COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE NO. 2018-CA-001899

STEVE CHANDLER — APPELLANT

v. APPEAL FROM THE CRITTENDEN CIRCUIT COURT
CIVIL ACTION NO. 15-CI-00033

WILLIAM ROBINSON, et al. — APPELLEES

BRIEF SUBMITTED ON BEHALF OF THE APPELLEES

Respectfully submitted,

LESLIE P. VOSE (KBA # 53843)
ERIN C. SAMMONS (KBA # 91040)
GREGORY A. JACKSON (KBA # 96088)
LANDRUM & SHOUSE LLP
P.O. Box 951
Lexington, KY 40588-0951
lvose@landrumshouse.com
esammons@landrumshouse.com
gjackson@landrumshouse.com
Telephone: (859) 255-2424
Facsimile: (859) 233-0308

BY: Erin C. Sammons
COUNSEL FOR APPELLEES

CERTIFICATION

The undersigned does hereby certify that copies of this brief were served upon the following named individuals by first class U.S. Mail, postage prepaid, on Aug 5, 2019: the Honorable C. René Williams, Webster County Courthouse, 35 U.S. Highway 41A-S, P.O. Box 126, Dixon, KY 42409; Hon. Kayce R. Powell, P.O. Box 4, 511 West 9th Street, Hopkinsville, KY 42241. It is further certified that no portion of the record on appeal was withdrawn by, or on behalf of, Appellees.

BY: Erin C. Sammons
COUNSEL FOR APPELLEES

STATEMENT CONCERNING ORAL ARGUMENT

The Appellees respectfully submit that standing and it requiring a judicially recognizable interest in the subject matter of the case is well settled by long-standing precedent, such that oral argument is not necessary. Nevertheless, the Appellees would be pleased to participate if this Court believes oral argument would be beneficial in its consideration of the evidence in the record and analysis of the applicable law.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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COUNTERSTATEMENT OF THE CASE

The sole issue on appeal is whether the Crittenden Circuit Court correctly dismissed the Appellant's case for lack of standing.[1] The facts and law will demonstrate beyond any doubt that the Crittenden Circuit Court's decision should be affirmed.

At the most basic level, the fight is about Appellant Steve Chandler's ("Steve") misguided belief he was entitled to his brother's farm upon Harold Keith Chandler's ("Keith") death. Both the Appellant and his brother Keith had been deeded their own separate farms of several hundred acres while their parents lived; Steve owned 360 acres[2], and Keith owned 238 acres.[3] When Keith passed away, Steve was willing to go to any measures to get Keith's farm – starting with launching scurrilous and false accusations against his dead brother and his friend, Randy Fish, whose son was Keith's beneficiary.[4]

The Appellant's efforts also involved two probate cases[5], two circuit court cases[6], and four appeals[7], excluding this present appeal. The Appellant has more than exhausted the judicial process; each and every case has been

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[1] (T.R. 745-748).
[2] (T.R. 573).
[3] (T.R. 292).
[4] (T.R. 259-270, Notice & Will Contest Complaint).
[5] In re the Estate of Harold Keith Chandler, Crittenden District Court, Civil Action No. 11-P-50; In re the Estate of Mary Katherine Chandler, Crittenden District Court, Civil Action No. 07-P-90.
[6] Steve Chandler v. William Robinson, et al., Crittenden Circuit Court, Civil Action No. 11-CI-150; Steve Chandler v. William Robinson, et al., Crittenden Circuit Court, Civil Action No. 15-CI-00033.
[7] In re Estate of Mary Katherine Chandler, Crittenden Circuit Court, C.A. No. 15-XX-00005; Steven Chandler v. William Robinson, et al. Court of Appeals, C.A. No. 2014-CA-963; In Re: Estate of Mary Katherine Chandler, Court of Appeals, C.A. No. 2015-CA-001174; In Re: Estate of Mary Katherine Chandler, Court of Appeals, C.A. No. 2015-CA-001182. Court of Appeals C.A. No. 2015-CA-001174 was dismissed on a motion to consolidate appeals by Order entered Feb. 16, 2016. (T.R. 407-10).

decided against him and upheld on appeal – including a three-day jury trial where the jury upheld Keith's will and dismissed Steve's will contest.[8]

This present appeal involves the Crittenden Circuit Court's Order of Dismissal entered November 21, 2018 in Civil Action No. 15-CI-00033, which granted the Appellees' Motion to Dismiss.[9] The Appellees' Motion went through each of the Appellant's claims, with reference to the various court proceedings where each claim had already been argued and decided in the Appellees' favor.[10] In response, the Appellant simply rehashed arguments raised in the other cases.[11] Not surprisingly, the Crittenden Circuit Court correctly found that the Appellant had "exhausted all avenues..."[12] Any judicially recognizable interest that the Appellant may have had "ceased to exist once the last appellate decision became final."[13] Without a judicially recognizable interest in the subject matter of the suit, the Appellant no longer had standing to prosecute, as the Crittenden Circuit Court found and appropriately dismissed the case.[14] As such, the November 21, 2018 Order of Dismissal should be affirmed.

PROCEDURAL HISTORY

The following brief synopsis is provided to put the Crittenden Circuit Court's November 21, 2018 Order of Dismissal into context, if so desired by this Court. Keith and Steve were brothers; Keith had lived with their parents for his

[8] (T.R. 747-48). The Appellant has since filed an additional appeal that has been decided against him as well in Steven Chandler v. Estate of Harold Keith Chandler, Crittenden Circuit Court, C.A. No. 18-XX-00001. The Order Affirming entered April 11, 2019, is not part of the appellate record herein but can be made readily available upon request.
[9] (T.R. 747-48).
[10] (T.R. 179-82).
[11] (T.R. 213-25).
[12] (T.R. 747).
[13] (T.R. 748).
[14] (T.R. 748).

entire life, and was the executor over their mother Mary Katherine Chandler's estate when she passed away in December 2007.[15] Under her will, Mary Katherine had distributed all of her property evenly to Keith and Steve.[16] Their mother's estate was settled with Steve's executed Consent and Waiver of Final Settlement on August 15, 2008, and approved on October 8, 2008.[17]

On October 23, 2006, Keith executed his last will and testament leaving his entire estate to Appellee Payton Fish, a minor son of Appellee Randy Fish.[18] Keith passed away in mid-July 2011.[19] The primary asset of his estate was a 238-acre farm deeded to Keith by his parents in 1997.[20]

When Appellee William Robinson probated Keith's will, Steve attempted to challenge the will.[21] The Crittenden District Court declined to do so and referred Steve to the Crittenden Circuit Court on jurisdictional grounds.[22] Steve filed a will contest action against William Robinson, Randy Fish and Payton Fish, asserting an equity claim for the "undistributed assets" from his mother's estate, and seeking to have Keith's will set aside as obtained through the undue influence of Randy Fish.[23] Following a three-day trial, a jury upheld Keith's will and dismissed

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[15] (T.R. 260, ¶¶ 6, 9, 11; T.R. 266, ¶ 75; T.R. 301). Their father Rudolph Chandler had passed away in 2004. (T.R. 260, ¶ 9).
[16] (T.R. 301, Article II).
[17] (T.R. 317, 330, 356).
[18] (T.R. 240-41).
[19] (T.R. 241).
[20] (T.R. 292).
[21] (T.R. 156-57; T.R. 380 ¶ 14).
[22] (T.R. 380, ¶ 17).
[23] (T.R. 259-270; T.R. 380, ¶ 18).

Steve's will contest on May 14, 2014.[24] The Court of Appeals affirmed the jury verdict, and Steve unsuccessfully sought discretionary review.[25]

A few days later, Steve petitioned to reopen their mother's estate in a continued effort to assert his perceived 50% interest in those assets.[26] The Crittenden District Court denied Steve's petition, and Steve appealed.[27] The Crittenden Circuit Court affirmed, and Steve unsuccessfully sought discretionary review.[28]

While both Steve's appeal from his mother's probate and Steve's appeal from the will contest jury verdict remained pending, Steve filed the Complaint in this present suit.[29] The Complaint referenced both appeals, contained the same allegations that had already been argued in other cases, and affirmatively stated that the allegations currently on appeal were the same allegations in this lawsuit.[30] After twenty (20) months of complete inactivity, the Crittenden Circuit Court placed this case on its show cause docket.[31] Steve argued the case should not be dismissed due to the number of cases that were pending in the other courts.[32] Indeed, Steve specifically conceded that if the Court of Appeals

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[24] (T.R. 142-46; T.R. 241).
[25] (T.R. 127; T.R. 308; Court of Appeals Opinion, C.A. 2014-CA-963, available at T.R. 240-258). Supreme Court C.A. 2017-SC-630-D.
[26] (T.R. 305-310).
[27] (T.R. 331-32; T.R. 333-34).
[28] (T.R. 366-76; T.R. 377-85; T.R. 177; Crittenden Circuit Court Opinion, C.A. No. 15-XX-00005, available at T.R. 361-65; Court of Appeals Order Denying Motion for Discretionary Review, C.A. No. 2015-CA-001182, available at T.R. 411-12).
[29] (T.R. 1-17).
[30] (T.R. 1, ¶ 2; T.R. 178-82). The Appellees in their Motion to Dismiss specifically addressed each of the Appellant's claims set forth within his Complaint, with reference to the various court proceedings where each claim had already been argued and decided in the Appellees' favor. (T.R. 179-82).
[31] (T.R. 50-51).
[32] (T.R. 52-61).

upheld the jury verdict dismissing Steve's will contest that he would be without standing to maintain this present lawsuit.[33]

While the Crittenden Circuit Court considered whether to allow the case to remain on its active docket, the Court of Appeals affirmed the jury verdict upholding Keith's will and dismissing Steve's will contest.[34] Steve's petition for rehearing and motion for discretionary review were both denied, and the Court of Appeals' decision became final on April 18, 2018.[35] By the end of May 2018, the Appellant Steve Chandler had exhausted his appeals and each of the respective underlying cases had become final.[36]

On July 5, 2018, the Appellees William Robinson, Randy Fish, Payton Fish, Brucie Moore and Steven Downey moved to dismiss for lack of standing.[37] Appellant Steve Chandler responded, and the motion was fully argued on August 9, 2018.[38] On November 21, 2018, the Crittenden Circuit Court granted the Appellees' motion and dismissed the case with prejudice.[39] This appeal followed.[40]

The record in this case demonstrates that the Appellant Steve Chandler has argued his perceived interest in his brother's (and mother's) estate repeatedly in many venues, all of which have been decided against him.[41] It

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[33] (T.R. 69).
[34] (T.R. 240-258; T.R. 158-161).
[35] (T.R. 177-78).
[36] (T.R. 178; T.R. 184-90).
[37] (T.R. 175-90; T.R. 194-95).
[38] (T.R. 200-12; T.R. 213-25; T.R. 199).
[39] (T.R. 745-48).
[40] (T.R. 749-50).
[41] (T.R. 745-48).

follows that the Appellant therefore lacks standing and the Crittenden Circuit Court's Order of Dismissal entered November 21, 2018 should be affirmed.[42]

ARGUMENT

I. Standard of Review

The issue of whether Appellant Steve Chandler had standing to pursue his claims against the Appellees has been preserved for review by virtue of the Crittenden Circuit Court's Order of Dismissal entered November 21, 2018, granting the Appellees' Motion to Dismiss.[43]

A trial court's determination of standing and whether it exists "is a pure legal question." *Interactive Gaming Council v. Com. ex rel. Brown*, 425 S.W.3d 107, 111 (Ky. App. 2014). As such, the proper standard of review for this appeal is *de novo*. *Id.*

II. The Complaining Party Must Hold a Present and Continuing Interest in the Subject Matter of the Lawsuit to Have Standing

Standing consists of statutory standing, constitutional standing, and, in the federal courts, prudential standing. *Cabinet for Health & Family Servs. v. Sexton*, 566 S.W.3d 185, 191 (Ky. 2018). Statutory standing involves "whether a plaintiff can sue for violations" of a statute; constitutional and prudential standing "are about, respectively, the constitutional power of a . . . court to resolve a dispute and the wisdom of so doing." *Id.* (internal citations omitted). In *Sexton*, our Supreme Court held that "the issue of constitutional standing is not waivable." *Id.* at 192. Further, "all Kentucky courts have the constitutional duty to ascertain the issue of constitutional standing ... to ensure that only *justiciable* causes proceed

[42] (T.R. 747-48).
[43] (T.R. 745-48).

in court..." *Id.* (emphasis original). Most importantly, the holding in *Sexton* "conforms to the general understanding of constitutional standing as a predicate for a court to hear a case and the ability of a court, acting on its own motion, to address that issue." *Id.*

In order for a complaining party to have standing to sue in Kentucky, there must be an injury, causation, and redressability. *Id.* at 196. Stated another way,

> A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief. . . . The injury must be 'fairly' traceable to the challenged action, and relief from the injury must be 'likely' to follow from a favorable decision."
>
> 566 S.W.3d at 192. (internal citations omitted).

In other words, "the plaintiff must have a judicially recognizable interest in the subject matter of the suit *and a present or substantial interest therein*. *Hous. Auth. v. Serv. Employees Int'l Union, Local 557*, 885 S.W.2d 692, 695 (Ky. 1994) (emphasis added). The complaining party's interest in the suit must be continuing – not only at the filing of the complaint as Appellant suggests. If the complaining party's interest in the suit ceases to exist, the suit must be dismissed no matter its procedural posture. *Bacigalupo v. Kohlhepp*, 240 S.W.3d 155, 156, 158 (Ky. App. 2007) (dismissing appeal where complaining party ceased to have a present interest in the case).

III. The Appellant Steve Chandler Ceased to Have Standing to Maintain His Claims Against Appellees Once All Appeals Were Decided in Appellees' Favor Such That the Crittenden Circuit Court Properly Dismissed the Appellant's Case.

From a simple review of the Complaint, it is evident that the Appellant's

suit is founded upon his claimed constitutional standing.[44] No statutory claims have been alleged therein. Indeed, the only statutes to which reference has been made do not create a statutory right of action and have since been repealed.[45] Thus, the Crittenden Circuit Court had a duty to and did ascertain whether the Appellant had a continuing, "present" interest in the case. *Hous. Auth. v. Serv. Employees Int'l Union, Local 557*, 885 S.W.2d 692, 695 (Ky. 1994). It correctly concluded that any interest that the Appellant had in the suit was no longer present and dismissed the case.[46]

Specifically, the Crittenden Circuit Court in its November 21, 2018 Order of Dismissal held that the present lawsuit "is intertwined with many other cases involving the same underlying parties."[47] Indeed, the Appellees had spelled out in their Motion to Dismiss how each of the Appellant's claims had already been decided by other courts.[48] The Crittenden Circuit Court described the various proceedings before the Crittenden District Court, the Crittenden Circuit Court, the Court of Appeals, and the Supreme Court.[49] All decisions were entered in the Appellees' favor and had become final, as the Crittenden Circuit Court correctly observed.[50] Further, the Crittenden Circuit Court noted that the Appellant had "admitted if the Court of Appeals upheld the jury's verdict, [the Appellant] would have no standing to proceed with this case."[51] The Court of Appeals upheld the

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[44] (T.R. 1-17).
[45] (T.R. 13, ¶ 79). Copies of former KRS 378.010 and former KRS 378.020, referred to within the Complaint, have been included within the Appendix for ease of reference.
[46] (T.R. 745-48).
[47] (T.R. 745).
[48] (T.R. 179-82).
[49] (T.R. 745-48).
[50] (T.R. 747-48).
[51] (T.R. 747) (referring to T.R. 69).

jury's verdict on February 17, 2017, and the Supreme Court denied discretionary review on April 18, 2018.[52] Thus, the Appellant's standing ceased to exist at that time, as the Crittenden Circuit Court correctly found and as the Appellant has conceded.[53] It follows that the November 21, 2018 Order of Dismissal should be affirmed.

CONCLUSION

The Appellant Steve Chandler's standing to maintain the underlying suit in this case ceased once the Court of Appeals' decision upholding the jury verdict upholding his brother Keith Chandler's will and dismissing his will contest became final. Thus, the Crittenden Circuit Court's November 21, 2018 Order of Dismissal for lack of standing should be upheld.

WHEREFORE, the Appellees respectfully request that the November 21, 2018 Order of Dismissal be AFFIRMED.

Respectfully submitted,

LESLIE P. VOSE (KBA # 53843)
ERIN C. SAMMONS (KBA # 91040)
GREGORY A. JACKSON (KBA # 96088)
LANDRUM & SHOUSE LLP
P.O. Box 951
Lexington, KY 40588-0951
lvose@landrumshouse.com
esammons@landrumshouse.com
gjackson@landrumshouse.com
Telephone: (859) 255-2424
Facsimile: (859) 233-0308

BY: _____
COUNSEL FOR APPELLEES

[52] (T.R. 747; T.R. 240-58; T.R. 178).
[53] (T.R. 69).

APPENDIX

		T.R.
1)	November 21, 2018 Order of Dismissal	745-48
2)	July 5, 2018 Defendants' Motion to Dismiss, Supporting Memorandum of Law	175-90
3)	August 16, 2018 Response to Defendants Motion to Dismiss (w/o 513 pages of exhibits)	213-25
4)	KRS 378.010	
5)	KRS 378.020	

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COMMONWEALTH OF KENTUCKY
5th JUDICIAL CIRCUIT
CRITTENDEN CIRCUIT COURT
CIVIL ACTION NO. 15-CI-00033

STEVE CHANDLER — PLAINTIFF

v. **ORDER OF DISMISSAL**

WILLIAM ROBINSON, Individually, and as Executor of Estate of Harold Keith Chandler, RANDY FISH, Individually, as Trustee, and next of kin of PAYTON FISH, minor, BRUCIE MOORE, Individually and of MOORE & WALLACE, STEVEN DOWNEY, Individually and of Law Office Of Steven D. Downey — DEFENDANTS

*****

This matter having come before the Court upon the Defendants' Motion to Dismiss; the Court having reviewed the record herein and having considered all arguments of counsel and being otherwise sufficiently advised,

IT IS HEREBY ORDERED AND ADJUDGED, as follows:

This case is intertwined with many other cases involving the same underlying parties. A brief history of the events that have led the parties and the Court is in order to fully understand the history of this matter.

The Plaintiff Steve Chandler and his deceased brother Harold Keith Chandler were both deeded farms by their parents during their lifetime. Neither brother married nor had children. Mary Katherine Chandler died in 2007 and pursuant to her Will, Harold Keith Chandler was named the Executor of her estate. It was probated without issue or objection with Steve ("Steve") Chandler filing waivers of final settlement. It was

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discharged on October 9, 2008 in Crittenden District Court Action No. 07-P-00090.

On July 5, 2011, Harold Keith Chandler ("Keith") passed away and it was discovered that he had executed a will leaving his estate (including his farm) to an unrelated minor child and named a co-worker from Rayloc, William Robinson, as the Executor. His will was offered for probate in the Crittenden District Court, Civil Action No. 11-P-00050 shortly after his death. In October 2011, Plaintiff filed a will contest action in Crittenden Circuit Court Action 11-CI-00150. During the pendency of the lengthy will contest action, the Plaintiff filed the present action against the Defendants to preserve any statutory limitations periods and waiver arguments, and to preserve his perceived interest in Keith's estate. The Defendants filed their Answer denying all allegations. Due to the ongoing will contest matter, this Court basically held this matter in abeyance pending the outcome of the other pending matters involving these parties.

A three-day trial was held in May of 2014 wherein a jury upheld Keith's will and dismissed the Plaintiff's will contest. There were multiple motions and orders issued by this Court within the will contest that the Plaintiff disagreed with and he exercised his right to appeal the jury's verdict to the Kentucky Court of Appeals in Civil Action 2014-CA-000963. He also filed a petition seeking to re-open his mother's 2007 estate that was denied by the Crittenden District Court. He appealed that decision to this Court and in Case No 15-XX-00005, this Court upheld the District Court's ruling denying the reopening of that estate in July of 2015. Plaintiff sought discretionary review of this ruling in two separate appeals which were both ultimately dismissed by the Court of Appeals. The decision that his mother's estate could not be re-opened was finalized in August 2016.

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While the will contest was still pending before the Court of Appeals (nearly a three year process), a standard motion to dismiss for lack of prosecution under Civil Rule 77.02 appeared on the Court's February 9, 2017 docket. These motions are automatically generated per computerized court programs when there has been no action or activity in a case for a period of time. The Plaintiff argued against dismissal at that time stating that the outcome of the pending appeal of the will contest would affect the issues in this case. In his reply dated February 8, 2017, it is noted that he admitted if the Court of Appeals upheld the jury's verdict, he would have no standing to proceed with this case. The Court allowed the case to remain on the docket while awaiting the Court of Appeals decision.

On February 17, 2017, the Court of Appeals rendered its Opinion Affirming the jury verdict and dismissal of the Plaintiff's will contest. The Plaintiff's motion for rehearing was denied by the Court of Appeals in November 2017. The Kentucky Supreme Court denied the Plaintiff's motion for discretionary review on April 18, 2018. At this point, the Plaintiff has exhausted all avenues involving the will contest of his brother Keith's estate and the re-opening of his mother's estate. The Defendant seeks dismissal of this lawsuit stating there that Plaintiff has no standing and there is no issue of material fact remaining.

In paragraph 2 of the Plaintiff's complaint herein, he admits and states "that some of the same allegations are applicable to current issues on Appeal with the Kentucky Court of Appeals, Case Number 2014-CA-000963; and certain issues have recently been appealed from Crittenden District Court to the Crittenden Circuit Court, Case #15-xx-00005." The Plaintiff has exhausted the appellate process in each case. As these

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actions have all been decided in the Defendants' favor and have become final as a matter of law, the Court finds that the Plaintiff has no standing to pursue any of these issues within this case. Therefore, the Court finds it is not necessary to address each alleged cause of action set out in the Plaintiff's complaint individually. To the extent the Plaintiff may have had a judicially recognizable interest in the subject matter of this lawsuit, it ceased to exist once the last appellate decision became final. *West v. Com.*, 887 S.W.2d 338, 341 (Ky. 1994). The Plaintiff is therefore without standing to prosecute this matter and is unable to sustain his case. *Com. ex rel. Andy Beshear v. Matthew Bevin*, 498 S.W.3d 355, 361 (Ky. 2016); *Fourroux v. City of Shepherdsville*, 148 S.W.3d 303, 306 (Ky. App. 2004).

THEREFORE, for the reasons set forth above, the Court **GRANTS** Defendants' Motion to Dismiss. The Plaintiff's Complaint against them is dismissed with prejudice, there being no genuine issues of material fact.

Done this, the 20 day of Nov, 2018.

C. Rene' Williams

HON. C. RENÉ WILLIAMS
CHIEF REGIONAL CIRCUIT JUDGE
CRITTENDEN CIRCUIT COURT

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15-CI-00033 07/05/2018 Melissa Guill, Crittenden Circuit Clerk

COMMONWEALTH OF KENTUCKY
5th JUDICIAL CIRCUIT
CRITTENDEN CIRCUIT COURT
CIVIL ACTION NO. 15-CI-00033

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STEVE CHANDLER PLAINTIFF

v.

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS

WILLIAM ROBINSON, Individually, and as Executor of Estate of Harold Keith Chandler, RANDY FISH, Individually, as Trustee, and next of kin of PAYTON FISH, minor, BRUCIE MOORE, Individually and of MOORE & WALLACE, STEVEN DOWNEY, Individually and of Law Office Of Steven D. Downey DEFENDANTS

*****

Come now the Defendants, William Robinson, Individually and as Executor of the Estate of Keith Chandler, et al., by and through counsel, and move this Court to dismiss the Plaintiff's Complaint with prejudice for lack of standing, there being no genuine issues of material fact. In support hereof, the Defendants state as follows and request oral argument regarding same.

As this Court is well aware, the Plaintiff has brought multiple lawsuits that to a disinterested party may appear to be a late attempt to acquire real estate and personalty that has long since passed hands. All of these other lawsuits have now been dismissed or otherwise resolved in the Defendants' favor, leaving the Plaintiff's present lawsuit without legs upon which to stand. The Defendants therefore respectfully request that the Court dismiss this lawsuit with prejudice, there being no genuine issues of material fact.

Filed 1023191 15-CI-00033 07/05/2018 Melissa Guill, Crittenden Circuit Clerk

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PROCEDURAL HISTORY

In mid-July 2011, the Plaintiff's brother, Harold Keith Chandler ("Keith"), passed away. Keith's will was soon probated over Plaintiff's objection[1]. A few months later, in October 2011, the Plaintiff filed a will contest action in the Crittenden Circuit Court to challenge the validity of the will, which left Keith's personal property and 238 acres of farmland to Payton Fish, minor son of Defendant Randy Fish.[2] During the course of the will contest, Plaintiff filed this present lawsuit against the Defendants in order to avoid any statutory limitations periods and waiver arguments, and to preserve his perceived interest in Keith's estate. (Complaint, para. 1). The Defendants filed their Answer herein, preserving defenses under CR 8 and 12, and denying the allegations against them.

Meanwhile, in the will challenge action, extensive discovery and motion practice ensued. Following a three-day trial, on May 15, 2014, a jury upheld Keith's will and dismissed the Plaintiff's will contest. Six days later, Plaintiff petitioned to re-open his mother's 2007 probate action to try to recover property devised to Keith in an apparent attempt to circumvent the jury's decision.[3] The Plaintiff's petition/motion to re-open was briefed, argued, and denied.

Apparently discontent with both outcomes, the Plaintiff continued with the appellate process. First, Plaintiff appealed the jury verdict to the Kentucky Court of Appeals, arguing numerous points in error.[4] With respect to his mother's probate case,

[1] In re the Estate of Harold Keith Chandler, Crittenden District Court, Civil Action No. 11-P-00050.
[2] Steve Chandler v. William Robinson, et al., Crittenden Circuit Court, Civil Action No. 11-CI-00150.
[3] In re the Estate of Mary Katherine Chandler, Crittenden District Court, Civil Action No. 07-P-00090.
[4] Kentucky Court of Appeals, Civil Action No. 2014-CA-000963.

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MEM : 000002 of 000009

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Plaintiff appealed to the Crittenden Circuit Court.[5] The Crittenden Circuit Court, sitting in its appellate capacity, affirmed the District Court's decision not to reopen his mother's estate. From there, the Plaintiff sought discretionary review from the Court of Appeals in two separate appeals.[6] The Court of Appeals dismissed one of the cases, and allowed the other to proceed before denying discretionary review.[7] The Court of Appeals' decisions, and hence the Crittenden Circuit Court's opinion affirming, became final in August 2016. Thus, there are no further avenues for the Plaintiff to explore concerning his mother's probate case; that path has concluded.

This left the Plaintiff's appeal of the jury verdict upholding Keith's will, Court of Appeals Civil Action No. 2014-CA-000963. On appeal, the Plaintiff filed eighteen (18) motions over the course of nearly three years. Meanwhile, this present action continued to linger before this Court without Plaintiff having taken any steps whatsoever to further the case. On February 9, 2017, when this case came up on this Court's dismissal docket, Plaintiff argued that this case is dependent upon the outcomes of the other appeals. In fact, Plaintiff admitted that if the Court of Appeals upheld the jury verdict, then Plaintiff is without standing to maintain this lawsuit. (February 8, 2017 Reply to Defendants Response to Civil Rule 77.02 Dismissal, p. 4).

The Court of Appeals rendered its Opinion Affirming on February 17, 2017. Therein, the Court of Appeals upheld the jury verdict and dismissal of the Plaintiff's will contest action. The Plaintiff petitioned the Court of Appeals for rehearing, which was

[5] Crittenden Circuit Court, Civil Action No. 15-XX-00005.
[6] Kentucky Court of Appeals, Civil Action No. 2015-CA-001182 and Kentucky Court of Appeals, Civil Action No. 2015-CA-001174.
[7] These appeals appeal to be essentially identical. The Court of Appeals denied Plaintiff's motion filed in 2015-CA-001182 to consolidate the appeals. The Court of Appeals granted Defendant William Robinson's motion to dismiss 2015-CA-001174, and allowed 2015-CA-001182 to proceed until the Court of Appeals denied Plaintiff's motion seeking discretionary review.

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denied in November 2017. The Plaintiff then sought discretionary review from the Kentucky Supreme Court, which was denied on April 18, 2018. By operation of the Kentucky Rules of Civil Procedure, the Court of Appeals' Opinion Affirming the jury verdict upholding Keith's will became final as of April 18, 2018. CR 76.30(2)(b). There are no other cases remaining at this time.[8] The Defendant therefore moves for dismissal of this lawsuit with prejudice for lack of standing, there being no genuine issue of material fact.

ARGUMENT

"To sustain a cause of action, a party must have standing." *Fourroux v. City of Shepherdsville*, 148 S.W.3d 303, 306 (Ky. App. 2004). In order to have standing to present that cause, "the basic rule is that the person must have a 'judicially recognizable interest in the subject matter of the suit.'" *Com. ex rel. Andy Beshear v. Matthew Bevin*, 498 S.W.3d 355, 361 (Ky. 2016). Without standing, all that is left is "a non-justiciable cause of action, which [calls] for dismissal without addressing the merits." *Id.* at 360. "A justiciable cause or controversy can be said to be a 'controversy in which a present and fixed claim of right is asserted against one who has an interest in contesting it...'" *West v. Com.*, 887 S.W.2d 338, 341 (Ky. 1994).

At this stage in the proceeding, any recognizable interest that the Plaintiff may have had at some point has been extinguished. Plaintiff's counsel has candidly admitted that her client is without standing now that the Court of Appeals' decision has become final. (February 8, 2017 Reply to Defendants Response to Civil Rule 77.02 Dismissal, p. 4). Nonetheless, each of Plaintiff's claims will be discussed in tandem,

[8] Copies of the final Orders conducting the probate case, In Re: Estate of Harold Keith Chandler, Crittenden District Court, Case No. 11-P-00050 are attached hereto as Exhibit A.

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showing conclusively that Plaintiff lacks standing to proceed and that this case must therefore be dismissed.

The Plaintiff's first claim within his Complaint is for abuse of process against Defendants Moore, Fish and Robinson by virtue of the counterclaim filed against Plaintiff within the will contest action. (Complaint, p. 2). Plaintiff raised this same issue before the Crittenden District Court in his brother's probate action, Case No. 11-P-00050. Plaintiff argued this point again on appeal, and the Court of Appeals discussed it thoroughly when it affirmed the trial court's decision. The Court of Appeals denied Plaintiff's petition for rehearing, and the Kentucky Supreme Court denied Plaintiff's motion seeking discretionary review. In other words, the point has been decided in the Defendants' favor; no action based thereon survives.

The Plaintiff's second claim within his Complaint is for Malicious Prosecution against Defendants Moore, Robinson and Fish. (Complaint, p. 4). Plaintiff alleges that these Defendants "instituted and continued judicial proceedings of false allegation against" Plaintiff. (Complaint, p. 4). Presumably this is in reference to the counterclaim that had been brought against Plaintiff during the will contest, and which was argued and affirmed on appeal. More than that, after filing a motion to dismiss the counterclaim, the Plaintiff had actually objected when the counterclaim was dismissed, and then argued to the Court of Appeals that this Court's doing so was erroneous, a point the Court of Appeals also recognized. Just as with the abuse of process claim, this claim should be dismissed.

The Plaintiff's third claim within his Complaint is Conversion against Defendant's Fish and Robinson, by virtue of Plaintiff's claimed legal interest in the personal property

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in Keith's residence. (Complaint, p. 5). This issue has already been dealt with when Plaintiff attempted to bring his claim against his mother's estate for the same personalty, In re the Estate of Mary Chandler, Crittenden District Court, Case No. 07-P-00090. The District Court declined to reopen probate, which the Crittenden Circuit Court affirmed, and the Kentucky Court of Appeals, Case No. 2015-CA-001182. The Plaintiff raised this argument again on appeal from the will contest action, Kentucky Court of Appeals, Case No. 2014-CA-000963, and in fact attempted unsuccessfully to supplement the record on appeal to include the probate pleadings. Again, this claim has been decided in the Defendants' favor, and no action based thereon survives.

The Plaintiff's fourth claim within his Complaint is entitled "Breach of Fiduciary Duty to Act in Good Faith and Accordance with Court Orders and the Law/Fraudulent Concealment" against Defendants Moore and Robinson. (Complaint, p. 7). Plaintiff's argument for this claim is two-fold. First, Plaintiff alleges that Defendant Robinson as Executor breached his duty to the Estate by paying for legal representation during the will contest, despite the fact that Robinson was complying with and upholding his statutory duties to defend the Estate when Plaintiff contested the will. KRS 395.195(18), (19). Plaintiff has admittedly argued that "any fees and expenses associated with defending an estate are paid out of the estate. These fees and expenses become the liability of the Defendants only after they successfully defeat a will Contest." in his May 13, 2012 Motion to dismiss the Defendants' counterclaim in the will contest action, Civil Action No. 11-CI-00150. The Defendants have successfully defeated the will contest, which the Court of Appeals has affirmed. It follows that any and all remuneration for fees and expenses that Defendants Downey and Moore

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received for defending the estate in the will contest are rightfully theirs and the Plaintiff has no claim. Second, Plaintiff alleges that Defendants Robinson and Moore failed to include certain assets in the probate inventory. The Plaintiff identified this in his Prehearing Statement in the will contest appeal, which has been decided in Defendants' favor. Again, no claim survives.

Plaintiff's fifth claim within his Complaint is entitled "Civil Conspiracy and/or Aiding and Abetting", against all Defendants. (Complaint, p. 9). The allegations in support of this claim assert that the Defendants conspired together to deprive the Plaintiff from his supposed legal interest in the personal property of his mother's estate, and from receiving a fair trial during the will contest in May 2014. Again, any interest Plaintiff might have held in the personal property from his mother's estate ended when the Crittenden District Court declined to reopen his mother's probate action, which the Crittenden Circuit Court affirmed and the Court of Appeals declined to review. Similarly, the Court of Appeals affirmed the jury outcome in the will contest decided in the Defendants' favor, and the Supreme Court has declined review.

The Plaintiff's sixth claim within his Complaint is for misappropriation of funds by Defendants Robinson, Moore and Downey, by virtue of Robinson having retained Moore and Downey to defend the Estate in the will contest action. (Complaint, p. 11). These are the same damages sought and arguments raised within the Plaintiff's fourth claim for breach of fiduciary duty, which fails for the same reasons that are incorporated herein.

The Plaintiff's seventh claim within his Complaint is for Fraudulent Conveyance. (Complaint, p. 13). This claim alleges in essence that the Estate was fraudulently

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conveyed, thereby depriving him of reimbursement for property taxes and utility bills. The Complaint specifically cites to the will contest action as having set out the property taxes and utility bills as having been paid by Plaintiff. Again, the jury's verdict in the will contest in the Defendants' favor has been affirmed on appeal, and Plaintiff is again without standing to pursue this claim.

The Plaintiff's eighth and final claim within his Complaint is for Intentional Infliction of Emotional Distress. (Complaint, p. 14). To support this claim, the Plaintiff simply repeats all of the same allegations that have been used to support the Plaintiff's other claims. All of the other claims have been decided in Defendants' favor and affirmed on appeal – nothing is left to support an IIED claim.

All Plaintiff has done for the last three years is to point to the appellate actions and ask that the Court hold this action in abeyance just in case. The Plaintiff has further conceded that once the Court of Appeals upheld the jury verdict, then the Plaintiff would be without standing to bring this lawsuit. (See Plaintiff's February 8, 2017 Reply, p. 4). The Court of Appeals has upheld the jury verdict, and the Supreme Court has denied discretionary review. Thus, Plaintiff is without standing, and this case should finally be dismissed.

WHEREFORE, Defendants William Robinson, Individually and as Executor of the Estate of Keith Chandler, Randy Fish, Individually, as Trustee, and next of kin of Payton Fish, minor, Brucie Moore, Individually and of Moore & Wallace, and Steven Downey, Individually and of the Law Office of Steven D. Downey, respectfully request that the Court DISMISS this case with prejudice for lack of standing, there being no genuine issues of material fact.

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Respectfully submitted,

LESLIE PATTERSON VOSE
ERIN C. SAMMONS
GREGORY A. JACKSON
LANDRUM & SHOUSE, LLP
106 W. Vine Street, Suite 800
P.O. Box 951
Lexington, Kentucky 40588
859-255-2424; Fax 859-233-0308
lvose@landrumshouse.com
esammons@landrumshouse.com
gjackson@landrumshouse.com

BY: */s/ Leslie P. Vose*
COUNSEL FOR DEFENDANTS

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CERTIFICATE OF SERVICE

This is to certify that on July 5, 2018, the foregoing document was electronically filed with the Clerk of this Court using the Kentucky Courts E-Filing system, which will send notification of such filing to the following:

Leslie P. Vose – lvose@landrumshouse.com
Erin C. Sammons – esammons@landrumshouse.com
Gregory A. Jackson – gjackson@landrumshouse.com
Counsel for Defendants

Hon. Kayce R. Powell - kayce_powell_law@yahoo.com
P.O. Box 4
511 West 9th Street
Hopkinsville, KY 42241
Counsel for Plaintiff

Local Rule 15 Copy and Accompanying Disc to:

Hon. C. René Williams
Chief Regional Circuit Judge
Webster County Courthouse
35 U.S. Highway 41A-S,
P.O. Box 126
Dixon, KY 42409

By: */s/ Leslie P. Vose*
ATTORNEY FOR DEFENDANTS

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Filed 1023191 15-CI-00033 07/05/2018 Melissa Guill, Crittenden Circuit Clerk

COMMONWEALTH OF KENTUCKY
CRITTENDEN DISTRICT COURT
PROBATE DIVISION
Case No. 11-P-00050

IN RE: ESTATE OF HAROLD KEITH CHANDLER
Date of Death: July 5, 2011

ORDER

This motion having been brought on motion of the Estate of Harold Keith Chandler, by and through counsel, having come before the Court for a hearing on May 30, 2018, and the Court being otherwise sufficiently advised herein HEREBY ORDERS AND ADJUDGES that the Executor, the Trustee, the Beneficiary and all persons and entities having the approval and permission of the Executor, the Trustee, and the Beneficiary, including, but not limited to, appraisers, real estate agents and personnel, and timbering personnel are AUTHORIZED to enter, inspect, timber, sell, and any and all other action incident thereto the real property owned by the Estate of Harold Keith Chandler including, but not limited to, the property located at 187 Rudolph Chandler Road, Sturgis, Crittenden County, Kentucky. Further, the Executor is AUTHORIZED to enter into and execute any contracts, agreements, deeds, and any other related documents concerning either the timbering or sale of the real property.

Signed and Entered this the 30th day of May, 2018.

DANIEL M. HEADY Judge
Crittenden District Court, Probate Division

Prepared by: Megan D. Randolph, Attorney at Law, MOORE & WALLACE, 110 South Court Street, P. O. Box 210, Morganfield, KY 42437, Phone: (270) 389-1200.

Megan D. Randolph

EXHIBIT
A

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EXH : 000001 of 000007

COMMONWEALTH OF KENTUCKY
CRITTENDEN DISTRICT COURT
PROBATE DIVISION
Case No. 11-P-00050

IN RE: ESTATE OF HAROLD KEITH CHANDLER
Date of Death: July 5, 2011

ORDER

This motion having been brought on motion of the Estate of Harold Keith Chandler, by and through counsel, having come before the Court for a hearing on May 30, 2018, and the Court being otherwise sufficiently advised herein HEREBY ORDERS AND ADJUDGES that the Executor is AUTHORIZED to transfer and distribute the personal property of the Estate of Harold Keith Chandler to the Trustee on behalf of the Beneficiary. This personal property includes, but is not limited to, vehicles and firearms. The Executor is further AUTHORIZED to execute any documents necessary to transfer and distribute the personal property of the Estate of Harold Keith Chandler to the Trustee on behalf of the Beneficiary.

Signed and Entered this the 30th day of May, 2018.

DANIEL M. HEADY Judge
Crittenden District Court, Probate Division

Prepared by: Megan D. Randolph, Attorney at Law, MOORE & WALLACE, 110 South Court Street, P. O. Box 210, Morganfield, KY 42437, Phone: (270) 389-1200.

Megan D. Randolph

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COMMONWEALTH OF KENTUCKY
CRITTENDEN DISTRICT COURT
PROBATE DIVISION
Case No. 11-P-00050

IN RE: ESTATE OF HAROLD KEITH CHANDLER
Date of Death: July 5, 2011

ORDER

This motion having been brought on motion of William Robinson, Executor of the Estate of Harold Keith Chandler, by and through counsel, having come before the Court for a hearing on May 30, 2018, and it appearing to the Court that all parties have been given Notice of the hearing, and the Court being otherwise sufficiently advised herein HEREBY ORDERS AND ADJUDGES that the Executor, William Robinson, is awarded an executor's fee in the amount of ~~$35,000.00~~ THIRTY-FIVE THOUSAND DOLLAR

Signed and Entered this the 30th day of May, 2018.

DANIEL M. HEADY Judge
Crittenden District Court, Probate Division

Prepared by: Megan D. Randolph, Attorney at Law, MOORE & WALLACE, 110 South Court Street, P. O. Box 210, Morganfield, KY 42437, Phone: (270) 389-1200.

Megan D. Randolph

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COMMONWEALTH OF KENTUCKY
CRITTENDEN DISTRICT COURT
PROBATE DIVISION
Case No. 11-P-00050

IN RE: ESTATE OF HAROLD KEITH CHANDLER
Date of Death: July 5, 2011

ORDER

This motion having been brought on motion of the Estate of Harold Keith Chandler, by and through counsel, having come before the Court for a hearing on May 30, 2018, and the Court being otherwise sufficiently advised herein HEREBY ORDERS AND ADJUDGES that Hon. Steven D. Downey is awarded an attorney fee in the amount of $27,686.58.

Signed and Entered this the 30th day of May, 2018.

DANIEL M. HEADY Judge
Crittenden District Court, Probate Division

Prepared by: Megan D. Randolph, Attorney at Law, MOORE & WALLACE, 110 South Court Street, P. O. Box 210, Morganfield, KY 42437, Phone: (270) 389-1200.

Megan D. Randolph

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CERTIFICATION OF COURT RECORDS
I, Clerk of the Crittenden Circuit/District Court, do certify that the foregoing are true and correct copy(s) of the original document(s) as recorded in my office.
In testimony whereof witness my hand as Clerk aforesaid, this the 30 day of May 2018.

Melissa Guill Clerk

By: Crystal Ford D.C.

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Filed 15-CI-00033 07/05/2018 Melissa Guill, Crittenden Circuit Clerk

COMMONWEALTH OF KENTUCKY
CRITTENDEN DISTRICT COURT
PROBATE DIVISION
Case No. 11-P-00050

IN RE: ESTATE OF HAROLD KEITH CHANDLER
Date of Death: July 5, 2011

ORDER

This motion having been brought on motion of the Estate of Harold Keith Chandler, by and through counsel, having come before the Court for a hearing on May 30, 2018, and the Court being otherwise sufficiently advised herein HEREBY ORDERS AND ADJUDGES that the Law Office of Moore & Wallace is awarded an attorney fee in the amount of $60,000.00.

Signed and Entered this the 30th day of May, 2018.

DANIEL M. HEADY Judge
Crittenden District Court, Probate Division

Prepared by: Megan D. Randolph, Attorney at Law, MOORE & WALLACE, 110 South Court Street, P. O. Box 210, Morganfield, KY 42437, Phone: (270) 389-1200.

Megan D. Randolph

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Filed 15-CI-00033 07/05/2018 Melissa Guill, Crittenden Circuit Clerk

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CERTIFICATION OF COURT RECORDS
I, Clerk of the Crittenden Circuit/District Court, do certify that the foregoing are true and correct copy(s) of the original document(s) as recorded in my office.
In testimony whereof witness my hand as Clerk aforesaid, this the 30 day of May 2018.

Melissa Guill Clerk

By: Crystal Ford D.C.

EXH : 000007 of 000007

COMMONWEALTH OF KENTUCKY 5 TH JUDICIAL CIRCUIT
CRITTENDEN CIRCUIT COURT
CIVIL ACTION NO. 15-C1-00033

ELECTRONIC FILED

STEVE CHANDLER PLAINTIFF

RESPONSE TO DEFENDANTS MOTION TO DISMISS

WILLIAM ROBINSON, Individually, and as
Executor of Estate of Harold Keith Chandler,
RANDY FISH, Individually, as Trustee, and next of Kin of PAYTON FISH, minor, BRUCIE MOORE, Individually and of MOORE & WALLACE,
STEVEN DOWNEY, Individually and of Law Office
Of Steven D. Downey DEFENDANTS

Comes Now the Plaintiff, Steve Chandler, by and through counsel, Kayce R. Powell, and for his response to the Defendants' Motion to Dismiss, respectfully sets out as follows:

This Court is keenly aware that the Plaintiff has been denied his Constitutional rights to a fair and impartial trial from the onset. This Court's unconstitutional Strike Order issued on April 17, 2012, has served as the catalyst to each subsequent fraudulent Order, Opinion, and Rulings which followed, by the District Court, by the Circuit Court, and by the Court of Appeals. Despite vehemently protesting any intermingling "outside the record" arguments pertaining to the separate, but related cases, the Defendants now appear to be more than willing to assert that they are all related, when at a glance it is seems to benefit them. In fact, in their proposed Order, they went as far as to say that all "[t]he facts underlying each lawsuit, including this present lawsuit, have a common nucleus, and the issues raised herein have been raised and litigated in these other lawsuits."

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FACTUAL PROCEDURAL HISTORY

Despite the Motion to Dismiss being filed by an alternate law firm who has had minimum involvement with the cases, their memorandum is no different than all other filings by the named Defendants. The entire memorandum seeks to rewrite history and tell an unrecognizable version of events.[1] Defendants falsely sets out that within the will contest action, that extensive discovery and motion practice occurred. This Court prematurely and unconstitutionally set a narrow two-year temporal reference surrounding the execution of the will to be the time frame for relevant admissible testimony and evidence during trial. Consequently, the Plaintiff was denied the right to conduct extensive discovery and adequately present his case during trial. [2] Moreover, on page two, the memorandum falsely asserts that this action and the will contest occurred simultaneously. This Court unequivocally is aware that the trial occurred in April of 2014, with this action being filed on March 30, 2015, just barely within the one-year statute of limitations. More specifically, one year after Attorney Steven Downey went on record, with this Court, asserting that he had been paid, and had case law which would support his advancement.[3]

The Defendants memorandum falsely tries to rewrite history, by setting out that "the Plaintiff petitioned to re-open his mother's estate to try and recover property devised to Keith in an apparent attempt to circumvent the jury's decision." The Motion to Dismiss and memorandum is support of is entirely void of the fact that this Court struck the Plaintiff's Equity Claim, that was included within the Plaintiff's will contest complaint. This Court never even addressed or acknowledge the stricken claim.

[1] The same holds true for the Court of Appeals Opinion attached as Exhibit A

[2] The premature unconstitutional Strike Order of April 17, 2012, is Attached As Exhibit B

[3] Therefore, Steven Downey intentionally started the one- year statute of limitations the present cause of action.

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As this Court knows, Mary Katherine Chandler's will bequeath all her personal property equally to both of her son's. This Court has extensive knowledge, more than seven years to be precise, of the numerous arguments presented to this Court concerning the undistributed personal property to which Steve Chandler maintains a vested legal interest in.[4] Thereafter, this Court improperly denied Plaintiff's motion to supplement the record on appeal with the probate files that were at the center of the entire action.[5] After this action was filed on March 30, 2015, this Court took the first opportunity it had available to utilize the probate court's ruling, as a backdoor means to circumvent the Plaintiff's legal vested interest, and to improperly affirm a decision for which she was currently being appealed upon.[6]

> Equitable relief is appropriate where legal remedy is incomplete and inadequate to accomplish substantial justice. The fact that there is some remedy at law does not preclude equitable relief. Court of equity in decreeing constructive trust is bound by no unyielding formula; equity of transaction must shape measure of relief.

So in summary, this Court disregarded and struck Steve Chandler's equity claim to retrieve personal property of the Chandler homestead. The Plaintiff emphatically set out his argument to this Court concerning why an equity argument was being presented in the will contest seeking for this Court to create a constructive trust for the preservation of the personal property contained within the Chandler family homestead, in lieu of a replevin action against the named beneficiary of Keith's will. Rather than addressing or even acknowledging Steve Chandler's equity claim contained within his will contest complaint, this Court improperly affirmed the equity defense of laches, more than a year after trial, against Steve Chandler, who

[4] Mary Katherine's Will and all relevant documents pertaining to the case cited by the Defendants Attached as **Exhibit C 07-P-00090; 2015-CA-001174; and 2015-CA-001182**

[5] Center- as in "common nucleus." See the proposed order of dismissal provided by the defendants.

[6] The Order of this Court affirming the probate court's order denying the Plaintiff the opportunity to reopen his mother's estate using the equity defense of laches. See Attached Exhibit C

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had a legal vested intertest in the property, in favor of someone having a mere conditional contingent interest.[7]

All the named defendants have fraudulently converted personal property of the estate to which Steve Chandler has a continued vested legal interest to. The District Court should have never signed the tendered order of laches, because it is an equity defense that can never be used in favor of an individual with a mere contingent interest in the personal property of the Chandler Family Homestead over someone with a fully vested legal interest.

Argument

Defendant's "move this Court to dismiss the Plaintiff's Complaint with prejudice for lack of standing, there being no genuine issues of material fact." (Dismissal Memo p.4) It is rather difficult to ascertain what exactly the Defendants claim entitles them to a dismissal. Standing to bring a suit is relevant at the time the suit is filed. "No genuine issues of material facts" is a summary judgment argument. In any event the case law presented within the Defendants Memorandum in entirely inapplicable to the facts at hand.

It goes without saying that a party cannot file a cause of action without having standing to do so. However, the defendants have improperly placed reliance upon Fourroux v. City of Sherpardsville, 148 S.W.3d 303, 306 (Ky. App. 2004). The quote the defendants cited from the case above, pertains to whether an individual citizen taxpayer of a city had standing to challenge annexation, or whether a person owning adjacent land to city annexation has standing to challenge annexation. The Court determined, that neither party had standing to bring a cause of action. Distinction here being, standing begins the jurisdiction of the Court, it is determined

[7] On July 20, 2011, the District Court specifically informed the Plaintiff that he would have to take up the issue of the undistributed personal household content within his Circuit Court Will contest action. Thereafter, nearly nine months after motion was filed, the District Probate Court signed a tendered Order provided by Attorney Moore, which asserted that the equity defense of laches barred Plaintiff's legal interest in favor of a party having a mere contingency interest.

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at the time the suit is filed. Furthermore, a key distinction here being, that the case involved individual taxpayer's standing to challenge aspects of a city government's projects.

The second case cited by the Defendants is even less on point. The case concerns the standing of the Attorney General or individual member of the General Assembly have standing to challenge the Governor's actions as violating a statute or the constitution? The Court concluded that the AG has standing but that the individual legislators in that cause of action did not. Similarly, to the case above, this case's primary focus was also concerned with who had standing to challenge governmental actions on behalf of Kentucky Citizens.

> However, the Kentucky Supreme Court has unequivocally ruled that the Attorney General has standing to challenge the constitutionality of legislation and executive action implementing legislation. Commonwealth ex rel. Beshear v. Bevin, 498 S.W.3d 355, 361–66 (Ky. 2016); Commonwealth ex rel. Conway v. Thompson, 300 S.W.3d 152, 172 (Ky. 2008). Accordingly, the Attorney General has standing to challenge the enactment of Senate Bill 151... "

Thus, the initial relevant question is: Under these facts, was the circuit court presented with a circumstance that could be deemed to constitute a "justiciable cause?"

The memorandum of the defendants merely cited to a Black's Law Dictionary definition of justiciable , " A justiciable cause or controversy can be said to be a "controversy in which a present and fixed claim of right is asserted against one who has an interest in contesting it. . . ."

> "Standing is a legal term defined as a sufficient legal interest in an otherwise justiciable controversy to obtain some judicial decision in the controversy. Standing is a subset of justiciability, and focusses on whether the parties before the court have a personal stake in the outcome of controversy. In order to have standing to sue, a plaintiff need only have real and substantial interest in the subject matter of the litigation, as opposed to a mere expectancy. Interactive Gaming Counsel v. Commonwealth ex rel. Brown, 425 S.W.3d 107 (Ky. Ct. App. 2014)"

The memorandum in support of the Defendants Motion to Dismiss, references the Kentucky Court of Appeals Opinion. The Court of Appeals opinion on Civil action # 2014-CA-000963 portrays an insulting mischaracterization of the Plaintiff's Brief throughout.[8] In fact

[8] Plaintiff's Brief – Defendants Response Brief- Plaintiff's Reply – and the Opinion of the Court of Appeals is attached as Exhibits E through H (E - H)

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the Opinion is so egregious, that rather than the original panel denying Plaintiff's Petition for Rehearing, six of the fourteen Court of Appeal judges recused themselves from the case entirely.[9]

The Plaintiff's legal vested interest has been fraudulently circumvented by the defendant's actions which include false filings and the utilization of their familiar connections to individuals employed with the Court of Appeals, as well as direct deliberate action of this Court.

Fraud in its procurement is basis for enjoining enforcement of or granting other equitable relief with respect to judgment where other requisites of exercise of equitable power are present. A judgment which is procured by any acts of fraud is unenforceable. The defendants in this case, has engaged in direct actions of committing fraud on the court, as well as extrinsic fraud, by ghostwriting the judgments they seek to enforce.

> In considering whether litigant is entitled to relief from prior judgment on ground of fraud, court may consider whether (1)fraud, whether intrinsic or extrinsic, prevented full and fair presentation or determination of litigant's claim or defense in prior action or otherwise would have render it unconscionable to give effect to prior judgment, (2)party seeking relief was diligent in discovering fraud and attacking judgment, and(3) evidence of fraud is clear and convincing.

Misconduct by the litigants and court officials that goes directly to the integrity of the process constitutes fraud on the court. In any case, they satisfy the classic definitions of extrinsic fraud, "by reason of something done by the successful party to a suit, there was in fact no adversary trial or decision of the issue in this case. The unsuccessful party was prevented from exhibiting fully its case by fraud or deception practices on it by its opponent. If a tribunal has been corrupted, no worthwhile interest is served in protecting its judgment. Legal fees may constitute Racketeer Influenced and Corrupt Organization act (RICO) damages when they are proximately caused by a RICO violation. 18 U.S.C.A. § 1961 et seq.

[9] See Petition for Rehearing attached as Exhibit A__

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The defendants have intentionally submitted false filings throughout all cases and have consistently obstructed justice throughout. Defendant, Downey has repeatedly lied to court of appeals and Kentucky Supreme Court, by denying the illegal advancement that he took from the estate. To which I might add has never been approved by the District Probate Court. Despite that, the Defendants once again, failed to give any legal notice to the Plaintiff concerning the various motions that it filed in May, 2018, the Plaintiff obtained his own copies of the motions and orders. Irrespective of this, Kentucky law has remained clear on this issue, Orders obtained through fraud are void. No individual or a group of conspiring individuals are above the law, no matter their status or connections.

> "Fraudulent intent required to establish wire fraud violation is established by proof of intentional fraud or by demonstrating reckless indifference to truth. 18 U.S.C.A. § 1343."

Defendant Steven Downey directly lied to this Court concerning his authority to take illegal advancement. The numerous false assertions made within his court of appeal's filings, where he intentionally lied to the Court, by denying having ever received the illegal advancement, amounts to far more than reckless indifference to the truth.

CLAIM ONE: ABUSE OF PROCESS

The abuse of process claim against the defendants in the present cause of action is not the "abuse of process claim" referenced, discussed throughout Plaintiff's Brief. Likewise, it is not even the same subject matter that was reference within the egregiously mischaracterized Opinion of the Court of Appeals pertaining to the Plaintiff's brief. Plaintiff's abuse of process claim discussed within Plaintiff's brief was the Abuse of process claim filed by the defendants against the Plaintiff. Plaintiff filed an immediate Motion to Dismiss the abuse of process counterclaim in May of 2012. In August of 2012, this Court, unequivocally issued an ORDER denying Plaintiff's Motion to Dismiss.

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More than two years later, less than a week before trial, the Defendants during the last unscheduled final preliminary hearings, audibly that they were going to file something to have the counterclaim dismissed. Plaintiff's counsel vehemently objected to the dismissal, and the defendants never filed anything moving to dismiss the bogus counterclaim. The named Defendants in this cause of action only set out their intent to dismiss the counterclaim, in response to Plaintiff's Counsel informing the Court that actions taken by the named defendants after Keith's body was discovered was relevant with respect to establishing motive. Moreover, Plaintiff's counsel specifically asserted that the counter-claim and the deliberate lies that was asserted within the counterclaim and the false documents submitted in support of the counterclaim, directly made the actions taken by the defendants during the time frame after Keith's body was discovered relevant to show who has been the bully of the case, and for impeachment purposes.

As this Court is aware, the dismissal was in direct violation KY Civil Rule 41 Voluntary Dismissal. The argument was presented within Plaintiff's Brief in support of the obvious bias rulings issued by this Court throughout. Plaintiff's brief referenced the prejudicial effect of this Court's last-minute improper dismissal had on the ability of the plaintiff to present his theory of the case, and to impeach the defendants. This Court knows that it dismissed the counter-claim despite Plaintiff's vehement protest. Then subsequently disallowing any testimony and evidence related to the counterclaim or any other events after October 23, 2006. To be clear, the defendant's memorandum in support of their dismissal, falsely asserts that the court of appeals opinion thoroughly discussed the merits of defendant's abuse of process counterclaim.

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Which is entirely not the case, and contrary to the assertion of defense counsel herein, no ruling has ever been decided in favor of the Defendants.[10]

CLAIM TWO: MALICIOUS PROSECUTION CLAIM

The same arguments apply to the malicious prosecution claim. The defendant's slandered the plaintiff throughout the fraudulently submitted counterclaim, and subsequently utilized their connections with this Court, to prevent the Plaintiff from revealing to the jury the true bullies of the case and their endless false assertions and lies alleged against the Plaintiff and all 23 of his witnesses. Again, the Court of Appeals did not address the merits of the counterclaim whatsoever. In fact, the opinion went out of its way to imply to any reader of the opinion that Steve Chandler's interest in the personal property was still protected since post-trial, the Plaintiff filed a motion to reopen his mother's estate. This false implication becomes even more egregious when a party learns that Judge Debra Lambert denied all of Plaintiff's motions to submit a reply to Attorney Steven Downey's endless false assertions, then subsequently denied Plaintiff's Motion for Discretionary Review on the improperly affirmed laches ruling, and then despite playing such a pivotal role in denying the Plaintiff his basic constitutional rights at all levels, refused to recuse herself from issuing an opinion on the merits of the case.

CLAIM THREE: CONVERSTION CLAIM

Regarding the conversation claim, it's highly unlikely that this Court will now admit that it improperly denied the Plaintiff the ability to present his equity claim within his will contest action. It's even more unlikely that this Court would acknowledge that it should not

[10] As stated within the Plaintiff's Petition for Rehearing, the Opinion of the Court of Appeals seemed far more concerned with concealing and protecting the reputation and rulings of this Court, rather than Steve Chandler's constitutional rights to a fair impartial tribunal. See attached Exhibit __A__

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have reviewed, much less affirmed the laches ruling of the district court, while its previous ORDER that struck the Plaintiff's equity claim was up on appeal.

Moreover, this Court cited to an entirely inapplicable, Supreme Court Of The United States case, Saul Ornealas and Ismal OrnelasoLedesma v. United States, 517 U.S. 690, (1996), which concerned the necessary reasonable suspicion of a law enforcement officer to stop a person, and the probable cause to conduct a warrantless search under the Fourth Amendment. Not to mention that this court within its order affirming, falsely set out the actual ruling in the case that it cited to. Nothing has been decided in favor of the defendants. Make no mistake, all rulings have been issued in attempt to conceal the unconstitutional actions throughout. Please see the court of appeals opinion attached as exhibit ___H___, on page four (4) which unquestionably implies that the Plaintiff had not been harmed by this Court improperly striking his equity claim.

CLAIM FOUR AND SIX :

BREACH OF FIDUCIARY DUTY &

MISAPPROPRIATION OF ESTATE FUNDS

William Robinson was under a direct order from district court to not disperse any money. KRS 395.195 is applicable to claims against the estate, and not issues pertaining to the validity of a will. The defendant's memorandum attempts to misconstrue arguments of counsel, when counsel was being forced to defend the Plaintiff against the false allegations set out within the fraudulent counterclaim. The counterclaim fraudulently accused the Plaintiff of using the will contest as a financial club to prevent the defendants from obtaining the money by forcing them to use it all on attorney fees.

Please see the discussion above concerning Steven Downey Misappropriation of estate funds, and his unlimited deliberate attempt to deny and conceal his misappropriation of estate funds. It's rather funny how the memorandum seeks to improperly assert KRS 395.195, as a

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defense for William Robinson, but offers nothing in support of the ILLEGAL $25,000 wire fraud advancement taken by Attorney Steven Downey. Not to mention, if this advancement from the estate was legal and supported by case law, then what prevented Attorney Moore from taking "her fees" prior to May of 2018.

With respect to the intentional and deliberate actions concerning Attorney Moore failing to disclose a nearly $50,000 401K within the estates inventory report, asserting the possible issue within the court of appeals prehearing statement is a far cry from presenting any arguments on the matter, and an even further cry from a ruling in the defendant's favor.

CLAIM FIVE: CIVIL CONSPIRACY and/or AIDING and ABETTING

Steve Chandler without question has a valid legal interest in the personal property of his mother's estate. There is no "supposed" about it. Counsel for the Plaintiff, herein, after seven years of this egregious miscarriage of justice and misconduct of the judiciary all around, is more than sick of having to address non-stop lies and false assertions set out within each and every single filing by the defendants and/or defense counsel. Please see the above discussion concerning the equity argument, the district court's ruling of laches, the improper affirmation of this court, followed by the deliberate intentional denial of the appellate court to even acknowledge Steve Chandler's legal vested interest in the property bequeathed to him by his mother.

This Court should have not used the first available opportunity it had, to illegally cut off Steve Chandler's legal vested interest in the personal content. No doubt the filing of the civil action subject of this response, played a role in the Court's improper ruling. There have been endless attempts throughout to cover-up all illegal conduct, and to conceal the fraud and false filings of the attorneys named herein.

Contrary to the Defendants assertion, absolutely nothing has been decided in the defendant's favor in this case, or its related counterparts. Not to mention that the Court can not

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possibly overlook that named defendants and the claims presented in this cause of action are not the same defendants in any other related case.

CLAIM SEVEN: FRAUDULENT CONVEYANCE

The Defendant's memorandum asserts an incomplete argument on this issue. This Court is keenly aware that paragraphs pertaining to property taxes and utility bills were amongst the 60% of the paragraphs improperly stricken within the Plaintiff's Complaint by this Court. The jury never heard this information, because this Court made sure of that since it fell after it's unprecedent October 23, 2006 cut-off date.

THEREFORE, the repeated assertion that each and every issue has been decided in the defendant's favor is not only false, but ridiculous in light of the fact that we are not even dealing with the same named defendants throughout. In conclusion, it stands to reason that a party cannot submit false fraudulent filings to the Court and then use their judiciary connections to aid and abet in their fraud by covering up their wrong doing and ultimately cut off the Plaintiff's legal interest to hold them accountable for their actions.

WHEREFORE, the Plaintiff, however far-fetched this request might seem, respectfully ask this Court to do the right thing, by acknowledging the true and accurate events which conspired during the past seven years and DENY the Defendants Motion to dismiss.

Respectfully submitted

Kayce R. Powell
Law Office of Kayce R. Powell
Attorney at Law; for the Plaintff
P.O. Box 4
Hopkinsville, Kentucky 42241

BY: /s/ Kayce R. Powell

Counsel for the Plaintiffs

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CERTIFICATE OF SERVICE

This is to certify that on August 8, 2018, the foregoing document was electronically filed with the Clerk of this Court using the Kentucky Courts E-Fyling System, which will send notification of such filing to the following;

Leslie P. Vose – lvose@landrumshouse.com
Erin C. Sammons -esammons@landrumshouse.com
Gregory A. Jackson - giackson@landumshouse.com
Counsel For Defendants

Local Rule 15 Copy to

Hon. C. Rene' Williams
Chielf Regional Circuit Judge
35 U.S. Highway 41 A-S
P.O. Box 126
Dixon, KY 42409

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378.010 Fraudulent conveyances and encumbrances -- Void as to whom -- Exception.

Every gift, conveyance, assignment or transfer of, or charge upon, any estate, real or personal, or right or thing in action, or any rent or profit thereof, made with the intent to delay, hinder or defraud creditors, purchasers or other persons, and every bond or other evidence of debt given, action commenced or judgment suffered, with like intent, shall be void as against such creditors, purchasers and other persons. This section shall not affect the title of a purchaser for a valuable consideration, unless it appears that he had notice of the fraudulent intent of his immediate grantor or of the fraud rendering void the title of such grantor.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 1906.

378.020 Conveyance or encumbrance without consideration -- Effect.

Every gift, conveyance, assignment, transfer or charge made by a debtor, of or upon any of his estate without valuable consideration therefor, shall be void as to all his then existing creditors, but shall not, on that account alone, be void as to creditors whose claims are thereafter contracted, nor as to purchasers from the debtor with notice of the voluntary alienation or charge.

Effective: October 1, 1942

History: Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 1907.