaldo Pruitt (hereinafter known as "Respondent"). On September 30, 2015, Respondent claimed to Dr. Petrie that the Decedent was being irresponsible with money and giving it away to family members. The Decedent's last appointment with Dr. Petrie was on July 26, 2017. She was confused with memory loss and the Respondent was with her. The Respondent claimed that the Decedent was removing large amounts of money from her bank two to three times a week. The Decedent received no further treatment from Dr. Petrie.

On June 23, 2016 the Decedent signed a Quitclaim Deed transferring her interests in the improved real property located at 747 Lynwood Avenue in Nashville to Pruitt & Associates. Pruitt & Associates is a business owned by the Respondent. The Decedent executed three Durable Powers of Attorney, each naming the Respondent as her attorney-in-fact. These Durable Powers of Attorney were executed on November 14, 2014, October 1, 2018 and September 23, 2019. All three Durable Powers of Attorney were drafted by Attorney Robert J. Notestine, III. The Respondent listed his name on the Decedent's Regions Bank accounts as "Renaldo M. Pruitt POA." Respondent wrote checks out of the Decedent's bank account where he would sign both his name and her name on the checks. The Respondent also made cash withdrawals from the account and paid some of his own bills from the account.

On January 26, 2019 the Decedent signed two trust documents placing her real estate that she owned at the time into two revocable trusts. Each trust document was nine pages in length. The Decedent signed six Quitclaim Deeds transferring the titles of the real estate to herself as Trustee for these trusts. The first trust (hereinafter known as "Trust One") named the Respondent as Successor Trustee and the Respondent and Marilyn Pruitt (hereinafter known as "Petitioner") as beneficiaries. The second trust (hereinafter known as "Trust Two") named the Respondent as Successor Trustee and sole

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beneficiary. Trust One contained three properties: 1813 Hillside Avenue in Nashville, 1213 Ireland Street in Nashville and 607 N. 9th Street in Nashville. Trust two contained three properties: 1715 16th Avenue N. in Nashville, 0 Walsh Street, Lots 25 and 26 in Nashville and 2715 Batavia Street in Nashville.

Decedent died intestate on September 19, 2020. Petitioner filed a Petition to Administer the Estate of Mary N. Johnson Pruitt on November 6, 2020. An Amended Petition was filed on December 1, 2020. Respondent objected to every action taken and filed by the Estate, including the opening of the estate by the Petitioner. On May 26, 2021 Petitioner was appointed as Personal Representative of the Estate and Letters of Administration were issued.[1]

On April 30, 2021 Petitioner filed a Petition to Include Real Estate in the Estate and Invalidate Transfers of Real Estate. The Petition alleged that the improved real property at 747 Lynwood Avenue conveyed to Respondent and the real estate conveyed to Trust One and Trust Two through the Trust Agreements were wrongfully transferred. An Amended Petition was filed on October 22, 2021 with a Motion to Amend by the Petitioner and entered by Agreed Order on November 5, 2021.

The Amended Petition further alleged that the Respondent misappropriated the Decedent's money and obtained that money and real estate through undue influence. Respondent filed an Answer on December 6, 2021 denying all allegations asserted in the Amended Petition, stating that the Decedent sufficiently understood her actions by entering into the Powers of Attorney and Trust Agreements and that these actions were not done as the result of undue influence by the Respondent. For Case Management purposes, this case was transferred by agreement from Seventh Circuit Court to Second Circuit Court on March 27, 2023. Trial was scheduled for May 18, 2023 but continued to June 6, 2023, July 31, 2023 and ultimately August 23, 2023.

[1] Since the Decedent died intestate, the Estate would pass according to Tennessee's Laws of Intestate Succession to Petitioner Marilyn Pruitt and Respondent Renaldo Pruitt.

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At trial the Court first heard the Deposition of Dr. William Petrie, read into the record by counsel for the Petitioner and Tammy Sharp. The testimony of Dr. Petrie consisted of his background as a Psychiatrist, expertise in diagnosing and treating patients with impaired cognitive disorders, and his experience with the Decedent. Dr. Petrie testified that he first saw the Decedent in March 2014. She was referred to him by her Primary Care Physician out of concern for some of her cognitive functioning. Dr. Petrie diagnosed the Decedent initially with a mild cognitive impairment. Dr. Petrie stated he gave that diagnosis "because I didn't know her as well, and I wanted to get – I thought she was going to need to be seen again. So she would be at high risk for increasing memory cognitive loss." (Deposition of William Petrie, M.D. Pg. 15).

Dr. Petrie testified that he met with the Decedent again in September 2015. The Respondent accompanied her on this visit and provided some insight as to how the Respondent was doing at that time. Dr. Petrie stated:

> Family members, including Renaldo, said that they were concerned because she was removing large sums of money from the bank with little or no financial judgment. She had been doing – she would often do this two or three times a week, and the family couldn't – couldn't predict when she would do it. They were concerned about this. She would give money to her grandson on a regular basis, which – and the family felt that she was unreliable with that, and the grandson was unreliable.

(Deposition of William Petrie, M.D. Pg. 16). Dr. Petrie stated that he believed that the Decedent's memory loss occurred probably in 2013. He further stated that the Respondent was aware of the Decedent's financial difficulties and aware of her mental impairments.

Dr. Petrie's next visit with the Decedent was in March 2016. Once again she was accompanied by the Respondent for this visit. Dr. Petrie testified that the Decedent had progressive memory loss with increasing loss of awareness and denial of any deficits. Dr. Petrie further stated that:

> The family reported that they had been frustrated, and I tried to explain to them, as I did to you, that she had little awareness of the nature of her forgetfulness/ the other thing, the family thinks if they would try harder, they would be okay, and family members always underestimate the degree of impairment. Because these are people you love, they're family members, you don't want them to be sick, and every once in

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> a while, they'll make a coherent statement, "They're okay. Mom's okay," but the fact is, you know, she was worse, and the family did not understand probably. I mean, they were beginning to understand.
>
> And she was making poor financial judgments. We've attempted to control these with some success, I said, because we had talked to the family about being careful with this. She can no longer manage the household, she could not make household decisions, and became more dependent on daughter and son. Feels irritable and angry because of that, Mrs. Pruitt had been a very independent and articulate and bright person before. And we talked about that. So that was pretty much that visit.

(Deposition of William Petrie, M.D. Pgs. 20-21).

Dr. Petrie testified that his next visit with the Decedent was in May 2016 when she had a lot of medical problems including swelling in her left arm and vascular impairments in her legs. Dr. Petrie believed this made her illness move faster. The Decedent was given medicine to help with her memory loss, but she was unable to take it due to nausea. According to Dr. Petrie the Decedent was stable at home but very repetitive in asking the same questions repeatedly.

The next visit with the Decedent occurred in September 2016. Dr. Petrie stated that the Decedent was still able to manage being at home but did believe that someone came into her house and stole her purse, which did not happen. Dr. Petrie stated that her mood was stable but that the dementia was "clearly worse." (Deposition of William Petrie, M.D. Pg. 23). The Decedent was accompanied on this visit by the Respondent. Dr. Petrie further testified that at this visit "we see a picture of a slowly progressing disorder." (Deposition of William Petrie, M.D. Pg. 23). Dr. Petrie met with the Decedent again in January 2017. She was accompanied this time by her granddaughter. Dr. Petrie stated that her paranoia had improved but that she was disoriented to the day. She was able to identify the month but could not identify the day of the week. She was still able to live at home at that time but was clearly confused.

Dr. Petrie was asked about the Decedent's cognitive impairments on June 23, 2016, when the improved real property at 747 Lynwood Avenue was transferred to the Respondent's business, and January 2019, when the Decedent executed the six Quitclaim Deeds to Trust One and Trust Two. Dr.

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Petrie stated that he believed the Decedent would not have been capable of transferring the Lynwood Avenue property at that time, nor would she have been able to execute the six Quitclaim Deeds in 2019 due to her mental impairments. Dr. Petrie was further questioned about if he believed the Respondent would have had knowledge of the Decedent's mental impairments on these dates and overall. The questioning went as follows:

> Q: In your opinion, did Renaldo Pruitt know and understand that there was a substantial cognitive impairment?
>
> A: Yeah, because he told me. I mean, this is this bright woman. Mrs. Pruitt was bright. She knows what a quitclaim deed is. So she was smart. It's not that she was uneducated. She was college educated, so she was bright and aware, but at this point, I think you would say that there was, yeah, a significant impairment that would have impaired her financial capacity.
>
> Q: So would you say that she would be unable to act in a reasonable manner and understand what the transaction was?
>
> A: She would not have been able to understand the implications of what she was doing. She could have bought a pizza, but if you're talking about making financial decisions involving big sums of money, I wouldn't – I don't think she would be capable.
>
> Q: In fact, is there any indication that she even knew she was signing that document?
>
> A: No. well, she would have forgotten it. I mean, she forgot that she had cancer. Here she's had surgery, chemotherapy, and she forgot it. So she would have likely forgotten what she had signed and probably wouldn't have understood it, you know, subsequently.
>
> Q: Would a normal person have realized that Ms. Pruitt was impaired in 2016 when she signed this document?
>
> A: I think – yeah, I think if they talked with her for more than a minute or so, I think it would have been apparent. I mean, she could do – she could say hello, and she was still riding her exercise bike, so there's some things she could do. But in terms of making important decisions, I think it was a problem.
>
> Q: Okay. So in your opinion, Renaldo Pruitt would understand –
>
> A: He would have understood, yeah, because he had a lot of contact with her.
>
> Q: And he even brought her in?

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A: Yes.

Q: And you told him about her medical condition?

A: He told me. He told me that she was making bad financial decisions.

(Deposition of William Petrie, M.D. Pgs. 27-29). The Court found the deposition testimony of Dr. Petrie to be very compelling. This testimony gave a great insight into the mental abilities of the Decedent during the time periods in question.

The Court next heard the testimony of Tammy Sharp. Tammy Sharp worked for the Rutherford County School Board overseeing the budget and conducting financial analysis. Ms. Sharp also has twenty years of banking experience. The Court qualified her as a financial expert for reviewing financial records and bookkeeping purposes. This qualification was objected to by the Respondent, questioning her background as it relates to her two years of college. This Court found that her experience in banking qualified her to analyze financial records and would consider her education when reviewing the weight of the evidence.

Ms. Sharp reviewed the credit report of the Respondent, tax records of the Respondent, the mortgage placed on the improved real property at 747 Lynwood Avenue in Nashville, Tennessee and the financial records of the Decedent. Upon review of the Respondent's credit report and tax reports, Ms. Sharp noticed that there was a discrepancy as it pertains to the improved real property at 747 Lynwood Avenue in Nashville, Tennessee. The Lynwood Avenue property had a mortgage placed on it by the Respondent through "Mr. Cooper" with a balance owed as of June 1, 2023 of one hundred ten thousand five hundred sixteen dollars and forty-two cents ($110,516.42). Ms. Sharp believed that the Respondent was renting the property and collecting more in rent than what was actually reported by the Respondent on his Schedule E Tax Form. Ms. Sharp stated that the Respondent collected a minimum of eighty-four thousand dollars ($84,000.00) in rent since 2018.

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Ms. Sharp also reviewed the financial records of the Decedent; specifically, her Regions Bank account. The Decedent wrote several checks in 2015 and 2016 that stated the wrong date and had her signature on different parts of the checks. The dates of these checks would reflect 2005 or 2006 instead of 2015 or 2016. Around these same dates Ms. Sharp also noted that there were two checks written from the Decedent's account with different handwriting and signatures and the correct dates. Ms. Sharp testified that several cash withdrawals were made from the Decedent's Regions Bank Account along with recurring PayPal transactions and transactions to a "Liquidglitz." Ms. Sharp stated that she was unsure of those transactions. Payments were also being made to Nationwide Insurance during this time but according to Ms. Sharp, the Decedent was not driving at that time.

When questioned about who would have the ability to stop these transactions after the death of the Decedent, Ms. Sharp stated that only the Respondent would have that ability after the Decedent passed. Ms. Sharp stated that the charges on the account stopped after the Administrator of the Estate was appointed in May 2021. Ms. Sharp further testified that anyone with a Power of Attorney would be able to get a debit card for the Decedent's account with their own PIN. The Court found Ms. Sharp to be very knowledgeable when it came to analyzing financial records and found the information she provided to be compelling and clarifying to the issues before the Court.

The Court then heard the testimony of the Petitioner, Ms. Marilyn Pruitt. The Petitioner is the daughter of the Decedent and was appointed Administrator of the Estate by Judge Kennedy in May 2021. The Petitioner is the half-sister of the Respondent; they share the same mother but have different fathers. Petitioner testified that she had an ok relationship with the Decedent as adults. She stated they had a mother/daughter relationship in that they travelled together and politicked together. Petitioner stated that the Decedent was a good but firm mother and that she wasn't spoiled.

Petitioner further testified that she did not have a good relationship with the Respondent. She stated that she was threatened on several occasions by the Respondent including once with a gun

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approximately ten years ago. She further stated that she was scared of the Respondent and was well aware that he was a convicted felon. She even stated at one point during her testimony "I don't mess with Renaldo." The Court does note that the Petitioner testified after being reminded by counsel that Judge Kennedy stated that convicted felons could not be an administrator or a trustee.

Petitioner stated that she has been locked out of the real property at 1813-B Hillside since 2014. The property at 1813 Hillside is a duplex. Petitioner further stated that she would go to the Hillside property when the Decedent was still alive and nobody else was there. She would have to knock on the door and her mother would let her in the house. Petitioner testified that she cooked, cleaned, brought occupational therapists to the house for her mother and "took care of her mother." Petitioner's daughter, Charmaine Blair, would stay with the Decedent during the day. Petitioner stated that when the Respondent "popped up" then Charmaine gradually started disappearing and eventually "stopped coming around."

Petitioner stated that she noticed her mother getting weaker but that she "had a great appetite" when the Petitioner was cooking. Petitioner further stated that she was told not to go over to her mother's house at night; the Decedent was left alone in the house at night. Petitioner requested that the Court enjoin the Respondent from going to the Hillside property, to stop removing valuables from the property and to turn over the keys to the Hillside property during the Administration of the Decedent's Estate. Petitioner testified that the Respondent removed fur coats, diamonds, silver, furniture and clothing from the property at 1813-B Hillside. Those requests were granted by this Court during the hearing on August 23, 2023.

According to the Petitioner, she paid the property taxes on six of the Decedent's properties in 2020 and three of the properties in 2021. Petitioner further testified that she did not pay any properties in 2022 and that there is an outstanding property tax balance owed of fourteen thousand dollars ($14,000.00). Petitioner received a piece of improved real property located at 1424 14th Avenue N. in

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Nashville from the Decedent around her birthday in 2013. Petitioner stated that her mother paid the insurance at that time. Once the property was transferred to the Petitioner, Petitioner paid the property taxes on the real property until she sold it in 2017. Petitioner had a property manager that oversaw the property at 1424 14th Avenue N. Petitioner sold the property in 2017 due to drug use in the area, cops in the area and because her tenants did not want to pay rent. As stated by the Petitioner during trial, "it was time to sell." Petitioner further testified that the Decedent was not upset with her for selling the property.

Petitioner was fired from her job with the State of Tennessee. She received unemployment benefits after being fired so she was fired without fault by the State of Tennessee. Petitioner testified that her mother helped her in an emergency situation because she was fired by the State. Prior to being fired Petitioner bought a new car and received help from her mother after being fired. Petitioner testified that her mother did not help her get the job with the State of Tennessee. On redirect, Petitioner stated that she believes her mother helped the Respondent in 2009.

Petitioner testified that Respondent owns several properties (913 Elvira Avenue, 333 Gray Street, 1108 Argyle Avenue, 3231 Panorama Drive and 747 Lynnwood Avenue). Respondent also sold a property at 557 Phipps Drive for $265,000.00[2] in 2010. Petitioner is asking this Court to invalidate Trust One and Trust Two, transfer the properties in Trust One and Trust Two back to the Estate of Mary N. Johnson Pruitt, transfer the improved real property at 747 Lynwood Avenue back to the Estate of Mary N. Johnson Pruitt, find that the Respondent is liable to the Estate for misappropriations totaling $105,869.90, that the Respondent is liable for the lien placed against the Estate on the 747 Lynwood Avenue property and that the Respondent is responsible for the mediator fees of Attorney Richard

[2] Petitioner testified that she believes Respondent has the funds to reimburse the Estate if found to be liable. She testified that Respondent told people at the funeral that he "was a millionaire."

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Hedgepath.[3] The Court found Petitioner's testimony to be compelling and insightful as to the relationships between her and the Decedent and between her and the Respondent.

The Court next heard from the Respondent, Mr. Renaldo Pruitt. During the initial testimony of the Respondent, he agreed to supplement his discovery responses.[4] Respondent stated that his business address is 913 Elvira Avenue[5] and he would occasionally stay there. His primary residential address is 1813-B Hillside Drive. Respondent testified that he was the original owner of the property at 747 Lynwood Avenue. He needed a startup with money for a business loan. The Decedent co-signed on a loan for $50,000.00 and he used the 747 Lynwood Avenue property as collateral. That property was transferred from the Respondent to the Decedent at that time. Respondent further testified that he paid back the loan to the Decedent through "things he was doing for her" and "cash here and there." Respondent stated that he did not keep records and that he "made a mistake."[6]

Respondent took out a mortgage through "Mr. Cooper" on the improved real property located at 747 Lynwood Avenue in Nashville, Tennessee. Respondent stated that there is also a lien of $6,000.00 or $7,000.00 on the Lynwood Avenue property. Respondent testified that he paid the mortgage payments out of his mother's Regions Bank account. He stated that this "was her way of paying back for things he was doing for her." Respondent claimed that she signed the checks that are in dispute at trial. He stated "you just had to be there" and "a lot of times she knew exactly what she was doing." When asked about Dr. Petrie's testimony about the Respondent sharing his concerns about the Decedent spending money, the Respondent stated: "I dispute" and "the Dr. was wrong."

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[3] Respondent agreed to pay the mediation fees of Attorney Richard Hedgepath but failed to appear at two scheduled mediation appointments with Mr. Hedgepath.
[4] Respondent stated that he "would have to go through his records."
[5] Respondent's Tax Return reflects his address as 913 Elvira Avenue.
[6] When asked about this during discovery through Interrogatories, Respondent never mentioned any of this in the Interrogatories. At trial Respondent stated that this was "all new to me."

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Respondent testified that he did not know what Liquidglitz was and blamed the Petitioner's daughter Charmaine for that charge. Respondent signed for $6,000.00 in May 2019 claiming it was to pay back part of a business loan. Respondent did get money out of the Decedent's account after she died stating that he made a mistake.[7] Respondent stated that he has two mortgages through "Mr. Cooper" on 747 Lynwood Avenue and 913 Elvira Avenue.[8]

Respondent testified that he lived at 1813-B Hillside Drive with the Decedent but would stay with his "lady friends" often. He testified that he would do work on the properties in Trust One and Trust Two. That work consisted of cutting grass, remodeling houses, taking care of tenants and collecting rent. He further testified that some of the properties were vacant lots. Respondent stated that he is a general contractor with an expired contractor's license. He further testified that he and his mother were going to build a house on Batavia Avenue with the Respondent as the General Contractor. He stated he got the foundation poured and the plumbing to street when the housing market declined. After that his mother ran for re-election as a State Legislator and then got sick with cancer.

Respondent testified that the amount he removed from the Decedent's account ($105,000.00) as Power of Attorney was for reimbursements for labor, materials and other expenses incurred in maintaining the four rental properties and for cutting grass and taking care of the vacant lots he was overseeing for the Decedent. He further testified that he did not charge any fees for these services. Respondent felt that he should be compensated for the work he performed on behalf of the Decedent. At trial it was stipulated that the Respondent was a convicted felon. He was convicted of mail fraud forty years ago, serving five years in prison and three years of probation. Judge Kennedy stated in a previous hearing that a felon could not be a trustee.

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[7] At this time Petitioner, through counsel, made an oral motion to the Court to amend the pleadings to allow for more research into other potential alleged misappropriations by the Respondent. That request was denied by the Court at trial on August 23, 2023.

[8] The property at 913 Elvira Avenue is not at issue however, the Court noted at trial that the Respondent would be liable for any mortgage payments that were made from the Decedent's Regions Bank account.

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Respondent further testified that he could not say if he could consider someone paying a mortgage out of someone else's account to be theft. He stated the Decedent was "stubborn but forgetful but knew what she was doing." He further stated that to his knowledge he did not know if the Decedent contacted an attorney to execute a Power of Attorney. Respondent testified that the Decedent did ask for a Trust.[9] He stated that he was with her and "maybe Charmaine was there" when the Trust was requested. The Respondent could not recall the year that this occurred. The testimony of the Respondent was compelling and insightful. While he admitted to making some mistakes and agreeing to supplement his discovery, his testimony did raise some concerns of this Court as to his actions towards the Decedent.

The Court next heard from William Russell Wallace, III. He is the grandson of the Decedent and lives at 1813 Hillside "in the back." The witness stated that he was "more of a son than him" acknowledging the Respondent while making this comment. He further stated that he "never had a relationship with Renaldo" and mentioned that he could not respect someone that pulled a gun on his mother. Mr. Wallace stated that the Decedent was very intelligent. He was unaware of if the Decedent drafted the quitclaim deed in 2009 conveying the 747 Lynwood Avenue property as he was in high school at that time.

The witness further testified that the Decedent became more confused after she got sick with cancer.[10] He stated that Charmaine would stay with his grandmother during the day in 2014 but would have to go home to her husband at night. He would occasionally stay the night with the Decedent if he wasn't working his 3rd shift job.[11] When asked about if the Respondent was ever present, the witness

[9] Respondent stated that Decedent "had been talking about this for years."
[10] The witness testified that the Decedent did not know who people were and would call them different names.
[11] The witness worked as a shift lead on 2nd shift at O'Reilly Auto Parts and worked as a shift lead on 3rd shift at Exxon.

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stated that the Respondent would "come around when he needed something." He observed that the Decedent's demeanor would change when the Respondent was around her.

Mr. Wallace further testified that any time the Respondent would ask the Decedent for money and she would say no that he would become angry, have an attitude and yell at the Decedent. He further stated that the Respondent treated the Decedent like a "personal ATM" and that he heard from the Decedent that the Respondent "was good for asking for money", "don't pay it back" and "just comes when he wants something."

The witness testified that he noticed the Decedent was getting better physically but not mentally in 2015. The Decedent could not be trusted to write checks during this time. He testified that Charmaine would write the checks and would sometimes sign the Decedent's name. The witness also acknowledged that the Decedent "wasn't in her right mind" because of how the Decedent would write her name all over the checks and use different signatures.

Mr. Wallace did not know anything about the Respondent making his mortgage payments out of the Decedent's account until his mom was named Administrator and hired counsel for representation. He was unaware of anytime that the Decedent stated "I want to pay his mortgages" with respect to the Respondent's mortgages through "Mr. Cooper." He never personally heard those comments either. He further stated that the Respondent never paid back any money loaned to him and that the Decedent said "he was a user" referring to the Respondent.

The witness did not have any knowledge of any Trusts or any property that was signed over to the Respondent. When asked about who would cook for the Decedent, the witness stated that he or his mother, the Petitioner, would be the ones to cook for her.[12] Mr. Wallace testified that he received a car

[12] The witness testified that if the Respondent ever provided food for the Decedent it would be some "greasy food from a soul food place."

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from the Decedent as a gift for graduating high school.[13] The Decedent paid the insurance on the car; the witness was 18 or 19 years-old at the time. He stated that the Decedent was very good to him. The witness could not recall any gifts being given to Charmaine and did state that Charmaine took money from the account. He also stated that Charmaine wrote a check out of the account to him for car insurance in 2015. The Court found the testimony of Mr. Wallace to be very insightful. He helped further paint the picture of the family dynamics as they relate to the Respondent and his actions with the Decedent and the Petitioner.

The final witness presented to the Court was Attorney Robert J. Notestine, III. Attorney Notestine has been licensed to practice law since 1986. He was introduced to the Decedent in the 1990s by the Respondent to assist with some landlord/tenant issues. Attorney Notestine drafted three Powers of Attorney naming the Respondent as the Attorney in Fact of the Decedent. He also drafted Trust One and Trust Two. he met with the Decedent in 2018 to discuss Estate Planning. He believed the Decedent had the intent to avoid Probate through a Trust. This resulted in Trust One and Trust Two being created.

Trust One consisted of the Decedent as Trustor and Trustee with the Respondent as the Successor Trustee. The Beneficiaries of Trust One were the Petitioner and the Respondent.[14] Trust Two consisted of the Decedent as Trustor and Trustee with the Respondent as Successor Trustee and Sole Beneficiary. Objections were raised at this point of the witness' testimony citing the Dead Man Statute, Tenn. Code Ann. § 24-1-203, with the theory that the witness would benefit from reciting the intent and statements of the Decedent. Attorney Notestine testified that he was under the impression that the Petitioner already received properties as intended by the Decedent and the Decedent wanted the Respondent to get his share and the remainder be split between the Petitioner and the Respondent. He

[13] On re-direct the witness stated that the Decedent bought nice cars and motorcycles for the Respondent when he was around the same age as the witness.

[14] Attorney Notestine testified that he recalled someone advising him that the Petitioner refused to sign as Beneficiary.

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further testified that he came up with the idea of the Trusts because the Decedent was very concerned with assets getting tied up and fought over in Probate.

Attorney Notestine could not recall drafting any of the three Powers of Attorney. He stated that it is possible that someone called his legal assistant stating that "they lost the Power of Attorney." Trust One and Trust Two did not contain Exhibits to the Trusts that list the real property included in each Trust. Mr. Notestine testified that it is commonplace for "real estate people" to change the contents of the Trusts by modifying the attached Exhibits to the Trusts.[15] When questioned by the Court if it was possible for either Trust One or Trust Two to be modified through a legal assistant, the witness denied that as a possibility because he signed as a witness.[16]

Attorney Notestine met the Respondent through some construction and real estate matters. The Respondent was helping the Decedent with some evictions involving her rental properties. He stated he only talked to the Decedent "when she needed something." He further testified that the Respondent brought the Decedent for her two visits. He stated that the Decedent "understood that this document would pass real estate to her son and some to her daughter to avoid Probate." He was of the opinion that she seemed to understand and was unaware of any capacity issues.

When questioned as to if there were any red flags related to the Decedent executing these documents, Attorney Notestine testified that the only issue he found was the issue of the Petitioner already receiving some of the properties and having sold them. He believed the Decedent was upset over this and that the Decedent and Petitioner had a strained relationship at the time. Attorney Notestine stated that he did not recall ever meeting the Petitioner but there were some discussions of her coming to sign the Trust documents, but she never did that.

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[15] Attorney Notestine when questioned by the Court stated it is not his practice to have people sign each page of the Trust or the Exhibits.

[16] Attorney Notestine did recall that he did not sign one of the Trusts as a witness, that a different witness signed a Trust and he signed a document "in the wrong place." He further testified that he signed anywhere he saw the Decedent sign on the document.

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Attorney Notestine was unaware that the Decedent's driving was taken away from her by her doctor until he learned of this during trial. He was unaware that the Respondent was a convicted felon at the time of drafting. He testified that had he known this fact in advance then he would have had some concerns drafting these Trusts. He was unaware that the Decedent was diagnosed with dementia in 2014 when drafting these documents.

The witness stated that it was negligence on his part to sign as a witness acknowledging the signature of the Petitioner who never signed the Trust One. Attorney Notestine further testified that he had no knowledge of the medical history of the Decedent but that she "seemed normal." He also did not have knowledge of the criminal history of the Respondent. He further testified that knowing these facts at the time "would give him pause now." Per the witness, the Decedent did not read either Trust One or Trust Two; each document consisting of nine pages. He went over the contents with the Decedent, but she never read them word for word.

Attorney Notestine stated that he had no memory of 2016 because it was a "brutal time for him."[17] He couldn't say whether or not the Decedent had symptoms or signs of dementia, but he didn't think so at the time. He could not recall any questions being asked by the Decedent when discussing these Trust documents. He was unaware of how these documents were paid for by the Decedent and was unaware that the Decedent was not allowed to use her checkbook at the time. Had he known that at the time he would have had some concerns.

Attorney Notestine affirmed the Respondent's comments that he was present at all meetings with the Decedent. He testified that he asked the Decedent what she wanted to do and according to the witness she stated she wanted the Respondent in the room. Had the witness known of the dementia diagnosis in 2014 he would not have drafted any of these documents for the Decedent. When asked if

[17] The witness testified that his first wife was dying of cancer in 2016 and he "doesn't remember much about 2016."

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the Respondent was the one facilitating these appointments for the Decedent, the witness stated that "he could've contacted his assistant." The witness finally stated that if he had it to do over again knowing the dementia diagnosis, he would not have drafted the Quitclaim Deeds, Powers of Attorney or Trust One and Trust Two for the Decedent. The Court found Attorney Notestine's testimony to be self-serving testimony; specifically, as to the three Powers of Attorney drafted and Trust One and Trust Two.

Conclusions of Law

I. Mental Capacity of the Decedent to Execute Powers of Attorney and Trust Documents

"The mental capacity required to execute a general durable power of attorney, revocable living trust and warranty deed are essentially the same and equate to the mental capacity required to enter into a contract." *In re Amster,* 2001 WL 1285904, at *7 (Tenn. Ct. App., Oct. 25, 2001). "The degree of mental capacity required to enter into a contract is a question of law." *Nashville, Chattanooga & St. Louis R.R. v. Brundige,* 114 Tenn. 31, 34, 84 S.W. 805, 805 (1905). "All that is required is that the contracting party reasonably knew and understood the nature, extent, character, and effect of the transaction." *Mays v. Prewett,* 98 Tenn. 474, 478, 40 S.W. 483, 484-85 (1897); *In re Estate of Holmes,* No. 02A01-9707-PB-00158, 1998 WL 134333, at *3 (Tenn. Ct. App. Mar. 26, 1998)(No Tenn. R. App. P. 11 application filed); *Roberts v. Roberts,* 827 S.W.2d 788, 791-92 (Tenn. Ct. App. 1991). "Thus, persons will be excused from their contractual obligations on the ground of incompetency only when (1) they are unable to understand in a reasonable manner the nature and consequences of the transaction or (2) when they are unable to act in a reasonable manner in relation to the transaction, and the other party has reason to know of their condition." Restatement (Second) of Contracts § 15(1)(1981).

"All adults are presumed to be competent enough to enter into contracts." *Uckele v. Jewett,* 642 A.2d 119, 122 (D.C. 1994); *Foltz v. Wert,* 103 Ind. 404, 2 N.E. 950, 953 (Ind. 1885). "Accordingly, persons seeking to invalidate a contract for mental incapacity have the burden of proving that one or both of the contracting parties were mentally incompetent when the contract was formed." *Knight v. Lancaster,* 988

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S.W.2d 172, 177-78 (Tenn. Ct. App. 1998); *Williamson v. Upchurch,* 768 S.W.2d 265, 269 (Tenn. Ct. App. 1988).

"It is not enough to prove that a person was depressed or had senile dementia. To prove mental incapacity, the person with the burden of proof must establish, in light of all the surrounding facts and circumstances, that the cognitive impairment or disease rendered the contracting party incompetent to engage in the transaction at issue according to the standards set forth above." *Butler v. Harrison,* 578 A.2d 1098, 1101 (D.C. 1990); *Weakley v. Weakley,* 355 Mo. 882, 198 S.W.2d 699, 702-03 (Mo. 1947); *see also Woods v. Mutual of Omaha,* No. 02A01-9510-CV-00218, 1996 WL 578489, at *3 (Tenn. Ct. App., Oct. 9, 1996), *perm. app. denied* (Tenn. 1997)(rejecting an affidavit that did not address the party's competency regarding the specific contract at issue).

Petitioner submits that the Decedent was mentally incapacitated at the time the three Powers of Attorney and Trust One and Trust Two were executed. The Decedent was diagnosed by Dr. Petrie with a mild cognitive impairment in 2014 Dr. Petrie stated he gave that diagnosis "because I didn't know her as well, and I wanted to get – I thought she was going to need to be seen again. So she would be at high risk for increasing memory cognitive loss." (Deposition of William Petrie, M.D. Pg. 15). Dr. Petrie painted a very vivid and elaborate picture through his testimony and expertise as to the deteriorating mental capacity of the Decedent through the latter years of her life. It is clear to this Court that the Decedent had mental capacity issues.

The Respondent submits that the question of the Decedent's mental capacity must focus on the Decedent's mental condition at the time the Powers of Attorney and Trust One and Trust Two were executed. Respondent relies on *Keasler v. Estate of Keasler,* 973 S.W.2d 213 (Tenn. Ct. App. 1997) and *American Trust & Banking Co. v. Williams,* 225 S.W.2d 79 (Tenn. Ct. App. 1948) in support of his assertion that the mental capacity must be focused on the time the Powers of Attorney and Trusts One and Two were executed. In *American Trust & Banking Co.,* the Court stated:

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> In determining testamentary capacity, the mental condition of the testator at the very time of executing the will is the only point of inquiry; but evidence of mental condition both before and after making the will, if not too remote in point of time, may be received as bearing upon that question. In so far as it has a reasonable tendency to bear upon the mental capacity of the testator when the will was executed, evidence of his physical condition both before and after the date of the will is also admissible. But, apart from its effect upon the mind, the physical condition of the testator has no bearing on the issue.

American Trust & Banking Co. v. Williams, 225 S.W.2d 79, 84 (Tenn. Ct. App. 1948).

Dr. Petrie diagnosed the Decedent with a mild cognitive impairment in 2014. Dr. Petrie last met with the Respondent in 2017. Dr. Petrie provided great insight into the Decedent's mental condition around the time the improved real property at 747 Lynwood Avenue was transferred and the Powers of Attorney and Trusts One and Two were executed. He further spoke to the knowledge and awareness of the Respondent to the Decedent's mental condition at that time stating:

> Q: In your opinion, did Renaldo Pruitt know and understand that there was a substantial cognitive impairment?
>
> A: Yeah, because he told me. I mean, this is this bright woman. Mrs. Pruitt was bright. She knows what a quitclaim deed is. So she was smart. It's not that she was uneducated. She was college educated, so she was bright and aware, but at this point, I think you would say that there was, yeah, a significant impairment that would have impaired her financial capacity.
>
> Q: So would you say that she would be unable to act in a reasonable manner and understand what the transaction was?
>
> A: She would not have been able to understand the implications of what she was doing. She could have bought a pizza, but if you're talking about making financial decisions involving big sums of money, I wouldn't – I don't think she would be capable.
>
> Q: In fact, is there any indication that she even knew she was signing that document?
>
> A: No. well, she would have forgotten it. I mean, she forgot that she had cancer. Here she's had surgery, chemotherapy, and she forgot it. So she would have likely forgotten what she had signed and probably wouldn't have understood it, you know, subsequently.
>
> Q: Would a normal person have realized that Ms. Pruitt was impaired in 2016 when she signed this document?

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A: I think – yeah, I think if they talked with her for more than a minute or so, I think it would have been apparent. I mean, she could do – she could say hello, and she was still riding her exercise bike, so there's some things she could do. But in terms of making important decisions, I think it was a problem.

Q: Okay. So in your opinion, Renaldo Pruitt would understand –

A: He would have understood, yeah, because he had a lot of contact with her.

Q: And he even brought her in?

A: Yes.

Q: And you told him about her medical condition?

A: He told me. He told me that she was making bad financial decisions.

(Deposition of William Petrie, M.D. Pgs. 27-29).

Respondent relies on the testimony of Attorney Notestine to give his opinion as to the mental condition of the Decedent. Attorney Notestine testified that the Decedent "seemed normal." "A lay witness's opinion is admissible on the issue of testamentary capacity if "based on details of conversations, appearances, conduct or other particular facts from which the [testator's] state of mind may be judged."" *In re Estate of Smallman,* 398 S.W.3d 134, 160 (Tenn. 2013)(quoting *In re Estate of Elam,* 738 S.W.2d 169, 172 (Tenn. 1987)).

While Attorney Notestine may give his opinion as a lay person as to the mental capacity of the Decedent during the times he met with her, Attorney Notestine also admitted that he does not recall much of 2016 because it was a "brutal time for him" due to his first wife dying of cancer. Attorney Notestine was also unaware of the medical diagnosis of the Decedent at the time these documents were drafted and executed and knowing that now would "give him pause." When weighing the medical proof offered by the Petitioner and the Respondent, the Court is of the opinion that the Decedent would not have the mental capacity to draft and execute these Powers of Attorney or Trusts One and Two.

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II. Undue Influence by the Respondent

"The doctrine of undue influence is applicable only when there is a confidential relationship with the testator whereby one party is able to dominate and exercise undue influence over the testator." *In re Estate of Brevard,* 213 S.W.3d 298, 302 (Tenn. Ct. App. 2006)(quoting *Keasler v. Estate of Keasler,* 973 S.W.2d 213, 219 (Tenn. Ct. App. 1997); *Simmons v. Foster,* 622 S.W.2d 838, 840 (Tenn. Ct. App. 1981)). "A confidential relationship is "that relationship where confidence is placed by one in the other and the recipient of that confidence is the dominant personality, with the ability, because of that confidence, to influence and exercise dominion over the weaker or dominated party."" *Id.* (quoting *Iacometti v. Frassinelli,* 494 S.W.2d 496, 499 (Tenn. Ct. App. 1973)(quoted in *Kelley v. Johns,* 96 S.W.3d at 197).

"There are two sources of such confidential relationships: (1) "legal confidential relationships" and (2) "family and other relationships." *In re Estate of Brevard,* 213 S.W.3d 298, 302 (Tenn. Ct. App. 2006)(quoting *Matlock,* 902 S.W.2d at 385-86)). ""Family and other relationships" are not confidential *per se;* therefore, the contestants must prove the elements of domination and control in order to establish the existence of a confidential relationship." *In re Estate of Brevard,* 213 S.W.3d 298, 303 (Tenn. Ct. App. 2006)(quoting *Matlock,* 902 S.W.2d at 385-86)). "The issue of whether a confidential relationship arose from a non-fiduciary relationship is an issue of fact." *Id.* "Proof of "family and other relationships," alone, provides no support to an undue influence claim." *In re Estate of Brevard,* 213 S.W.3d 298, 303 (Tenn. Ct. App. 2006)(quoting *Kelley,* 96 S.W.3d at 197). "However, proof of such relationships coupled with proof of domination and control, does establish the existence of a confidential relationship, but does not make out a *prima facie* claim of undue influence unless an additional suspicious circumstance exists." *Id.*

"It is immaterial whether undue influence is exercised directly or indirectly." *Estate of Glasgow v. Whittum,* 106 S.W.3d 25, 31 (Tenn. Ct. App. 2002)(quoting *Brown v. Cobb,* 53 N.M. 169, 172, 204 P.2d 264, 266 (1949). "In determining whether undue influence is present, a central focus is on the means

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used and the effect upon the donor." *Id.* (quoting *McElhinney v. Kelly,* 67 N.M. 399, 404, 356 P.2d 113, 116 (1960)("It is not the nature and extent of the influence, but its effect upon the mind of the testator which determines whether it is undue influence.")(quoting 1 William J. Bowe & Douglas H. Parker, *Page on Wills* § 15.6 at 724); *In re Estate of Gonzales,* 108 N.M. at 586, 775 P.2d at 1303 (ultimate issue is effect of influence on donor). "The underlying theory of the doctrine is that the donor is induced by various means to execute an instrument that, in reality, is the will of another substituted for that of the donor." *Id.* (quoting *In re Will of Ferrill,* 97 N.M. [383] at 398, 640 P.2d [489] at 504.

The Respondent was acting as the Decedent's attorney-in-fact with Durable Powers of Attorney executed in 2014, 2016 and 2018 with the Respondent listed on the Decedent's Regions Accounts as "Renaldo M. Pruitt POA." This created a confidential relationship between family members as explained in *In re Estate of Brevard.* The next step would be to determine if the Respondent exercised domination and control over the Decedent through this confidential relationship to establish undue influence.

The Decedent's grandson, William Russell Wallace, III, stated that the Respondent would "come around when he needed something." He observed that the Decedent's demeanor would change when the Respondent was around her. Mr. Wallace further testified that any time the Respondent would ask the Decedent for money and she would say no that he would become angry, have an attitude and yell at the Decedent. The Petitioner also testified that she was threatened on several occasions by the Respondent including once with a gun approximately ten years ago. She further stated that she was scared of the Respondent.

The testimony and evidence are clear to the Court that the Respondent exerted undue influence on the Decedent. The fact that her demeanor would change when the Respondent was around and his reactions to being told no when asking for money from the Decedent shows an ability to exert undue influence. When combined with the mental state of the Decedent during this time period it is obvious to the Court that undue influence existed when the Powers of Attorney and Trusts One and Two were

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executed. Accordingly, based on the mental capacity of the Decedent and the undue influence by the Respondent at the time these documents were executed, the Court finds that the Powers of Attorney, Trust One and Trust Two are all void.

III. Misappropriation of Decedent's Funds by the Respondent

"The execution and exercise of a power of attorney establishes a fiduciary relationship between the attorney-in-fact and the grantor of the power." *Ralston v. Hobbs,* 306 S.W.3d 213, 221 (Tenn. Ct. App. 2009)(quoting *Martin v. Moore,* 109 S.W.3d 305, 309 (Tenn. Ct. App. 2003)(citing *Matlock v. Simpson,* 902 S.W.2d 384 (Tenn. 1995); *Mitchell v. Smith,* 779 S.W.2d 384 (Tenn. Ct. App. 1989); *Askew v. Askew,* 619 S.W.2d 384 (Tenn. Ct. App. 1981); *Black v. Pettigrew,* 38 Tenn.App. 1, 270 S.W.2d 196 (1953)). "The fiduciary is obligated to deal with the property of his principal in "the utmost good faith."" *Id.* (citing *Estate of Doyle v. Hunt,* 60 S.W.3d 838 (Tenn. Ct. App. 2001); *Alexander v. Inman,* 974 S.W.2d 689 (Tenn. 1998); *McFarlin v. McFarlin,* 785 S.W.2d 367 (Tenn. Ct. App. 1989)). "The duties of loyalty and honesty are also a part of the fiduciary's obligation." *Id.* (citing *Roberts v. Iddins,* 797 S.W.2d 615 (Tenn. Ct. App. 1990); *Knox-Tenn Rental Co. v. Jenkins Ins., Inc.,* 755 S.W.2d 33 (Tenn. 1988)).

"Conversion is the appropriation of another's property to one's own use and benefit, by the exercise of dominion over the property, in defiance of the owner's right to the property." *Ralston v. Hobbs,* 306 S.W.3d 213, 221 (Tenn. Ct. App. 2009)(quoting *Hannan v. Shefflin,* 275 S.W.3d 423, 427 (Tenn. Ct. App. 2008); *Brandt v. BIB Enters., Ltd.,* 986 S.W.2d 586, 595 (Tenn. Ct. App. 1998); *Mammoth Cave Prod. Credit Ass'n v. Oldham,* 569 S.W.2d 833, 836 (Tenn. Ct. App. 1977); *Barger v. Webb,* 216 Tenn. 275, 391 S.W.2d 664, 665 (1965)). "A cause of action for conversion occurs when the alleged wrongdoer exercises dominion over the funds in "*defiance of the owner's rights.*" *Id.* (quoting *Hanna,* 275 S.W.3d at 427 (citing *Mammoth Cave,* 569 S.W.2d at 836))(emphasis added).

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Tenn. Code Ann. § 71-6-120 governs actions for abuse or neglect, sexual abuse or exploitation, or theft and the right of recovery for an elderly person or disabled adult. Tenn. Code Ann. § 71-6-120 states:

> (a) As used in this section, unless the context otherwise requires:
>
> (1) "Capacity to consent" means the mental ability to make a rational decision, which includes the ability to perceive, appreciate all relevant facts and to reach a rational judgment upon such facts; or to make and carry out reasonable decisions concerning the person or the person's resources; or to protect the person from neglect, or hazardous or abusive situations without assistance;
>
> (2) "Disabled adult" means a person who is eighteen (18) years of age or older and who meets one (1) of the following:
>
> (A) Has some impairment of body or mind that makes the person unfit to work at any substantially remunerative employment;
>
> (B) Lacks the capacity to consent;
>
> (C) Has been certified as permanently and totally disabled by an agency of this state or the United States that has the function of so classifying persons; or
>
> (D) Has been found to be incompetent by a court of proper jurisdiction; and
>
> (3) "Elderly person" or "elder" means a person who is sixty (60) years of age or older who has some mental or physical dysfunctioning, including any resulting from age.
>
> (b) In addition to other remedies provided by law, an elderly person or disabled adult in that person's own right, or by conservator or next friend, shall have a right of recovery in a civil action for compensatory damages for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such person's or adult's money or property whether by fraud, deceit, coercion or otherwise. Such right of action against a wrongdoer shall not abate or be extinguished by the death of the elderly person or disabled adult, but shall pass as provided in § 20-5-106, unless the alleged wrongdoer is a family member, in which case the cause of action shall pass to the victim's personal representative.
>
> (c) Jurisdiction for such action shall be in the circuit or chancery court where the elderly person or disabled adult may reside or where the actions occurred.
>
> (d) Damages shall include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses. In addition, if it is proven upon clear and convincing evidence that abuse

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or neglect, sexual abuse or exploitation or theft resulted from intentional, fraudulent or malicious conduct by the defendant, a claimant shall be entitled to recover reasonable attorneys' fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise.

(e) In addition to the damages described in (d), a defendant may also be found liable for punitive damages in accordance with common law standards.

(f) Nothing in this section shall be construed as requiring the department of human services to initiate any proceedings pursuant to this section or to act on behalf of any elderly person or disabled adult subject to this section.

(g) This section shall not apply to a cause of action within the scope of title 29, chapter 26; such cause of action shall be governed solely by title 29, chapter 26.

(h) A financial institution, officer, director, or employee of a financial institution, shall not be liable in any civil action brought by or on behalf of a disabled adult or elderly person for recovery of damages under this chapter, unless prior to such civil action, the financial institution, officer, director, or employee of a financial institution, shall have been convicted of a violation of § 39-15-502; provided, however, that this provision shall not apply to theft or conversion by an employee, officer or director of a financial institution or liability arising under other law.

Tenn. Code Ann. § 71-6-120.

Petitioner alleges that the Respondent misappropriated funds in the Regions Bank account of the Decedent by paying his mortgage on 747 Lynwood Avenue and loaning himself money from the account even after the Decedent died. Respondent contends that the mortgage payments and loans were the Decedent's way of paying him back for the work he did for her as a property manager. The Respondent was acting as the Decedent's attorney-in-fact with Durable Powers of Attorney executed in 2014, 2016 and 2018 with the Respondent listed on the Decedent's Regions Accounts as "Renaldo M. Pruitt POA."

The Respondent placed a mortgage on the improved real property at 47 Lynwood Avenue in Nashville, Tennessee through "Mr. Cooper." Respondent made mortgage payments from the Decedent's Regions Bank Account on multiple occasions. He asserts that these payments were the Decedent's way

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of paying him back for the things he did for her as a property manager for her rental properties. Respondent also made several cash withdrawals from the bank counter and from the ATM. Again, Respondent asserts that these were also the Decedent's way for paying him for what he did for her.

After the Decedent passed, the Respondent made several financial transactions out of her account as power of attorney. His name was still listed as "Renaldo M. Pruitt POA" on her account. He admitted that he made a mistake in doing that, while also admitting that he made other mistakes as they relate to the management of funds of the Decedent's Regions Bank Account. The testimony of Dr. Petrie and Ms. Tammy Sharp give the Court significant insight as to what occurred in this matter. Dr. Petrie testified that the Respondent was well aware of the Decedent's mental condition at the time the Powers of Attorney were executed, stating:

> Q: In your opinion, did Renaldo Pruitt know and understand that there was a substantial cognitive impairment?
>
> A: Yeah, because he told me. I mean, this is this bright woman. Mrs. Pruitt was bright. She knows what a quitclaim deed is. So she was smart. It's not that she was uneducated. She was college educated, so she was bright and aware, but at this point, I think you would say that there was, yeah, a significant impairment that would have impaired her financial capacity.
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> Q: So would you say that she would be unable to act in a reasonable manner and understand what the transaction was?
>
> A: She would not have been able to understand the implications of what she was doing. She could have bought a pizza, but if you're talking about making financial decisions involving big sums of money, I wouldn't – I don't think she would be capable.
>
> Q: In fact, is there any indication that she even knew she was signing that document?
>
> A: No. well, she would have forgotten it. I mean, she forgot that she had cancer. Here she's had surgery, chemotherapy, and she forgot it. So she would have likely forgotten what she had signed and probably wouldn't have understood it, you know, subsequently.
>
> Q: Would a normal person have realized that Ms. Pruitt was impaired in 2016 when she signed this document?

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A: I think – yeah, I think if they talked with her for more than a minute or so, I think it would have been apparent. I mean, she could do – she could say hello, and she was still riding her exercise bike, so there's some things she could do. But in terms of making important decisions, I think it was a problem.

Q: Okay. So in your opinion, Renaldo Pruitt would understand –

A: He would have understood, yeah, because he had a lot of contact with her.

Q: And he even brought her in?

A: Yes.

Q: And you told him about her medical condition?

A: He told me. He told me that she was making bad financial decisions.

(Deposition of William Petrie, M.D. Pgs. 27-29).

Tammy Sharp testified to the financial records and transactions related to the Respondent and the Decedent. The Decedent wrote several checks in 2015 and 2016 that stated the wrong date and had her signature on different parts of the checks. The dates of these checks would reflect 2005 or 2006 instead of 2015 or 2016. Around these same dates Ms. Sharp also noted that there were two checks written from the Decedent's account with different handwriting and signatures and the correct dates. Ms. Sharp testified that several cash withdrawals were made from the Decedent's Regions Bank Account along with recurring PayPal transactions and transactions to a "Liquidglitz." Ms. Sharp stated that she was unsure of those transactions.

Payments were also being made to Nationwide Insurance during this time but according to Ms. Sharp, the Decedent was not driving at that time. When questioned about who would have the ability to stop these transactions after the death of the Decedent, Ms. Sharp stated that only the Respondent would have that ability after the Decedent passed. Ms. Sharp stated that the charges on the account stopped after the Administrator of the Estate was appointed in May 2021. Ms. Sharp further testified that anyone with a Power of Attorney would be able to get a debit card for the Decedent's account with their own PIN. Based upon the evidence presented at trial and the testimony of the parties and

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witnesses it is clear to the Court that the Respondent misappropriated the funds and is liable to the Estate for this misappropriation.

IV. Remedies

A. Improved Real Property at 747 Lynwood Avenue in Nashville, Tennessee

The improved real property at 747 Lynwood Avenue in Nashville, Tennessee was originally owned by the Respondent. He needed a startup with money for a business loan. The Decedent co-signed on a loan for $50,000.00 and he used the 747 Lynwood Avenue property as collateral. That property was transferred from the Respondent to the Decedent at that time. Respondent further testified that he paid back the loan to the Decedent through "things he was doing for her" and "cash here and there."

The improved real property at 747 Lynwood Avenue in Nashville, Tennessee was conveyed from the Decedent to the Respondent via Quitclaim Deed on June 23, 2016. The Respondent placed a lien on the property through a mortgage with "Mr. Cooper." The Court finds that the conveyance from the Decedent to Respondent on June 23, 2016 was the result of the satisfaction of the business loan of the Respondent. He transferred that property to the Decedent as collateral. Therefore, the conveyance on June 23, 2016 was proper and the improved real property at 747 Lynwood Avenue in Nashville, Tennessee will remain in the possession of the Respondent who will be solely responsible for any and all liens placed on that improved real property.

Ms. Tammy Sharp believed that the Respondent was renting the property and collecting more in rent than what was actually reported by the Respondent on his Schedule E Tax Form. Ms. Sharp stated that the Respondent collected a minimum of eighty-four thousand dollars ($84,000.00) in rent since 2018. The Court will not award any damages related to the rental income of the improved real property at 747 Lynwood Avenue in Nashville, Tennessee.

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B. Trusts One and Two

The Court declared Trusts One and Two to be void due to the Decedent lacking the mental capacity to consent to and execute these documents and the undue influence exerted on the Decedent by the Respondent. Trust One contained three properties: 1813 Hillside Avenue in Nashville, 1213 Ireland Street in Nashville and 607 N. 9th Street in Nashville. Trust two contained three properties: 1715 16th Avenue N. in Nashville, 0 Walsh Street, Lots 25 and 26 in Nashville and 2715 Batavia Street in Nashville. Each trust document was nine pages in length. The Decedent signed six Quitclaim Deeds transferring the titles of the real estate to herself as Trustee for these trusts. Trust One named the Respondent as Successor Trustee and the Respondent and the Petitioner as beneficiaries. Trust Two named the Respondent as Successor Trustee and sole beneficiary.

Since Trusts One and Two were both declared to be void, the contents of Trusts One and Two revert to the original ownership when Trusts One and Two were executed by the Decedent. 1813 Hillside Avenue in Nashville, 1213 Ireland Street in Nashville and 607 N. 9th Street in Nashville, 1715 16th Avenue N. in Nashville, 0 Walsh Street, Lots 25 and 26 in Nashville and 2715 Batavia Street in Nashville were all owned by the Decedent at the time Trusts One and Two were executed. Accordingly, those properties shall revert from the Petitioner and Respondent in Trust One and the Respondent in Trust Two to the Decedent.

Since the Decedent has passed, these properties shall become part of the Estate for distribution. Therefore, the Quitclaim Deeds related to 1813 Hillside Avenue in Nashville, 1213 Ireland Street in Nashville and 607 N. 9th Street in Nashville, 1715 16th Avenue N. in Nashville, 0 Walsh Street, Lots 25 and 26 in Nashville and 2715 Batavia Street in Nashville shall all be set aside and placed into the Estate of the Decedent.

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C. Misappropriation of Funds

The Court found that the Respondent is liable to the Petitioner for the misappropriation of funds from the Decedent's Regions Bank account. Tammy Sharp testified to the financial records and transactions related to the Respondent and the Decedent. The Decedent wrote several checks in 2015 and 2016 that stated the wrong date and had her signature on different parts of the checks. The dates of these checks would reflect 2005 or 2006 instead of 2015 or 2016. Around these same dates Ms. Sharp also noted that there were two checks written from the Decedent's account with different handwriting and signatures and the correct dates. Ms. Sharp testified that several cash withdrawals were made from the Decedent's Regions Bank Account along with recurring PayPal transactions and transactions to a "Liquidglitz." Ms. Sharp stated that she was unsure of those transactions.

Payments were also being made to Nationwide Insurance during this time but according to Ms. Sharp, the Decedent was not driving at that time. When questioned about who would have the ability to stop these transactions after the death of the Decedent, Ms. Sharp stated that only the Respondent would have that ability after the Decedent passed. Ms. Sharp stated that the charges on the account stopped after the Administrator of the Estate was appointed in May 2021. Ms. Sharp further testified that anyone with a Power of Attorney would be able to get a debit card for the Decedent's account with their own PIN.

Petitioner is seeking damages in the amount of $105,869.90 for the misappropriation by the Respondent. "The execution and exercise of a power of attorney establishes a fiduciary relationship between the attorney-in-fact and the grantor of the power." *Ralston v. Hobbs,* 306 S.W.3d 213, 221 (Tenn. Ct. App. 2009)(quoting *Martin v. Moore,* 109 S.W.3d 305, 309 (Tenn. Ct. App. 2003)(citing *Matlock v. Simpson,* 902 S.W.2d 384 (Tenn. 1995); *Mitchell v. Smith,* 779 S.W.2d 384 (Tenn. Ct. App. 1989); *Askew v. Askew,* 619 S.W.2d 384 (Tenn. Ct. App. 1981); *Black v. Pettigrew,* 38 Tenn.App. 1, 270 S.W.2d 196 (1953)). "The fiduciary is obligated to deal with the property of his principal in "the utmost

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good faith."" *Id.* (citing *Estate of Doyle v. Hunt,* 60 S.W.3d 838 (Tenn. Ct. App. 2001); *Alexander v. Inman,* 974 S.W.2d 689 (Tenn. 1998); *McFarlin v. McFarlin,* 785 S.W.2d 367 (Tenn. Ct. App. 1989)). "The duties of loyalty and honesty are also a part of the fiduciary's obligation." *Id.* (citing *Roberts v. Iddins,* 797 S.W.2d 615 (Tenn. Ct. App. 1990); *Knox-Tenn Rental Co. v. Jenkins Ins., Inc.,* 755 S.W.2d 33 (Tenn. 1988)).

The Respondent created a confidential fiduciary relationship with the Decedent when the three Durable Powers of Attorney were executed in 2014, 2016 and 2018. Dr. Petrie testified that the Respondent was also well aware of the Decedent's mental condition at the time these documents were executed. The testimony and evidence are clear to the Court that the Respondent exerted undue influence on the Decedent.

The fact that the Decedent's demeanor would change when the Respondent was around and his reactions to being told no when asking for money from the Decedent shows an ability to exert undue influence. When combined with the mental state of the Decedent during this time period it is obvious to the Court that undue influence existed when the Powers of Attorney and Trusts One and Two were executed. Based upon the proof presented at trial through witness testimony and evidence, the Court finds for a judgment in favor of the Petitioner, Marilyn Pruitt, as Administrator of the Estate against the Respondent, Renaldo Pruitt, in the amount of $105,869.90.

D. Attorney Fees and Mediator Fees

Petitioner is seeking attorney's fees to be paid by the Respondent as well as the fees of Attorney Richard Hedgepath who served as Mediator. Tenn. Code Ann. § 71-6-120(d) states:

> (d) Damages shall include compensatory damages and costs where it is proven that a defendant is liable for abuse or neglect, sexual abuse or exploitation as defined in this part or for theft of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise. Costs shall include reasonable expenses. In addition, if it is proven upon clear and convincing evidence that abuse or neglect, sexual abuse or exploitation or theft resulted from intentional, fraudulent or malicious conduct by the defendant, a claimant shall be entitled to recover reasonable attorneys' fees. As part of any judgment, the court may declare void and unenforceable any marriage proven to have been entered into as part of a scheme to commit abuse or neglect, sexual abuse or exploitation as defined in this part or theft

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> of such elderly person's or disabled adult's money or property whether by fraud, deceit, coercion or otherwise.

Tenn. Code Ann. § 71-6-120(d).

The Respondent was well-aware of the mental condition of the Decedent as testified to by Dr. Petrie. When questioned about who would have the ability to stop these transactions after the death of the Decedent, Ms. Sharp stated that only the Respondent would have that ability after the Decedent passed. Ms. Sharp stated that the charges on the account stopped after the Administrator of the Estate was appointed in May 2021. Ms. Sharp further testified that anyone with a Power of Attorney would be able to get a debit card for the Decedent's account with their own PIN.

The Respondent intentionally misappropriated the funds of the Decedent. Because of this action, Tenn. Code Ann. § 71-6-120(d) applies to attorney's fees. Counsel for Petitioner is seeking attorney's fees in the amount of $50,129.75 plus additional attorney's fees in the amount of $11,164.00 that were requested during the hearing. Counsel for the Respondent was provided a copy of the Supplemental Affidavit of Fees and Invoice as was the Court. Since no objection to these supplemental fees has been raised by the Respondent or counsel the Court will approve the initial and supplemental attorney's fees requests. Therefore, the Respondent is liable for attorney's fees in the amount of $61,293.75.

Mediation was scheduled on two separate occasions to attempt to resolve this matter. Attorney Richard Hedgepath agreed to serve as the Mediator. Mediation was scheduled for February 9, 2023 and March 1, 2023. The Respondent failed to appear at either session without giving notice to his attorney or the other parties. Therefore, the Respondent shall also be responsible for paying the fees of Attorney Richard Hedgepath who served as Mediator.

V. Conclusion

It is, therefore, **ORDERED, ADJUDGED** and **DECREED** that the improved real property at 747 Lynwood Avenue in Nashville, Tennessee shall remain titled in the name of the Respondent who shall be

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solely responsible for any and all liens placed on that property. Trusts One and Two are hereby declared void and the Quitclaim Deeds related to 1813 Hillside Avenue in Nashville, 1213 Ireland Street in Nashville and 607 N. 9th Street in Nashville, 1715 16th Avenue N. in Nashville, 0 Walsh Street, Lots 25 and 26 in Nashville and 2715 Batavia Street in Nashville shall all be set aside and placed into the Estate of the Decedent.

The three Durable Powers of Attorney are also hereby declared void and due to the intentional misappropriation by the Respondent of the Decedent's Regions Bank Account, judgment shall be entered in favor of the Petitioner, Marilyn Pruitt, as Administrator of the Estate of Mary N. Johnson Pruitt, against the Respondent, Renaldo Pruitt in the amount of one hundred five thousand eight hundred sixty-nine dollars and ninety cents ($105,869.90) plus attorney's fees in the amount of sixty-one thousand two hundred ninety-three dollars and seventy-five cents ($61,293.75) for a grand total of one hundred sixty-seven thousand one hundred sixty-three dollars and sixty-five cents ($167,163.65), plus court cost, for which execution may issue, if necessary.

Entered this the 6th day of October, 2023.

Amanda McClendon, Judge

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cc: Ellen Taylor Turley
1400 N. Mt. Juliet Road, Suite 202
Mt. Juliet, TN 37122

Ron Nevin
315 Deaderick Street, Ste. 1550
Nashville, TN 37238

STATE OF TENNESSEE

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IN RE: ***MARY N. JOHNSON PRUITT***

Docket No: ***20P1958***

I, JOSEPH P. DAY, Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the document heretofore entered in the above styled case on October 9, 2023 in the Seventh Circuit Court for Davidson County, Tennessee, as same remains of record in the Minutes of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, on February 2, 2024.

JOSEPH P. DAY CIRCUIT COURT CLERK

JOSEPH P. DAY, Clerk,

By: _____

Deputy Clerk