APPELLANT'S BRIEF

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

NO. 30887

GLEN E. GOLDEN
Petitioner and Appellant

v.

DOUGLAS L. GOLDEN
Respondent and Appellee

APPEAL FROM THE CIRCUIT COURT
OF THE
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

GLEN GOLDEN, PER SE
820 Hoyt Street
Lakewood, Colorado 80215

FRANK DRISCOLL
Driscoll Law Office, P.C.
P.O. Box 2216
Rapid City, South Dakota
Attorney for Appellee

Notice of Appeal was Filed on October 28, 2024

AUTHORITIES

Statement on Irrelevance of Past Cases

Recent actions taken by the US Supreme Court, such as overturning Roe v Wade, 410 U.S. 113 (1973); proclaiming that the President of the United States is not obligated to follow the law when administering the duties of the Office; and reversing its opinion on the 40-year-old Chevron doctrine clearly show that precedent no longer dictates settled law. Therefore, the Court is asked to evaluate the merits of this appeal based on statutory requirements and reason.

Applicable Statutes

JURISDICTIONAL STATEMENT

The Appellate Court has jurisdiction on a District Court appeal pursuant to SDCL 15-26A-3. As the District Court Judge made findings and conclusions, and subsequent judgments and orders, that are not sustained by the evidence, an appeal is permitted pursuant to SDCL 15-26A-60(5). The Appellate Court is being asked to modify the District Court's Judgments and Orders, as provided for in SDCL 15-26A-12.

LEGAL ISSUE

As implied by 15-26A-60(5), findings of fact and other determinations must be sustained by the evidence. The evidence in this case do not sustain the final judgments and orders issued by the Circuit Court Judge. The Appellate Court is being asked to modify the District Court's Judgments and Orders, as provided for in SDCL 15-26A-12.

STATEMENT OF THE CASE AND FACTS

On December 22, 2018, Marjorie R. Golden died. The heirs to Marjorie's estate are her four adult children: Gloria Holsworth, Robert-, Doug-, and Glen Golden. On December 28, 2018, Doug Golden, through his attorney, Frank Driscoll, requested a hearing before Judge Matthew M. Brown of the Seventh Judicial Circuit Court to have Marjorie's Will, dated April 12, 2002, admitted to probate and to have Doug Golden appointed as the Personal Representative. At a hearing on January 18, 2019, the Will was admitted into probate (Case 51PRO18-228), but, at the request of his siblings, Doug Golden's petition to be appointed Personal Representative was denied. From then on, a very lengthy, litigious probate process ensued, including non-jury (bench) trials in October 2022 and April 2023, which were presided over by Judge Brown. The most highly contested probate issue, which is the basis for this appeal, involved the money that Marjorie kept in her home floor safe. In a document, dated March 22, 2024, Judge Brown issued his Findings of Fact and Conclusions of Law on the case. As Judge Brown's document contained numerous errors and misleading statements, on May 14, 2024, Glen Golden filed a motion with the court requesting a reconsideration of the information

given in Judge Brown's Findings of Fact and Conclusions of Law document; however, Glen received no response from the court on his request. Ultimately, Judge Brown issued an ORDER FOR COMPLETE SETTLEMENT OF THE ESTATE, signed on 10/07/2024, filed on October 09, 2024; and an AMENDED JUDGMENT, signed on 10/11/2024, filed on October 15, 2024. As Judge Brown reached conclusions that are not sustained by the evidence, the Petitioner, Glen Golden, on October 28, 2024, initiated an appeal on matters relating to the money Marjorie had in her home floor safe. Glen filed his appeal with the District Court. Glen is asking the Appellate Court to rescind Judge Brown's judgments and orders related to the home-floor-safe money and to have judgments issued that are consistent with the facts and evidence. The following four issues pertain to the problems associated with Judge Brown's decisions:

1. How much money was in Marjorie's home floor safe?
2. Who is entitled to the home-floor-safe money?
3. Where is the money now?
4. How should the money be divided among the beneficiaries?

ISSUE ARGUMENTS

1. How much money was in Marjorie's home floor safe?

Respondent's (Appellee's) Claim

Doug testified that on March 4, 2018, he and others counted the money in Marjorie's home floor safe and determined it amounted to $174,000. (See Trial Transcript [TT] Volume [V]1, page[p.] 64, Line(s) [L] 22; p.78, L 4; p.103, L 10-12; V2, p.222, L

22-25; p.223, L 17; p.233, L 3; p.251, L 18; p.301, L 18-23; and p.308, L 13-15.) In a report, dated 1/24/2019, Jesse Huschle, a Pennington County Sheriff's investigator, indicated that Gloria acknowledged that the home-floor-safe money amounted to $174,000. (See Trial Exhibit 19.)

Petitioner's (Appellant's) Claim

As Glen did not count the money, nor was he ever told the total dollar amount, he has no estimate of the amount of money that was in the safe.

Judge Brown's Assumption

On page 11 of the Court's Findings of Fact and Conclusions of Law document, dated March 22, 2024, Finding 45 states that there was $180,000 in Black Hills Federal Credit Union (BHFCU) safe deposit box #177, which is where Doug put the money after taking it out of Marjorie's safe. (Incidentally, Doug took the money without Marjorie's knowledge.) Judge Brown never explained how an additional $6000 could have gotten into safe deposit box #177.

It appears Judge Brown based his assumption on the testimony of Doug and Shelly Holsworth-Jackson.

As discussed above, Doug was adamant that the money amounted to $174,000.

Although Shelly helped count the money at BHFCU on October 15, 2018, her testimony on the total dollar amount is inconsistent. Shelly admitted that she couldn't remember the exact amount of money that was in the safe deposit box (TT V6, p.926, L5.), but that didn't stop her from blurting out guesses. During the trial in October 2022,

Shelly said the money amounted to "either 182 or 189" (thousand dollars). (See TT V4, p598, L14.) Whereas, during the trial on April 25, 2023, Shelly testified that the money total was "either 189, 192" (thousand dollars). (See TT V6, p.926, L6.) Later, when asked again about the missing safe-deposit-box money, Shelly said, "Was it $29,000? Was it $198,000? Was it 60? I have no clue. I have no clue exactly how much it was, how much it got whittled to." (See TT V6,p. 937, L 7-10.) It should be noted that the dollar amount that Judge Brown finally assumed for the total, $180,000, doesn't match any of the Shelly's estimates.

Shelly's estimates for the total amount of money taken out of safe deposit box #177 are based on an unlabeled number that she thought she saw on a piece of paper her mother (Gloria) was holding. (See TT, V4, P.598, L 24-25.) However, that number could have represented anything. For example, perhaps the number she saw represented the total amount of money that was taken from Marjorie's house. In addition to the home-floor-safe money, Doug said he also removed $8,400 that he had found elsewhere in Marjorie's house. Combining the two dollar amounts reported by Doug would yield a total of $182,400 ($174,00 + $8,400), a number that is close to one of Shelly's many guesses, i.e, $182,000 (ibid). In any case, Shelly's estimates are inconsistent and unreliable. It was irresponsible and an abuse of discretion for Judge Brown to arbitrarily assume there was an extra $6,000 in Doug's safe deposit box, as the assumption is not sustained by the evidence, which violates Statute SDCL 15-26A-60(5).

Petitioner's Recommendation

Unless Judge Brown can provide supporting evidence for his $180,000 assumption, his conclusion on how much money was in BHFCU safe deposit box should be changed to $174,000, which is the only dollar amount that has a degree of credibility.

2. Who is entitled to the home-floor-safe money?

Doug's (Appellee's) Claim on Issue 2

Initially, Doug claimed there was a codicil included with Marjorie's Will, dated April 12, 2002, which specified he was entitled to all the money in Majorie's home floor safe. However, after no codicil was found, and there was no indication that a codicil ever existed, Doug changed his claim to, he is entitled to one-quarter share of the home-floor-safe money, as provided for by the generic wording in Marjorie's Will.

Petitioner's Claim on Issue 2

A Will shows a testator's intent on the date the Will was executed. Marjorie's Will reflected her intent more than 15 years and 7 months before her death. Over that period of time Marjorie changed her preference on several provisions in her Will. For example, Marjorie executed a beneficiary deed in 2008, which specified that only Gloria and Robert were to inherit her house. (See trial exhibit no. 5.) Likewise, that same year Marjorie executed a beneficiary deed that specifies I am to inherit the vacant lot that is immediately across the street from her house. (See trial exhibit no. 5.) In March 2018 Marjorie changed the beneficiaries to her bank accounts and CD's. (See trial exhibit no.

5.) Also in 2018, Marjorie changed her mind on who should inherit the money that had been in her home floor safe. As I testified, during a telephone conversation I had with Marjorie in late September or early October 2018, Marjorie distinctly told me, "That money (home safe money) is not for Doug! I've already given him enough money!" (See TT V2, p. 358, L 22-25.) Shelly confirmed Marjorie's sentiment in her testimony. (See TT V4, p. 599, L 22-25.) On October 15, 2018, Marjorie demonstrated that she didn't want Doug to have any of her home-floor-safe money when she, with the help of her daughter (Gloria) and her granddaughter (Shelly), removed all the money from the safe deposit box (#177) she was leasing with Doug, and transferred all the money to another BHFCU safe deposit box (#191) that she then leased with Gloria. (See TT V4, p.602.) Clearly, Marjorie would have left money in the safe deposit box she was leasing with Doug had she wanted Doug to have any of the money! The decisions Marjorie made after 2002 clearly show that her preference on how she wanted her estate distributed radically changed over that time period. The Court should acknowledge and accept Marjorie's intent in 2018, instead of relying on a generic provision that existed 15 years and 7 months earlier. Therefore, only Gloria (the Gloria Holsworth Estate), Robert, and I should be deemed entitled to the money that was in Marjorie's home floor safe.

Trial Court's Disposition on Issue 2

In his Amended Judgment, dated 10/11/2024, Judge Brown ruled that Doug is entitled to one-fourth share of the home-floor-safe money, per the generic wording in Marjorie's 2002 Will.

Proposed Appellant Court Ruling on Issue 2:

In accordance with Marjorie's clear intent in 2018, the home-floor-safe money should be divided only among Gloria (Gloria Holsworth Estate), Robert, and Glen.

Issue 3. Where is the money now?

Doug's (Appellee's) Claim on Issue 3

On December 20, 2023, Frank Driscoll sent the Court an unsolicited document, entitled "Proposed Findings of Fact and Conclusions of Law", which the Court later used as a template for its own Findings of Fact and Conclusions of Law. Mr. Driscoll's proposed Conclusion 39, page 30, implies that Gloria, Robert, and I divided the safe-deposit-box money among ourselves and we took possession of a portion of the money.

Appellant's Claim on Issue 3

I never counted nor took possession of any of the home-floor-safe money that eventually was deposited in a safe deposit box at First Interstate Bank in Sturgis. (See TT V2, p. 353, L 12-14.) On December 28, 2018, Robert and Gloria told me they were planning on dividing the money. I told them to divide the money anyway they saw fit, and I asked Gloria to keep my share of the money with her share until the probate process was finished. Gloria agreed to keep my share with hers. (See TT V2, p.354, L 21-25.) In January 2019 Robert told me that the money had not been divided, as it was unclear whether Gloria would inherit any money from Marjorie's checking and savings accounts. In early February 2019 attorney Brian Utzman informed Gloria that it would be okay for

her to use the home-floor-safe money to pay for Estate expenses. Therefore, Gloria removed $30,000 from the safe deposit box at First Interstate Bank and, on February 21, 2019, she deposited the money into a checking account at Pioneer Bank in Rapid City, an account established to pay for Estate expenses. (See trial exhibit # 18.) The fact that Gloria removed $30,000 from the First Interstate Bank safe deposit box in February 2019 supports the claim that the safe-deposit-box money had not yet been divided.

The money that was in the First Interstate Bank safe deposit box in February 2019 stayed in Gloria's possession until she died in June 2020. After Gloria's death, her living companion, Donnie Roberts, continued to live in Gloria's house for about three months. (See TT V6, p. 927, L 4-5.) During most of that time Mr. Roberts had a restraining ordered imposed on Shelly, Gloria's daughter, and her brother, David Holsworth, that prevented either of them from having access to Gloria's estate property, including Gloria's house. (See TT V6, Page 929, L11-12.) Prior to establishing the restraining order, while standing on the front porch at Gloria's house, Mr. Robert's yelled to Shelly saying something to the effect, "Your Uncle Doug and I going to make sure you and David don't inherit one dollar of your Mom's inheritance." (See TT V6, p. 927, L 10-16.) Despite the clear indication that Doug and Mr. Roberts intended to steal whatever they could from Gloria's estate, it appears no legal steps were taken to prevent Doug or Donnie from looting Gloria's estate assets, including her cash. Shelly reported that there was no trace of the home-floor-safe money after Mr. Roberts moved out of Gloria's house. (See TT V6, p.929, L 22-25, and p. 930.) It is highly unlikely that Doug would

have allowed Mr. Roberts to keep any of the home-floor-safe money. Therefore, it should be concluded Doug most likely took the money.

> Note: As this issue comes down to who is telling the truth, on two occasions during the probate proceedings, I proposed that Doug and I undergo polygraph tests to determine who is telling the truth. Attorney Driscoll pointed out that the South Dakota Supreme Court has concluded the results from polygraph tests are unreliable; however, I was, and still am, willing to abide by the results from such testing. In both cases, Doug refused to undergo the tests.

Trial Court's Disposition on Issue 3

In Finding 90, page 19, of the Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW document, dated March 22, 2024, Judge Brown assumed that "... Gloria, Robert and Glen kept $150,000 of the estate's money and divided it among themselves." In Finding 85, page 18, Judge Brown found (concluded) that "Gloria's estate, Robert, and Glen must disgorge the gross amount of $15,000 each to fund the distribution to Doug." Subsequently, in the Court's Amended Judgment, dated October11, 2024, the Court awarded a judgment of $14,584.61 to Doug against Glen.

Proposed Appellant Court Ruling on Issue 3

As there is no basis for the Court's assumption that I took possession of any of the home-floor-safe money, the Court's "finding" that I took possession of any of the safe deposit money should be eliminated from the finding, and the judgment that I owe Doug $14, 584.61 should be vacated.

Issue 4. How should the money be divided among the beneficiaries?

Doug's (Appellee's) Claim on Issue 4

Despite his initial claim, Doug endorsed the assumption that safe deposit box #177 at BHFCU contained $180,000. Furthermore, Doug claimed he should receive one-quarter of the money. (See page 30 of the PLAINTIFF DOUG GOLDEN'S POST-TRIAL BRIEF, PROBATE ACTION, dated September 1, 2023.)

Appellant's Claim on Issue 4

As discussed above in Issue 1, the money in safe deposit box #177, which was transferred to a safe deposit box at the First Interstate Bank in Sturgis, most likely amounted to $174,000. After subtracting the $30,000 that was removed from the First Interstate Bank safe deposit box to fund the Pioneer Bank checking account (trial exhibit #18), the amount of money that remained in the First Interstate Bank safe deposit box would have been $144,000 ($174,000 - $30,000). As discussed in Claim 2 above, only the Gloria Holsworth Estate, Robert, and Glen are entitled to the home-floor-safe money. However, as Marjorie Golden surely intended for Gloria to be a beneficiary to her checking and savings accounts, the Gloria Holsworth Estate should receive a larger share of the safe-deposit-box money as compensation for being unexpectedly eliminated as a beneficiary to Marjorie's bank accounts. In December 2018 Gloria agreed to help out Marjorie by becoming her financial power of attorney (POA), so she could pay Marjorie's bills and other expenses. An unexpected consequence of Gloria becoming Marjorie's financial POA was that US Bank automatically removed her as a beneficiary

to Marjorie's checking and savings accounts. (See Court's Finding # 58.) At the time of her death Marjorie had a combined total of $126,031 ($29,306 [checking] + $96,725 [savings]) in her US Bank accounts. Had Gloria still been a beneficiary she would have received at least one-quarter of $126,031, or $31,508. Therefore, $31,508 should be set aside for Gloria's extra share, leaving $112,492 ($144,000 - $31,508). Then, dividing the remaining $112,492 equally three ways would leave each legitimate beneficiary $37,497. Also, the three beneficiaries would evenly split the residual amount of money from the Pioneer Bank account. (See the attached Appendix for details.) Therefore, Doug should be required to pay the Gloria Holsworth Estate $69,005 ($37,497 + $31,508), and Robert and Glen $37,497, each.

Trial Court's Disposition on Issue 4

The Court adopted Mr. Driscoll's proposed findings and conclusions, and ordered the Defendants to each pay Doug $45,000, minus what Doug should have contributed to the Pioneer Bank estate expense account. (See Court's Conclusion #27, page 26.)

Proposed Appellant Court Ruling on Issue 4

The Appellate Court should conclude that Doug most likely is in possession of the missing home-floor-safe money, and, therefore, is obligated to disgorge the money to the probate Defendants as discussed above in the Appellant's Claim section. Likewise, the remaining money from the Pioneer Bank account should be divided evenly among the Gloria Holsworth Estate, Robert, and Glen.

CONCLUSIONS

Many of Judge Brown's Findings of Fact and Conclusions of Law regarding Marjorie Golden's home-floor-safe money are wrong. Accordingly, the subsequent Orders and Judgments issued based on the incorrect assumptions are without merit, as they are not sustained by the evidence, which violates the implied intent of SDCL 15-26A-60(5). As permitted by SDCL 15-26A-12, the Petitioner, Glen Golden, is asking the Appellate Court to nullify the Orders and Judgments issued related to the home-floor-safe money and to have new Orders and Judgements issued that reflect the facts and evidence. The following actions are requested:

1) Set the amount of home-floor-safe (safe deposit box) money at $174,000.
2) Specify that the only rightful beneficiaries to the home-floor-safe money are the Gloria Holsworth Estate, Robert Golden, and Glen Golden.
3) Acknowledge that Doug Golden is most likely in possession of the missing money, and, therefore, require him to distributed the money to the rightful beneficiaries.

Dated this 13 day of December 2024.

/s/ Glen E. Golden
Glen E. Golden, Pro Se
820 Hoyt Street
Lakewood, Colorado 80215
303-237-6730
glen.golden@gmail.com

APPENDIX

Summary of Pioneer Bank Account on October 1, 2019

In February 2019, $30,000 was taken from a First Interstate Bank safe deposit box to fund a checking account (#31830904) at Pioneer Bank in Rapid City. The following table is an accounting of the money, as of October 1, 2019.

Component	Dollar Amount
Bank Account Balance	$16, 897
Estate Expenses Paid	* $7,154
**Amount Owed by Probate Defendants:	
Gloria Holsworth Estate	$1,983
Robert Golden	$1,983
Glen Golden	$1,983
Total Amount	$30,000

* Frank Driscoll has argued that some of the expenses paid were inappropriate. For example, Mr. Driscoll feels it was unnecessary to have a roof leak repaired at the Estate house in September 2019. However, it would have been very irresponsible not to repair the leak, as further leaking could have caused considerable damage to the Estate house and its contents. Also, Mr. Driscoll said that some of the Estate bills for services provided could have been avoided by cancelling service. However, as Gloria was not the Personal Representative for the Estate, she did not have the authority to terminate the service agreements that Marjorie had established with the various service providers; in which

case, Gloria simply paid the Estate bills as they came due. Had Gloria not taken on the job of Estate bill-payer, Estate bills could have gone into arrears, resulting in lawsuits and property liens! Gloria did write a few checks to herself, but that money compensated her for the time she spent processing and paying bills, and maintaining the property. All the expenses paid were justified and should be allowed, except for the money that was paid to attorney Brian Utzman ($5949).

** Offset to the Amount of Money ($5949) the Defendants Owe

After October 1, 2019, the Pioneer Bank account was no longer used to pay for Estate expenses. As Estate bills still had to be paid, Gloria Holsworth opened a checking account at the First National Bank in Rapid City. The account, which was used to pay Estate expenses, was funded by Gloria Holsworth, Robert Golden, and Glen Golden. During the period from October 1, 2019 to March 5, 2020 (date set by the Court for Estate expense liability; Finding 108), $3460 worth of Estate expenses were paid from the account. Therefore, the amount of money the probate defendants owe to the Pioneer Bank account should be reduced by $3460, resulting in a total amount due of $2,489 ($5,949 -$3,460), each owing $830.

CERTIFICATE OF SERVICE

I certify that on December 13, 2024, I mailed a hardcopy of my Appellant Brief document to the Appellee's (Doug Golden's) attorney, Frank Driscoll, and to the Supreme Court Clerk, Shirley A. Jameson-Fergel, at the addresses shown below.

Shirley A. Jameson-Fergel, Clerk
South Dakota Supreme Court
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Frank Driscoll
Driscoll Law Office, P.C
P.O. Box 2216
Rapid City, SD 57709

Signed this 13th day of December, 2024.

Glen E. Golden

Glen E. Golden, Pro Se
820 Hoyt Street
Lakewood, Colorado 80215
303-237-6730
glen.golden@gmail.com

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT NOV 1 2 2024
	) SS.	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT Clerk
In the Matter of the Estate of	)	
	)	
Marjorie R. Golden,	)	51PRO 18-228
Deceased.	)	51CIV 22-0462
	)	
DOUGLAS GOLDEN,	)	
	)	
Plaintiff,	)	
	)	**JUDGMENT**
vs.	)	
	)	
ROBERT GOLDEN,	)	
	)	
Defendant.	)	

The above-captioned matters are, respectively, a formal probate action and an action in tort that were consolidated for trial and further proceedings on October 3, 2022. The consolidated actions came on for trial before the Court, without a jury, on October 3 through 6, 2022 and on April 24 through 26, 2023. Petitioner and plaintiff Doug Golden appeared in person and through his attorney, Frank Driscoll. Respondent Estate of Gloria Holsworth appeared through its personal representative Shelly Holsworth in person and its attorney Jon J. LaFleur. Respondent and defendant Robert Golden appeared in person and through his attorney Terry L. Pechota. Respondent Glen Golden appeared pro se and in person.

The parties have presented their respective cases and the Court has heard the testimony and considered the exhibits. The Court has also considered the briefs and oral arguments submitted by the parties and has made and filed its Findings of Fact and Conclusions of Law. The Court has ruled that Doug Golden is entitled under the

decedent's Will to a one-fourth share of the $180,000 in cash from the decedent's estate that the Respondents had divided among themselves, minus $1,246.16 as Doug's equal share of estate expenses that the Respondents had properly paid from the estate's cash. All other issues which had been presented to the Court in these actions have been addressed and resolved. Accordingly and based thereupon, it is hereby ORDERED, ADJUDGED and DECREED as follows:

That Doug Golden is awarded judgment in the amount of $14,584.61 against Robert Golden;

That Doug Golden is awarded judgment in the amount of $14,584.61 against the Estate of Gloria Holsworth;

That Doug Golden is awarded judgment in the amount of $14,584.61 against Glen Golden;

That the Pennington County Clerk of Courts shall remit $14,584.61 to Doug Golden from Robert Golden's one-half share of the $182,641.00 in proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020 and that the Clerk shall thereafter remit $76,735.89 by a check payable to Robert Golden and Terry L. Pechota to be delivered to attorney Terry L. Pechota;

That Doug Golden shall, through counsel, file an appropriate satisfaction of judgment promptly following receipt of the Clerk's check for $14,584.61 from Robert Golden's funds;

That the Pennington County Clerk of Courts shall remit $7,381.09 to Doug Golden from the remaining balance of Gloria Holsworth's Estate's one-half share of the

proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020;

That Doug Golden shall, through counsel, file an appropriate partial satisfaction of judgment promptly following receipt of the Clerk's check for $7,381.09 from the Estate of Gloria Holsworth's funds;

That Doug Golden shall not recover punitive damages from Robert Golden in the above-captioned and -numbered tort action.

That each party shall bear their own costs and disbursements, any expert witness fees they incurred and their own attorney fees; in both of the above-captioned actions; and

That Doug Golden, as the personal representative of the decedent's estate, shall distribute the remaining funds held in the estate's checking account in accordance with the Court's Order of Complete Settlement entered in the above-captioned probate action, which Order of Complete Settlement is incorporated herein and made a part of this Judgment by reference.

10/7/2024 3:09:20 PM
Attest:
Slaughter, Patrick
Clerk/Deputy

BY THE COURT:

Hon. Matthew M. Brown
Circuit Court Judge

Submitted by Frank Driscoll
Driscoll Law Office, P.C.
Attorney for Douglas Golden
September 13, 2024

C:\Data\golden\doc\judgment.proposed.wpd

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this

NOV 04 2024

Amber Watkins
Clerk of Courts, Pennington County
By _____ Deputy

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
In the Matter of the Estate of	)	
	)	
Marjorie R. Golden,	)	51PRO 18-228
Deceased.	)	51CIV 22-0462
	)	
DOUGLAS GOLDEN,	)	
	)	
Plaintiff,	)	**AMENDED**
	)	**JUDGMENT**
vs.	)	
	)	
ROBERT GOLDEN,	)	
	)	
Defendant.	)	

The above-captioned matters are, respectively, a formal probate action and an action in tort that were consolidated for trial and further proceedings on October 3, 2022. The consolidated actions came on for trial before the Court, without a jury, on October 3 through 6, 2022 and on April 24 through 26, 2023. Petitioner and plaintiff Doug Golden appeared in person and through his attorney, Frank Driscoll. Respondent Estate of Gloria Holsworth appeared through its personal representative Shelly Holsworth in person and its attorney Jon J. LaFleur. Respondent and defendant Robert Golden appeared in person and through his attorney Terry L. Pechota. Respondent Glen Golden appeared pro se and in person.

The parties have presented their respective cases and the Court has heard the testimony and considered the exhibits. The Court has also considered the briefs and oral arguments submitted by the parties and has made and filed its Findings of Fact and Conclusions of Law. The Court has ruled that Doug Golden is entitled under the

decedent's Will to a one-fourth share of the $180,000 in cash from the decedent's estate that the Respondents had divided among themselves, minus $1,246.16 as Doug's equal share of estate expenses that the Respondents had properly paid from the estate's cash. All other issues which had been presented to the Court in these actions have been addressed and resolved. Accordingly and based thereupon, it is hereby ORDERED, ADJUDGED and DECREED as follows:

That Doug Golden is awarded judgment in the amount of $14,584.61 against Robert Golden;

That Doug Golden is awarded judgment in the amount of $14,584.61 against the Estate of Gloria Holsworth;

That Doug Golden is awarded judgment in the amount of $14,584.61 against Glen Golden;

That the Pennington County Clerk of Courts shall remit $14,584.61 to Doug Golden from Robert Golden's one-half share of the $182,641.29 in proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020 and that the Clerk shall thereafter remit $76,736.03 by a check payable to Robert Golden and Terry L. Pechota to be delivered to attorney Terry L. Pechota;

That Doug Golden shall, through counsel, file an appropriate satisfaction of judgment promptly following receipt of the Clerk's check for $14,584.61 from Robert Golden's funds;

That the Pennington County Clerk of Courts shall remit $7,381.24 to Doug Golden from the remaining balance of Gloria Holsworth's Estate's one-half share of the

proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020;

That Doug Golden shall, through counsel, file an appropriate partial satisfaction of judgment promptly following receipt of the Clerk's check for $7,381.09 from the Estate of Gloria Holsworth's funds;

That Doug Golden shall not recover punitive damages from Robert Golden in the above-captioned and -numbered tort action.

That each party shall bear their own costs and disbursements, any expert witness fees they incurred and their own attorney fees; in both of the above-captioned actions; and

That Doug Golden, as the personal representative of the decedent's estate, shall distribute the remaining funds held in the estate's checking account in accordance with the Court's Order of Complete Settlement entered in the above-captioned probate action, which Order of Complete Settlement is incorporated herein and made a part of this Judgment by reference.

This Amended Judgment has been entered to correct the omission of 29 cents from the $182,641.00 amount shown in the Judgment filed on October 7, 2024 as proceeds deposited with the Clerk of Courts and to then allocate the additional 29 cents between the amounts for the one-half shares for Robert Golden and Gloria Holsworth's Estate stated on page two of the Judgment.

10/11/2024 1:22:30 PM

BY THE COURT:

Hon. Matthew M. Brown
Circuit Court Judge

Attest:
Shaw, Heather
Clerk/Deputy

State of South Dakota } Seventh Judicial
County of Pennington } Circuit Court
I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on record in my office this

NOV 04 2024

Amber Watkins
Clerk of Courts, Pennington County

By _____ Deputy

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

****

IN THE MATTER OF THE
ESTATE OF MARJORIE R. GOLDEN,
Deceased.

No. 30887

****

APPEAL FROM THE CIRCUIT COURT OF
THE SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

****

THE HONORABLE MATTHEW M. BROWN
Circuit Court Judge

****

APPELLEE'S BRIEF

GLEN GOLDEN — Respondent and appellant
Lakewood, Colorado

FRANK DRISCOLL — Attorney for petitioner and appellee Douglas Golden
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The appellant's Notice of Appeal was filed on November 4, 2024.

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JURISDICTIONAL STATEMENT

This is an appeal taken by Glen Golden from a judgment entered in a contested probate action following a trial to the court. An Amended Judgment was filed on October 11, 2024. The appellant was served with a Notice of Entry by mail on October 17, 2024. The appellant's Notice of Appeal was filed with the Pennington County Clerk of Courts on November 4, 2024. This Court's jurisdiction is conferred by SDCL15-26A-3(1).

STATEMENT OF ISSUES

The appellant presented four issues which can be consolidated into the following two issues:

I. Was the trial court's finding that determined the amount of the cash that originated from the decedent's home safe clearly erroneous?

The trial court found that the amount of cash that originated from the decedent's home safe and that belonged to the estate was $180,000.

The cases and authorities most relevant to this issue are:

Parsley v. Parsley, 2007 SD 58, 734 N.W.2d 813
Estate of Card v. Card, 2016 SD 4, 874 N.W.2d 86

II. Did the trial court err in ruling that Doug Golden was entitled by the decedent's Will to a one-fourth share of the cash that originated from her home safe?

The trial court ruled that the cash was to be divided into four equal shares as provided in the decedent's Will and that Doug's three siblings would each be required to disgorge equal amounts to fund his share of the distribution.

The cases and authorities most relevant to this issue are:

80 Am. Jur. 2d, *Wills* (1975)
In re Estate of Hubert, 2022 SD 73, 983 N.W.2d 194
In re Estate of Kesling, 2012 SD 70, 822 N.W.2d 709

STATEMENT OF THE CASE

This is an appeal that was taken following a trial to the court in a contested probate action. Douglas Golden filed a petition for formal probate on December 26, 2018 following the death of his mother Marjorie R. Golden on December 22, 2018. The respondents in the probate action were Doug's three siblings, Gloria Holsworth, now deceased, Robert Golden and Glen Golden, the appellant. The case was venued in circuit court in Pennington County and presided over by the Honorable Matthew M. Brown. The action was tried to the court over four full days and two half days in October, 2022 and late April, 2023. After a transcript was prepared and the parties filed briefs and other post-trial submissions, the court issued Findings of Fact and Conclusions of Law,[1] without an accompanying memorandum decision, on March 25, 2024. The trial court entered a Judgment on October 9, 2024 and then filed an Amended Judgment[2] to correct a minor arithmetic error on October 11, 2024.

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[1] Clerk's Index at 1746. As explained later, the trial court entered Amended Findings of Fact and Conclusions of Law on July 12, 2024. Clerk's Index at 1941. Because the appellant failed to attach a copy of the findings and conclusions to his docketing statement or include it in the appendix to his brief, as required by SDCL 15-26A-60(8)(a), a copy of the Amended Findings of Fact and Conclusions of Law is provided in the Appendix to this brief.

[2] Clerk's Index at 2088. Because the appellant also failed to include a copy of the Amended Judgment in the appendix to his brief, a copy is provided in the Appendix to this brief.

There were multiple issues in the probate litigation. One of the primary issues required that the trial court determine the amount of cash that had been in a safe in the decedent's home and had been removed from the home prior to her death. A corresponding issue was to determine which of the siblings were entitled to receive distributions of the cash, and in what amounts, after it had been accounted for as an asset of the estate. The trial court determined that the amount of the cash was $180,000 and that it was to be distributed equally among the four siblings as provided by their mother's Will. The appellant disagrees with the trial court's finding as to the amount of cash and its conclusion that appellee Doug Golden was entitled to a one-fourth distribution from the estate.

Among the other issues tried in the case was whether two of the siblings, Gloria Holsworth and Robert Golden, had exerted undue influence over the decedent and caused her to remove Doug as her sole payable on death beneficiary on certain bank accounts she owned. The trial court found that Doug had not proven undue influence had been exerted and Doug has not sought review of this and related adverse rulings.

Before the probate litigation reached trial, Doug commenced a tort action against his brother Robert on April 14, 2022, alleging exertion of undue influence, conversion, fraud and deceit and self-dealing and requesting compensatory and punitive damages. On October 3, 2022 the tort action was consolidated for trial with

the probate action.[3] The trial court found that Doug had proven that Robert had committed conversion but had not proven the other three tort claims. The request for punitive damages was bifurcated and decided after the court had entered its Findings and Conclusions following the trial on the consolidated actions. The trial court later declined to award punitive damages.[4] Doug has not sought review of the trial court's rulings in the tort action.

STATEMENT OF FACTS

This case involves a myriad of facts, many of them interrelated. The trial involved several issues, particularly the question of undue influence, that are not a part of this appeal. The facts most directly related to the issues raised by the appellant are as follows.

Marjorie Ruth Golden began her 91st and final year of life in January, 2018. Marjorie, who was widowed in 1968, was a long-time resident of Rapid City. South Dakota. Although in declining health, Marjorie still lived in her own home with Calvin Wiest, her companion of several years.[5]

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[3] Order Consolidating Actions (Clerk's Index at 413). After the two actions were consolidated, most of the pleadings were placed in the probate action file rather than in the file for the tort action. All references to the Clerk's Index in this brief are to the index for the probate action unless specifically noted.

[4] The trial court denied Doug's motion for punitive damages in its Amended Findings of Fact and Conclusions on July 12, 2024. The only change to the previous Findings and Conclusions was adding Conclusion 23a denying the punitive damages.

[5] See Amended Findings of Fact, ¶¶ 1, 3 (Clerk's Index at 1941). Hereinafter, the Amended Findings of Fact and Conclusions of Law will referred to as Findings or as Conclusions, as the case may be, and the applicable paragraph number.

Marjorie had four children, Gloria Holsworth, Robert Golden, Doug Golden, and Glen Golden, all of whom survived her death.[6] Gloria died in June, 2020 while Marjorie's probate was being litigated and her estate was substituted as a party in the probate litigation.[7] Gloria's daughter Shelly Holsworth appeared for her mother's estate through the remainder of the probate litigation.

Marjorie executed a simple Will on April 12, 2002. Her Will was admitted to probate following her death. Marjorie's Will provided that her estate was to be divided equally among her four children.[8] A few years after signing her Will, Marjorie refined her estate plan by arranging for specific assets having unequal values to be distributed in-kind among her four children after she died. On July 17, 2008, Marjorie executed two "Beneficiary Deeds." One deed conveyed ownership of her house to Gloria and Robert after she died. The other deed provided for Glen to receive a bare lot Marjorie owned across the street from her residence. One week after signing the two deeds, Marjorie signed payable on death beneficiary forms at US Bank to leave her checking and savings accounts to Doug.[9]

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[6] Findings, ¶ 2.

[7] *Id.*, ¶ 96.

[8] *Id.*, ¶ 4.

[9] *Id.*, ¶ 9.

Marjorie had a floor safe in the basement of her home in which she had accumulated a large amount of cash over the years.[10] Doug genuinely believed Marjorie intended for him to receive the cash she had stored in her safe, based upon statements she had made to him numerous times and had also expressed on multiple occasions during family gatherings with his siblings present. Marjorie had also told her children several times that she wanted Gloria and Robert to get her house and for Glen to receive the vacant lot.[11]

Doug and his wife Marina would come to Rapid City from their home in Colorado to visit Marjorie and her companion Cal several times each year, particularly for holidays. During the last few years before Marjorie died, Doug would usually open and check the floor safe during their visits. Doug was the only person who was supposed to have the combination for the safe other than Marjorie and her companion Cal.[12] Doug would set the dial at a particular setting each time after checking the safe. During the last couple years before Marjorie died, Doug noticed the dial was being moved and became concerned someone other than Marjorie or Cal was accessing the safe and might be pilfering the cash.[13]

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[10] *Id.*, ¶ 13.

[11] *Id.*, ¶ 17.

[12] Transcript of Court Trial, Volume 1 (Clerk's Index at 425), at 51-52. Hereinafter, references to the trial transcripts, the volume numbers and page numbers will be to "TR _, at __."

[13] Findings, ¶ 18.

During a visit in early March, 2018, Doug asked Marjorie if she knew how much cash she had accumulated in the safe. Marjorie said she didn't know, so Doug asked if they could count it. Marjorie agreed. Doug brought the cash up from the basement and Marjorie, Cal, Doug and Doug's wife Marina counted it. Each of them counted and stacked up a portion of the large denomination bills. Marjorie tallied up the counts for each stack when they finished. Her total was $174,000. In addition to the large bills, there were a few thousand dollars of the smaller denominations bills that had been set off to the side during the count.[14]

After the count was completed, Doug took the cash back downstairs to the safe. Marjorie put the few thousand dollars of smaller bills in a cash box she kept in her bedroom.[15]

On the following day, March 5, 2018, Doug took all of the cash out of the safe, put it into a shopping bag and removed it from the residence without telling Marjorie or Cal. Doug went to the nearby Elk Vale branch of the Black Hills Federal Credit Union ("BHFCU") where Marjorie banked. He leased a safe deposit box, using his mother's address, where he secured the shopping bag and all of the cash. Doug and Marina then drove back home to Colorado. Doug did not keep any of the cash he had removed from Marjorie's safe.[16]

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[14] *Id.*, ¶¶ 18-19.

[15] *Id.*, ¶ 19.

[16] *Id.*, ¶¶ 22-24.

Doug's brother Robert, and his wife, arrived in Rapid City to visit Marjorie less than a week later. Robert discovered that all the cash had been removed from Marjorie's safe and assumed Doug had taken it. Robert took Marjorie to US Bank on Monday, March 12, 2018 where she signed a new payable on death form removing Doug and leaving his three siblings as beneficiaries on her IRA. Marjorie also signed new forms removing Doug as the sole payable on death recipient of her checking and savings accounts and substituted Gloria, Robert and Glen as equal beneficiaries in his place.[17]

About two weeks after Doug had removed the cash from the safe, Marjorie called him about an ATM card she had received from the credit union. During the conversation Doug told Marjorie he had removed the cash from her safe and put it in a safe deposit box to prevent it from being pilfered.[18] Marjorie told Doug it was still her money so Doug said he would add her to the safe deposit box lease the next time he and his wife came back to Rapid City.[19]

Doug and Marina returned to Rapid City two months later to visit for Mother's Day and Doug took Marjorie to the credit union. They added Marjorie to his lease and she received a key to the safe deposit box. Doug also took Marjorie into the vault

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[17] *Id.*, ¶ 26.

[18] *Id.*, ¶ 31.

[19] TR 1, at 85.

and showed her bag with all of her cash. Marjorie was satisfied to leave the cash in the safe deposit box.[20]

At some later time, Gloria found out Marjorie had a key to a safe deposit box. On October 15, 2018, Gloria arranged to have her daughter Shelly, who lives in Rapid City, meet her and Marjorie at the credit union to access the safe deposit box. By that time Marjorie had no recollection about the key, the safe deposit box or that Doug had shown her the cash in the box in May.[21] A banker helped Marjorie access the box and took it to a private room where Gloria and Shelly were waiting. When they opened the box, Shelly saw it contained a shopping bag filled with cash. Shelly testified she observed "... tons of money in the bag, stacks of money."[22] Shelly and Gloria started counting the money and Gloria wrote amounts down on a piece of paper. Shelly testified that she glanced over her mother's shoulder after Gloria had totaled up the numbers from the count:

> I cannot remember for sure, but it was 180 something. It was either 182 or 189. It was just off of 200,000 ....[23]

After they had finished counting, Gloria and Marjorie leased a different box and put the shopping bag and all of the cash in the new box.[24]

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[20] Findings, ¶ 39.

[21] *Id.*, ¶¶ 42-43.

[22] TR 4 (Clerk's Index at 1034), at 596.

[23] TR 4, at 598; *See also* Findings, ¶ 44.

[24] Findings, ¶ 46.

Doug and his wife came back to Rapid City over Thanksgiving to be with Marjorie, who had then gone into a nursing home. While they were here, Doug went to the credit union to check his safe deposit box and discovered it was empty. He telephoned Gloria and confronted her about taking the money, which she admitted. Doug demanded that Gloria return the money to his safe deposit box by noon the following day, which she did not do. Consequently, Doug went to the Sheriff's Office on Saturday afternoon, November 24, 2018 and reported that Gloria had stolen the money.[25]

Gloria telephoned Robert about Doug's call and his threat to report her to law enforcement. Gloria then went to the credit union on Monday, November 26th and leased yet another safe deposit box, listing Marjorie as a co-lessee. On the next day, Gloria had Shelly meet her at the credit union where they moved all the cash from the box Gloria and Marjorie had previously leased to Gloria's new safe deposit box.[26]

While Gloria was moving the cash to her new safe deposit box, Robert busied himself preparing a "General Power of Attorney" for Marjorie to authorize Gloria to handle all her financial affairs. Robert drove from his home in Kansas City to Rapid City with his form and he and Gloria took it for Marjorie to sign in the nursing home on November 29, 2018.[27] Robert and Gloria then immediately went to US Bank

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[25] *Id.*, ¶¶ 48-50.

[26] *Id.*, ¶¶ 51-52.

[27] *Id.*, ¶ 54.

where they used the General Power of Attorney to have Gloria placed on Marjorie's checking and savings accounts as a POA. Gloria then changed the payable on death designations on Marjorie's checking and savings accounts by adding Doug as an equal beneficiary and - unbeknownst to her and Robert at the time - removing herself as a beneficiary on both of the accounts. That left the two accounts payable to Robert, Doug and Glen equally.[28]

On December 20, 2018, Marjorie entered hospice care. On the same morning, Robert and Gloria went to the credit union and removed all of the cash from the box Gloria had leased three weeks earlier. They drove directly to Sturgis, where Gloria lived, and jointly leased a safe deposit box at First Interstate Bank. They put all of the cash they had taken from BHFCU into their new box.[29]

Marjorie Golden died in hospice on the morning of December 22, 2018.[30] On December 28th, Gloria, Robert and Glen went to the bank in Sturgis where Robert and Gloria had stashed the cash they had taken from the credit union in Rapid City. Robert and Gloria entered the vault and accessed their box. Glen said he did not go into the vault and did not participate in counting the money. Incredibly, Glen testified that Robert and Gloria never told him how much money there was and that he never

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[28] *Id.*, ¶¶ 57-58.

[29] *Id.*, ¶¶ 71-72.

[30] *Id.*, ¶ 74.

asked them.[31] Robert testified repeatedly that the amount of cash was only about $29,000.[32] Gloria, Robert and Glen all signed off on an answer to an interrogatory denying they had split up any of the money that had originated from the safe deposit boxes in Rapid City.[33] However, during trial Glen testified that Gloria and Robert had divided up the money but that he did not take his share while they were at the bank in Sturgis.[34] Glen's testimony was contradicted by an e-mail he had sent to the three siblings' then lawyer Brian Utzman, with a copy to his sister Gloria, just a couple weeks into the probate litigation on January 15, 2019 stating:

> After our mother died, we split the money among us (Gloria, Robert, and I) as our Mother intended.[35]

Doug filed a petition for formal probate of Marjorie's estate on December 26, 2018 asking to be appointed as the personal representative and for supervised administration.[36] The petition alleged, among other things, that his three respondent siblings had removed some $174,000 of the decedent's cash from her safe deposit box and were withholding it from the estate. At a hearing held January 18, 2019, Marjorie's Will was admitted to probate and supervised administration was granted.

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[31] TR 2 (Clerk's Index at 677), at 353-56.

[32] Findings, ¶ 98.

[33] TR 2, at 405.

[34] *Id.*, at 354-55.

[35] *Id.*, at 404-05.

[36] Clerk's Index at 1.

The appointment of a personal representative was deferred until a later date.[37] With that, the probate litigation was underway.

Although Marjorie left an estate worth upwards of one-half million dollars, the cash that had originated from her home safe and her tangible personal property were the only assets to be distributed under her Will. Her US Bank IRA, checking account and savings account were all payable upon death assets, although the changes that had been made to the beneficiary designations were litigated in the probate action. Marjorie's accounts and certificates of deposit at BHFCU were all payable upon death and were distributed accordingly without becoming part of the probate litigation.[38]

The probate litigation, along with Doug's tort action against Robert, were tried to the court without a jury over 3 ½ days in October, 2022 and 1 ½ days in late April, 2023. After the trial transcript was completed, the parties submitted briefs. Counsel for Doug submitted Proposed Findings of Fact and Conclusions of Law.[39] The court rendered its decision by entering Findings of Fact and Conclusions of Law, without an accompanying memorandum decision, on March 25, 2024.[40] Among the numerous

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[37] *See* Order Admitting Will to Probate and Granting Supervised Administration (Clerk's Index at 30).

[38] Findings, ¶ 79.

[39] Clerk's Index (Probate Action) at 38.

[40] Clerk's Index at 1746.

issues that were decided, the trial court determined that the amount of cash that had originated from the safe in Marjorie's home was $180,000.[41]

After making its finding on the amount of cash that belonged to the estate, the trial court had to determine how it was to be distributed. Robert and Glen claimed they were entitled to keep the cash because Marjorie had told them she did not want Doug to receive any of it.[42] The court determined that the $180,000 was distributable under the equal shares provision of Marjorie's 2002 Will. As a result, Doug was entitled to recover a gross distribution of $45,000, representing his one-fourth share of the $180,000. Consequently, the court ruled that Gloria's estate, Robert and Glen would each be required to disgorge $15,000 gross to fund the distribution Doug was entitled to receive under the Will. The trial court also provided that the gross distribution was to be reduced by Doug's proportionate share of certain expenses for the estate that his siblings had paid from the $180,000 in cash they had kept for themselves.[43]

The probate was concluded with a hearing in September, 2024 on Glen's objections to the personal representative's proposal for the final distribution of the remaining funds in the estate. The trial court subsequently entered an order of

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[41] Findings, ¶¶ 45, 72.

[42] *See, e.g.*, TR 5 (Clerk's Index at 1253) at 830-31(Robert) and TR 2 at 358 (Glen).

[43] Findings, ¶ 85.

complete settlement[44] which addressed the logistical arrangements for making various offsets in distributing the balance in the estate checking account and a Judgment[45] awarding Doug the $15,000 (gross) amount owed by each of the three respondents for his share of the estate's $180,000 of cash. This appeal by Glen Golden followed.

ARGUMENT

I. The trial court properly found that the amount of cash that originated from the safe in Marjorie's home was $180,000.

The cash that originated from the safe in Marjorie's home and eventually made its way into a safe deposit box in Sturgis was property that belonged to her estate. After Robert and Gloria removed the cash from the credit union in Rapid City, they - along with Glen - did their level best to prevent Doug from finding out what happened to the money or from recovering any of it. That all had to be pried from the respondents through the discovery process and at trial.

At the outset, the respondents refused to acknowledge they had possession of the cash and that all three of them knew where it had been hidden in Sturgis. They waited for two months after the probate had been opened before they fabricated a story about the amount of the cash. It was not until February 20, 2019 that the respondents' former attorney, Brian Utzman, sent a letter to Doug's attorney stating, in part:

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[44] Clerk's Index at 2082.

[45] Clerk's Index at 2085. On October 11, 2024 the court filed an Amended Judgment (Clerk's Index at 2088) which corrected a minor arithmetic error.

> Gloria Holsworth, Robert Golden and Glenn [sic] Golden took the $30,000.00 that was in Marjorie Golden's safe deposit box and deposited the monies into a separate probate bank account. These monies will be turned over to the Personal Representative when said individual has been appointed by the Court.[46]

During discovery, Glen joined with Gloria and Robert in falsely swearing that all the cash had been deposited into a new bank account and that the amount was approximately $27,000.[47] At trial Glen claimed ignorance and testified he had not observed while Robert and Gloria were counting the cash while they were together at the First Interstate Bank in Sturgis on December 28, 2018. Glen also claimed at trial that Robert and Gloria never told him what the amount of the money they had counted was.[48]

Eventually the location of the cash was revealed when Robert spilled the beans when he was deposed on June 23, 2020. Robert stated he and Gloria had put the money in a safe deposit box at some bank - the name of which he professed he could not remember - in Sturgis.[49] Even after that, the cash could not be recovered because the three respondents had split it among themselves, except for $30,000 they had

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[46] TR 5, at 832.

[47] TR 2, at 405.

[48] TR 2, at 355-56.

[49] TR 5, at 801-03.

deposited into a checking account for Gloria to pay for their lawyer and for expenses with the properties Marjorie had deeded to them.[50]

On appeal Glen complains that the trial court erred by finding that the amount of the cash was $180,000 rather than $174,000. Determining the amount of the cash was clearly a question of fact to be decided by the trial court. This Court reviews the trial court's findings of fact using the clearly erroneous standard. The review that this Court performs was aptly described in *Parsley v. Parsley* as follows:

> "We review findings of fact deferentially, applying the clearly erroneous standard." Zepeda v. Zepeda, 2001 SD 101, ¶19, 632 NW2d 48, 55 (citations omitted). "Clear error is shown only when, after a review of all of the evidence, 'we are left with a definite and firm conviction that a mistake has been made.' The trial court's findings of fact are presumed correct and we defer to those findings unless the evidence clearly preponderates against them." City of Deadwood v. Summit, Inc., 2000 SD 29, ¶ 9, 607 NW2d 22, 25 (citations and quotations omitted). Further, "[a]bsent clear proof of error, we must defer to the judge's firsthand perception of the witnesses and the significance the judge gave to their testimony." *Zepeda*, SD 101, ¶ 19, 632 NW2d at 55 (citation omitted).[51]

Applying this standard, Glen has utterly failed to demonstrate any error, let alone clear error. The trial court found the amount of cash was $180,000.[52] The testimony at trial provided a range from $29,000, as Robert claimed, to a high of $189,000, as Shelly Holsworth testified to. Shelly testified the amount her mother had

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[50] *See* Findings, ¶¶ 89 and 101.

[51] 2007 SD 58, ¶ 15, 734 N.W.2d 813, ___.

[52] Findings, ¶ 72.

written down during their count "... was either 182 or 189."[53] The trial court made a reasonable decision in finding the amount was $180,000. It represents the approximate midpoint between the $174,000 amount that Doug testified to and the maximum of $189,000 from Shelly's testimony.

The trial court's decision on the amount of cash was a credibility choice. The court specifically found that Doug Golden's testimony at trial was generally credible,[54] as was Shelly Holsworth's testimony.[55] The trial court found that Robert's testimony was generally not credible and that he was "... avoidant, deceitful, and untrustworthy."[56] Robert's testimony that there was only about $29,000 in cash "... was not at all credible."[57] Overall, Glen's testimony was "... only intermittently credible."[58] The trial court also found that Gloria, Robert and Glen had:

> ... intentionally withheld information about the amount, the location, and the division among themselves of the cash that Robert and Gloria had removed from BHFCU on December 20, 2018 after the probate litigation was underway and when responding to Doug's discovery requests during the probate litigation."[59]

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[53] TR 4, at 598.

[54] Findings, ¶ 81.

[55] *Id.*, ¶ 82.

[56] *Id.*, ¶ 83.

[57] *Id.*, ¶ 98.

[58] *Id.*, ¶ 84.

[59] *Id.*, ¶ 99.

It is firmly settled that "... it is within the prerogative of the trial court to resolve conflicts of evidence, judge the credibility of witnesses, and weigh the testimony of witnesses."[60] This is not a situation in which Shelly's testimony regarding the amount of money was more credible than Doug's testimony. There was a large amount of cash that was counted by four people working together on one occasion and two people working together and counting fairly quickly on the other. It is almost inevitable that neither count was perfectly accurate - but perfect accuracy is not required. Both Doug and Shelly were credible witnesses and it was simply a matter of the trial court making a finding within the range of credible evidence as to what the amount of money was.

Although Glen did not specifically argue it in his brief, he implies the trial court was required to adopt the lowest number provided through Doug and Shelly's testimony. Glen failed to provide either logic or authority to support his contention that the trial court erred. The trial court made a reasoned finding and the appellant disputes it only because he does not like any part of the trial court's decision to award a judgment to Doug.

II. The trial court correctly ruled Doug Golden was entitled to one-fourth of the cash that originated from Marjorie's home safe pursuant to her Will.

Glen contends the equal distribution provision of Marjorie's Will should be disregarded because he thinks the document was too old and because he claims

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[60] *Estate of Card v. Card*, 2016 SD 4, ¶ 17, 874 N.W.2d 86, __ (citations omitted)

Marjorie told him Doug should not receive any of the cash he had removed from her safe.[61] Glen's argument ignores the fact that the trial court did not find him particularly credible and ignores the established rules prohibiting the use of extrinsic evidence to modify or disregard the unambiguous provisions of a Will.

There is no question Marjorie's very simple Will[62] clearly stated that her estate was to be distributed equally among her four children. Marjorie's Will contained a provision to distribute her personal effects according to a memorandum, if she had left one, and, if not, then equally among her four children. Her Will then stated:

> All the rest, residue, and remainder of any property, whether real, personal, or mixed, which I own or have an interest in at the time of my death, I hereby give, devise and bequeath to my above-named children,[63] in equal shares, share and share alike.

If there is any ambiguity in this provision of Marjorie's Will, Glen failed to identify what it is. There was no issue about the Will being ambiguous raised before or during trial. There is no question that Marjorie was entitled to refine the estate plan contemplated by her Will by making arrangements to distribute her real property and most of her financial assets outside of her Will through payable on death designations. Instead, what Glen asserts is that the trial court should have ignored what the law requires and distributed the estate's cash as he and his brother Robert saw fit.

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[61] Appellant's Brief at 7- 8.

[62] Clerk's Index at 5.

[63] The Will specifically named each of Marjorie's four children who are the parties to this probate litigation.

The interpretation of a Will is a question of law. This Court reviews the circuit court's interpretation of Wills and its legal conclusions de novo:

> "We review a circuit court's interpretation of a Will de novo." *In re Bickel*, 2016 S.D. 28, ¶ 879 N.W.2d 741, 750. This Court's "goal 'in interpreting a will is to discern the testator's intent. If the intent is clear from the language used, that intent controls.'" *Novak v. Novak*, 2007 S.D. 108, ¶ 12, 741 N.W.2d 222, 226 (citation omitted). "We limit our examination to what the testator meant by what he said, not what we think he meant to say." *Bickel*, 2016 S.D. 28, ¶ 28, 879 N.W.2d at 750.[64]

The intent of Marjorie's Will is unquestionable. What Glen advocates is altering Marjorie's expressed intent rather than interpreting applying it to distribute the estate's assets. He claims the trial court should have distributed the cash the way he said Marjorie told him during a phone conversation in Fall, 2018, to the effect that Doug should not receive any of the money from the safe; that she had already given him enough.[65]

The rule barring the use of extrinsic or parole evidence to rewrite a provision in a Will is firmly settled:

> ... extrinsic evidence is not admissible to vary, contradict, or add to the terms of a will, or to show a different intention on the part of the testator from that disclosed by the language of the will ....[66]

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[64] *In re Estate of Hubert*, 2022 SD 73, ¶ 18, 983 N.W.2d 194, ___.

[65] *See* Appellant's Brief at 8.

[66] 80 Am. Jur. 2d, *Wills* § 1279 (1975) (*citing, inter alia, Re Hurley's Estate*, 61 S.D. 233, 248 N.W. 194 (1933)).

This Court has applied this principle in a variety of factual situations and the inquiry always starts - and frequently ends - in the same place. Extrinsic evidence is only admissible to clarify an ambiguity in a Will. When the testatrix's intent is clearly expressed within the four corners of her Will, the court is bound by the unambiguous language of the Will and extrinsic evidence is not needed.[67]

Doug learned that the law prohibits using a decedent's verbal statements to alter the distributions in their Will after he engaged counsel. Glen disregards what the rule is because it does not coincide with his point of view. The extrinsic evidence in this case is from hearsay statements allegedly made by a woman who is now deceased. Testimony regarding oral statements allegedly made by a deceased person is considered the weakest kind of evidence.[68] The prohibition against using extrinsic evidence to interpret an unambiguous Will applies squarely to statements of a deceased testatrix:

> The principle that extrinsic evidence generally is inadmissible to control the construction of an unambiguous will, or to vary, contradict, or add to the terms of the will, applies a fortiori where the evidence offered consists of the testator's declarations of intention. Thus, evidence of declarations of the testator is inadmissible to give an effect to a clause of a will different from that which the natural force and construction of the language would warrant.[69]

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[67] *In re Estate of Kesling*, 2012 SD 70, ¶ 13, 822 N.W.2d 709, ___ (citing *Estate of Klauzer*, 2000 SD 7, ¶ 14, 604 N.W.2d 474, 478).

[68] *Mahan v. Mahan*, 80 S.D. 211, ___, 121 N.W.2d 367, 369 (1963) (citation omitted).

[69] 80 Am. Jur. 2d, *Wills* § 1348, at 430.

The trial court heard Glen's testimony, as well as the testimony of the other witnesses, describing Marjorie's oral statements about the disposition of the cash from her safe. The court disregarded those statements for the purpose of varying from the express provisions of Marjorie's Will and correctly applied the law.

Neither Glen nor his two siblings produced any writing signed by Marjorie having testamentary effect that modified the equal distribution provision of her 2002 Will. To the contrary, Robert admitted under cross-examination at trial that he asked Marjorie to state in writing that Doug was not to receive any of the money from the safe and acknowledged that she declined to do so.[70] Consequently, there was no admissible evidence that would have allowed the trial court to override Marjorie's Will.

Glen's only authority for the remarkable proposition that his mother's Will was too old to be valid and that her alleged oral comment to him should have been implemented was Glen himself. He did not bother to provide any legal authority for his argument - or for any other arguments in his brief. In fact, Glen's brief claims he should not be expected to provide legal authority because, in his opinion, the United States Supreme Court has dispensed with precedent.[71] Be that as it may, in this Court Glen's failure to cite authority constitutes a waiver of his argument:

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[70] TR 5, at 831.

[71] *See* Appellant's Brief at 2, "Statement on Irrelevance of Past Cases."

> Because [the appellant] cites no authority for this novel proposition, it is waived. *See* SDCL 15-26A-60(6); *Veith v. O'Brien*, 2007 S.D. 88, ¶ 50, 739 N.W.2d 15, 29 (citations omitted).[72]

The trial court ruled correctly in awarding Doug one-fourth of the $180,000 in cash that originated from Marjorie's safe. Her Will clearly provided for equal distributions and the trial court properly ignored Glen's demand that the court disregard the rule of law.

The appellant's brief raised two other issues which are merely variations on his argument that the trial court should not have awarded Doug one-fourth of the $180,000 (gross) that came from the safe. Under what he labeled as Issue 3, Glen claims Doug must have colluded with his late sister's companion Donnie Roberts to wrest possession of the cash from Robert and Gloria's safe deposit box.[73] Glen bases his fantastic claim on a hearsay statement purportedly made by Mr. Roberts to the effect that he and Doug would make sure Shelly and her brother wouldn't get a dollar of Gloria's inheritance.[74] Glen's argument is a remarkable attempt at burden shifting, particularly on the appellate level. It flies in the face of the trial court's finding that after depositing $30,000 of the estate's money into a checking account at Pioneer Bank, "... Gloria, Robert and Glen kept $150,000 of the estate's money and divided it

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[72] *Niesche v. Wilkinson*, 2013 SD 90, ¶ 15, 841 N.W.2d 250, ___.

[73] *See* Appellant's Brief at 9-11. This argument concludes with a frivolous comment advocating accepting evidence from polygraph examinations.

[74] *See* Appellant's Brief at 10.

among themselves."[75] Glen's brief offers nothing other than wild speculation to demonstrate that the trial court's finding about who ended up with the cash was clearly erroneous. Glen produced no evidence at trial to prove his outlandish assertion that Doug had somehow gotten his hands on the money that Gloria, Robert and Glen had in their control and possession as of December 28, 2018.

It was not Doug's burden to prove what happened with the cash after Robert and Gloria stashed the $180,000 in their safe deposit box in Sturgis on December 20, 2018. It does not effect Doug's inheritance however his three siblings may have chosen to divide the cash among themselves. Glen made no effort to provide evidence at trial to show why he should not be required to pay one-third of Doug's $45,000 (gross) share of the missing $180,000. Therefore, the trial court was justified in finding that:

> Robert and Glen failed to truthfully disclose on the record what amounts the respondents divided among themselves from the $180,000 that they accessed at the safe deposit box at First Interstate Bank in Sturgis on December 28, 2018 or at any time thereafter. Accordingly, there is no factual basis in the record that would enable the Court to equalize whatever amounts the three respondents divided among themselves from the $180,000 cash that Robert and Gloria removed from BHFCU on December 20, 2018.[76]

Glen also argues, under what he labeled as Issue 4, that Doug should be required to forfeit his one-fourth share of the $180,000 of cash and also surrender the

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[75] Findings, ¶ 90 (emphasis supplied).

[76] Findings, ¶ 111.

money he received as a one-third payable on death beneficiary of the US Bank checking and saving accounts so the money could be redistributed to Gloria's estate. Glen claims that Gloria's estate, "... should receive a larger share of the safe-deposit box money as compensation for being unexpectedly eliminated as a beneficiary to Marjorie's bank accounts."[77] This issue is just another variation on Glen's argument that the trial should not have awarded Doug one-fourth of the $180,000 in cash as required by Marjorie's Will.

The trial court was fully aware that Gloria was removed as a payable on death recipient when she used the General Power of Attorney that Robert had prepared to alter the beneficiaries on Marjorie's US Bank checking and savings accounts on November 29, 2018. The trial court found that, "Gloria was *removed* as a payable on death recipient on both accounts in the process of changing the POD designations to *add Doug* as a recipient.[78] What Glen proposes is that the trial court should have rewritten Marjorie's Will to eliminate Doug's inheritance in order to rescue Gloria from the consequences of using a power of attorney to alter Marjorie's payable on death designations. As before, Glen provides no legal authority to support this astounding proposition and has therefore waived the argument.[79]

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[77] *See* Appellant's Brief at 12-13.

[78] Findings, ¶ 58 (emphasis in original).

[79] *Niesche*, *id.*, ¶ 15, 841 N.W.2d at ___.

Glen Golden made any number of strategic mistakes in formulating his pro se trial strategy. It is not the place or obligation of this Court to relieve him of the consequences of his poor decisions.

CONCLUSION

Appellee Doug Golden respectfully requests that this Court summarily affirm the trial court and uphold the Amended Judgment entered in this action.

DATED this 24th day of January, 2025.

/S/ Frank Driscoll
Frank Driscoll
DRISCOLL LAW OFFICE, P.C.
Attorney for Appellee
P.O. Box 2216
Rapid City, SD 57709
605-718-5710

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

No. 30887

IN THE MATTER OF THE
ESTATE OF MARJORIE R. GOLDEN,
Deceased.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies, pursuant to SDCL 15-26A-66(b)(4), that this brief contains 5,776 words and 33,986 characters as counted in accordance with subsection (b)(2) of the statute and therefore complies with the type-volume limitation of no more than the greater of 10,000 words or 50,000 characters applicable to principal briefs.

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IN THE SUPREME COURT
OF THE
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No. 30887

IN THE MATTER OF THE
ESTATE OF MARJORIE R. GOLDEN,
Deceased.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January, 2025, I served the Appellee's Brief in this matter by placing one paper copy of the same in the United States mail, postage prepaid, addressed to:

Glen E. Golden
820 Hoyt St.
Lakewood, CO 80215

and by electronic transmission through Odyssey File and Serve upon:

Jon J. LaFleur
Attorney for Gloria Holsworth Estate
jlafleur@azlaw.pro

Terry L. Pechota
Attorney for Robert Golden
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/S/ Frank Driscoll
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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

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Deceased.

APPENDIX TO THE APPELLEE'S BRIEF

Contents of the Appendix:

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
In the Matter of the Estate of	)	
	)	
Marjorie R. Golden,	)	51PRO 18-228
Deceased.	)	51CIV 22-0462
	)	
DOUGLAS GOLDEN,	)	
	)	
Plaintiff,	)	**AMENDED**
	)	**JUDGMENT**
vs.	)	
	)	
ROBERT GOLDEN,	)	
	)	
Defendant.	)	

The above-captioned matters are, respectively, a formal probate action and an action in tort that were consolidated for trial and further proceedings on October 3, 2022. The consolidated actions came on for trial before the Court, without a jury, on October 3 through 6, 2022 and on April 24 through 26, 2023. Petitioner and plaintiff Doug Golden appeared in person and through his attorney, Frank Driscoll. Respondent Estate of Gloria Holsworth appeared through its personal representative Shelly Holsworth in person and its attorney Jon J. LaFleur. Respondent and defendant Robert Golden appeared in person and through his attorney Terry L. Pechota. Respondent Glen Golden appeared pro se and in person.

The parties have presented their respective cases and the Court has heard the testimony and considered the exhibits. The Court has also considered the briefs and oral arguments submitted by the parties and has made and filed its Findings of Fact and Conclusions of Law. The Court has ruled that Doug Golden is entitled under the

decedent's Will to a one-fourth share of the $180,000 in cash from the decedent's estate that the Respondents had divided among themselves, minus $1,246.16 as Doug's equal share of estate expenses that the Respondents had properly paid from the estate's cash. All other issues which had been presented to the Court in these actions have been addressed and resolved. Accordingly and based thereupon, it is hereby ORDERED, ADJUDGED and DECREED as follows:

That Doug Golden is awarded judgment in the amount of $14,584.61 against Robert Golden;

That Doug Golden is awarded judgment in the amount of $14,584.61 against the Estate of Gloria Holsworth;

That Doug Golden is awarded judgment in the amount of $14,584.61 against Glen Golden;

That the Pennington County Clerk of Courts shall remit $14,584.61 to Doug Golden from Robert Golden's one-half share of the $182,641.29 in proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020 and that the Clerk shall thereafter remit $76,736.03 by a check payable to Robert Golden and Terry L. Pechota to be delivered to attorney Terry L. Pechota;

That Doug Golden shall, through counsel, file an appropriate satisfaction of judgment promptly following receipt of the Clerk's check for $14,584.61 from Robert Golden's funds;

That the Pennington County Clerk of Courts shall remit $7,381.24 to Doug Golden from the remaining balance of Gloria Holsworth's Estate's one-half share of the

proceeds from the sale of the decedent's residence that was deposited with the Clerk pursuant to the Court's order filed on November 3, 2020;

That Doug Golden shall, through counsel, file an appropriate partial satisfaction of judgment promptly following receipt of the Clerk's check for $7,381.09 from the Estate of Gloria Holsworth's funds;

That Doug Golden shall not recover punitive damages from Robert Golden in the above-captioned and -numbered tort action.

That each party shall bear their own costs and disbursements, any expert witness fees they incurred and their own attorney fees; in both of the above-captioned actions; and

That Doug Golden, as the personal representative of the decedent's estate, shall distribute the remaining funds held in the estate's checking account in accordance with the Court's Order of Complete Settlement entered in the above-captioned probate action, which Order of Complete Settlement is incorporated herein and made a part of this Judgment by reference.

This Amended Judgment has been entered to correct the omission of 29 cents from the $182,641.00 amount shown in the Judgment filed on October 7, 2024 as proceeds deposited with the Clerk of Courts and to then allocate the additional 29 cents between the amounts for the one-half shares for Robert Golden and Gloria Holsworth's Estate stated on page two of the Judgment.

10/11/2024 1:22:30 PM

BY THE COURT:

Hon. Matthew M. Brown
Circuit Court Judge

Attest:
Shaw, Heather
Clerk/Deputy

Filed on: 10/11/2024 Pennington County, South Dakota 51PRO18-000228

STATE OF SOUTH DAKOTA,	)	IN CIRCUIT COURT
	) SS.	
COUNTY OF PENNINGTON.	)	SEVENTH JUDICIAL CIRCUIT
In the Matter of the Estate of	)	
	)	
Marjorie R. Golden,	)	51PRO18-228
Deceased.	)	51CIV 22-000462
	)	
DOUGLAS GOLDEN,	)	
	)	**AMENDED FINDINGS OF FACT**
Plaintiff,	)	**AND**
	)	**CONCLUSIONS OF LAW**
vs.	)	
	)	
ROBERT GOLDEN,	)	
	)	
Defendant.	)	

Before the Court are a tort action between Douglas Golden as plaintiff and Robert Golden as defendant in 51 CIV 22-000482 and the formal probate of the estate of Marjorie R. Golden in 51 PRO 18-228. These matters were consolidated for trial and further proceedings pursuant to an order entered and filed on October 3, 2022.

These matters came on for trial to the Court before the Honorable Matthew M. Brown, circuit court judge, on various dates in October, 2022 and April, 2023 at the Pennington County Courthouse in Rapid City, South Dakota. Petitioner and plaintiff Doug Golden appeared in person and through his attorney, Frank Driscoll. Respondent and defendant Robert Golden appeared in person and through his attorney Terry L. Pechota. Respondent Estate of Gloria Holsworth appeared through its personal representative Shelly Holsworth in person and its attorney Jon J. LaFleur. Respondent Glen Golden appeared in person pro se.

The parties having presented their cases and the Court having heard the testimony, having reviewed the exhibits, having read the briefs and considered the arguments submitted by the parties and being fully advised in the premises hereby finds, concludes and rules as follows:

FINDINGS OF FACT

1. Marjorie Ruth Golden, who was born on January 14, 1927, was a longtime resident of Rapid City, South Dakota. Marjorie owned a residence at 2011 Helios Drive where she had lived for many years. Marjorie died in Pennington County, South Dakota on December 22, 2018 at the age of 91 years.

2. Marjorie was a widow. Her husband Robert L. Golden died in July, 1968. Marjorie had four children, Gloria Holsworth, Robert Golden, Douglas Golden and Glen Golden, all of whom survived her death.

3. Marjorie's companion during the last ten years or so of her life was Calvin Wiest, who lived with her in her residence. Mr. Wiest died on June 14, 2019.

4. Marjorie executed a Last Will and Testament on April 12, 2002. Her Will was admitted to formal probate on January 25, 2019. Marjorie's Will nominated her son Doug to serve as the personal representative of the estate. Marjorie's Will provided that her estate was to be divided equally among her four children.

5. Marjorie had a printed form Living Will for medical decision-making that she executed on August 2, 1994. Marjorie's Living Will named her son Doug as her attorney-in-fact.

6. Marjorie had maintained a checking account, a savings account and Individual Retirement Accounts (IRAs) at US Bank in Rapid City, South Dakota for many years

before making a Will in 2002.

7. Marjorie had maintained share accounts and held certificates of deposit at the Black Hills Federal Credit Union ("BHFCU") in Rapid City, South Dakota for many years before making a Will in 2002.

8. Several years before making her Will in 2002, Marjorie had signed payable on death designations to distribute her US Bank IRAs and her BHFCU share account and certificate of deposits equally among her four children.

9. In July, 2008, Marjorie refined her existing estate plan to provide for in-kind distributions of specific assets having unequal values among her four children upon her death. On July 17, 2008, Marjorie executed a "Beneficiary Deed" to leave her residence at 2011 Helios Drive in Rapid City to her son Robert and her daughter Gloria, in equal shares, following her death. On the same day, Marjorie also executed another "Beneficiary Deed" to leave the vacant lot that she owned across the street from her residence to her son Glen upon her death. On July 22, 2008, Marjorie signed payable on death beneficiary forms at US Bank to leave her checking account and her savings account solely to her son Doug upon her death.

10. On September 16, 2008, Marjorie signed two replacement Beneficiary Deeds to correct technical defects in the two deeds she previously executed on July 17, 2008. The replacement Beneficiary Deeds were recorded on September 16, 2008.

11. On June 4, 2010, Marjorie and Doug signed forms at US Bank which named Doug as power of attorney on Marjorie's checking and savings accounts.

12. Marjorie and Doug maintained a close relationship and spoke daily by telephone following Doug's retirement. Marjorie trusted Doug with a general understanding of her financial affairs and to act on her behalf if she became incapacitated.

13. Marjorie's residence had a floor safe located in the closet area of a basement bedroom. The only people who were supposed to have the combination for the safe were Marjorie, her companion Calvin Wiest and her son Doug.

14. Over the course of many years, Marjorie had accumulated a substantial amount of cash in the safe at her residence. In addition to the cash, Marjorie kept the original of her Will, a prepaid funeral contract, the title for her car and various other documents in the safe.

15. Among the papers that Marjorie kept in her safe was a typed and signed document describing how she wanted to distribute her real property and her money after she died. Based upon Doug's testimony describing this document, which the Court finds to be credible, the document provided specific bequests of her residence to Gloria and Robert, her bare lot to Glen and her cash to Doug. Although Doug had seen the document in the safe in early March, 2018, it had been removed by late 2018 shortly before Marjorie's death, along with other some documents such as the prepaid funeral contract which Gloria had in possession when Marjorie died.

16. Although the absence of the document described in the previous paragraph prevents the Court from properly considering its contents and legal effect, the Court finds under the circumstances that the document predated July, 2008 and that the

provisions in the document were superseded by the steps Marjorie took in July, 2008 to refine the estate plan provided in her Will by executing and recording the two Beneficiary Deeds and by naming Doug as the sole payable on death beneficiary of her US Bank checking and savings accounts.

17. Based upon numerous conversations with his mother and also upon statements that Marjorie had made to Doug and his siblings together multiple times during family gatherings, Doug genuinely believed that Marjorie intended for him to receive the cash in her floor safe when she died.

18. Doug and his wife Marina would come to Rapid City to visit Marjorie and Cal several times each year, particularly for holidays. During the last few years before Marjorie died, Doug would usually check the floor safe when he and Marina came to visit. Doug would set the dial on the safe at a specific setting each time after checking the safe. In the last couple years before Marjorie died, Doug became concerned that someone other than Marjorie or Cal was accessing the safe because he often found the dial setting changed on his next visit. Doug became concerned that whoever was accessing the safe had been or could pilfer cash from the safe.

19. At Doug's suggestion, Marjorie, Cal, Doug and Marina counted the cash from the floor safe on or about March 4, 2018. The total amount they counted, in large bills, was $174,000, which Marjorie tallied on a small piece of paper.

20. After the count, Doug returned the cash to the floor safe except for a few thousand dollars in smaller bills, which had not been counted or tallied, which he put in a cash box that Marjorie kept in her bedroom.

21. *After Marjorie passed away*, the amount of money found by Doug in the cash box in Marjorie's bedroom totaled $8,420.

22. On the morning of March 5, 2018, Doug removed all the cash which had been counted the previous day from the safe, placed it in a shopping bag and removed it from Marjorie's residence without informing either Marjorie or her companion Cal.

23. Doug took the cash to the nearby Elk Vale branch of BHFCU where he leased a safe deposit box in his name (#177), using his mother's address for the new account and lease. Doug placed all the cash he had removed from the floor safe in the safe deposit box for safekeeping. Doug and Marina then left Rapid City and returned to their home in Aurora, Colorado.

24. Doug did not take any of the cash that had been in the floor safe.

25. Robert, along with his wife, arrived in Rapid City less than a week later (around March 12, 2018) for a visit. Robert discovered that all the cash had been removed from Marjorie's floor safe and assumed Doug had stolen it.

26. On March 12, 2018, Robert took Marjorie to the downtown branch of US Bank in Rapid City. Marjorie signed a new beneficiary designation form for her IRA which removed Doug as a recipient and made Robert, Gloria and Glen equal one-third recipients upon her death. Marjorie also signed new forms which removed Doug as the sole payable on death beneficiary of her checking and savings accounts and substituted Robert, Gloria and Glen as equal one-third recipients on both accounts.

27. Marjorie was prone to falling and was becoming increasingly forgetful as 2018 progressed. She was also hospitalized and in rehabilitation care multiple times

during her last year.

28. Although Marjorie was not mentally incapacitated as of March 12, 2018, her advanced age and her progressively declining physical health and mental faculties had made her more susceptible to being unduly influenced than she would have been in previous years.

29. When Marjorie executed new POD designations for her US Bank accounts on March 12, 2018, she misdated the form for the checking account as "March 12, 2016" and the form for the savings account as "March R. Golden."

30. Marjorie never told Doug that she had eliminated him as a payable on death beneficiary on her US Bank IRA and her checking and savings accounts on March 12, 2018.

31. Marjorie received a mailing with an ATM card from BHFCU approximately two weeks after Doug had leased a safe deposit box at the Elk Vale branch. Marjorie called Doug about the mailing and stated that she did not want an ATM card. During the phone conversation Doug told Marjorie that he had moved the cash from her floor safe to a safe deposit box at BHFCU. Marjorie did not inform Doug during this conversation, or at any time afterward, that she already knew he had removed the cash from her floor safe. Marjorie also did not inform Doug during this conversation, or at any time afterward, that she had removed him as a payable on death recipient on her US Bank IRA and as the beneficiary of her US Bank checking and savings accounts.

32. Robert's testimony regarding Marjorie's changes to the POD designations on her IRA and checking and savings accounts at US Bank on March 12, 2018 was riddled

with material inconsistencies and contradictions, including but not limited to whether his late sister Gloria had accompanied he and Marjorie to US Bank; whether Marjorie had gone to US Bank intending to change her beneficiary designations; whether Robert had been present with Marjorie and a banker when she discussed and changed her beneficiary designations. These inconsistencies raise the question to the Court as to whether Marjorie was unduly influenced by Robert when making these changes.

33. Numerous aspects of Robert's testimony at trial regarding what occurred on March 12, 2018, were inconsistent with the testimony he gave during his deposition on June 23, 2020, relevant portions of which deposition testimony were properly introduced as substantive evidence at trial.

34. Although the Court does not find Robert's testimony on most issues of fact to be credible, there is little evidence that Robert actively participated in the preparation of the changes to the "pay on death" forms for the US bank checking and savings accounts or the US Bank IRA account.

35. Bank representatives were involved and there was no evidence that the bank representative saw anything inappropriate occurring.

36. The Court finds the changes to the US Bank accounts were made in March 2018 shortly after a counting of the money in the home safe and Marjorie's realization that there was substantially more money in the safe than what she had previously thought. The Court further finds that, as opposed to being the result of undue influence on Robert's part, the changing of the beneficiaries at US Bank was due to a feeling by Marjorie that Doug would be receiving an unfair share if he were to receive all of the

home safe money along with all of the checking and savings account money and an equal share of the IRA account money.

37. It is also clear to the Court that Marjorie was upset with Doug for taking the money from the home safe and putting in the bank safety deposit box. Although Robert may have fanned the flames of this anger, it is not out of the question that Marjorie made a reasoned and independent decision to change her beneficiaries because of a number of other factors than being unduly influenced by Robert.

38. Doug has failed to meet his burden of proof to establish the March12, 2018 changes to the US Bank savings and checking "pay on death" designations or the US Bank IRA beneficiary designations were the result of undue influence.

39. In mid-May, 2018, Doug and Marina returned to Rapid City to visit Marjorie over Mother's Day. On May 14, 2018, Doug took Marjorie to the Elk Vale branch and added her as a co-lessee on his safe deposit box (#177). Marjorie was given a key for the safe deposit box. Doug then took Marjorie into the vault and showed her the cash contained in the safe deposit box. Marjorie was satisfied with leaving the cash in the box rather than removing it and returning it to the floor safe at her home.

40. The testimony of Cathy Vallette of BHFCU was credible and fully explained why video recordings from the safe deposit vault at the Elk Vale branch for March 5 and May 14, 2018 were no longer available by the time the probate litigation was underway. Her testimony also credibly explained why there was no paper log entry or electronic safe deposit vault record for Doug and Marjorie entering the vault at the Elk Vale branch on May 14, 2018 when Marjorie was added as a co-lessee on box #177.

41. In mid-October, 2018, Gloria Holsworth called her daughter Shelly to come to Marjorie's residence. Gloria had Shelly assist her and Marjorie to the basement and read Shelly the combination to open Marjorie's floor safe. Gloria and Marjorie urged Shelly to keep digging down into the safe until Shelly retrieved a key for a safe deposit box.

42. On October 15, 2018, Gloria arranged for Shelly to meet her and Marjorie at the Elk Vale branch of BHFCU. Once there, the ladies were informed that Marjorie had a safe deposit box with Doug. Marjorie had no recollection of the safe deposit box and told Gloria and Shelly she thought Doug must have taken her to BHFCU to re-up some of the investments she had there.

43. The three women went to the safe deposit box area where a bank employee removed box #177 from the vault for Marjorie and took it into a private room across the hall. When the three ladies opened the cover of the box, they found a shopping bag filled with cash. Marjorie was distraught and expressed disbelief that Doug had taken the money from her safe and put it in the box. Marjorie had no recollection that Doug had previously informed her that he had removed the cash from her safe and put it in the safe deposit box at BHFCU or that he had added her to the box lease and had shown her the money in the safe deposit box vault in mid-May.

44. Gloria and Shelly counted the money from Doug's safe deposit box. The total was "... $180 something thousand. It was either $182 or $189." (TT 594-598). Gloria wrote the amount down on a piece of paper.

45. Based upon the testimony of Doug Golden and Shelly Holsworth, who the

court finds most credible as to the amount of cash which had been transferred from the home safe to the bank, and more credible than Robert Golden, the Court specifically finds that the amount of cash in safe deposit box #177 at BHFCU on October 15, 2018 was $180,000.

46. After counting the cash in box #177, Gloria and Marjorie leased box #191 and transferred all of the cash from box #177 into the new box on October 15, 2018.

47. All of the cash that had been in box #177 was transferred into box #191 on October 15, 2018 and none was removed from BHFCU by Gloria, Marjorie or Shelly.

48. Doug and Marina came to Rapid City for Thanksgiving, 2018 to visit Marjorie, who had just been admitted to the Fountain Springs nursing home. On Friday, November 23, 2018, Doug checked safe deposit box #177 at BHFCU and discovered that the box was empty and all of the cash was gone.

49. Doug telephoned Gloria on the afternoon of November 23, 2018 after he discovered that the cash had been removed from box #177. Gloria admitted that she had removed all of the cash from the box but did not tell Doug what she had done with the money. Doug told Gloria to meet him at BHFCU before noon on the following morning, which was a Saturday, to return the money to his safe deposit box or that he would report her to the police.

50. Gloria did not show up to return the money to Doug's safe deposit box before the credit union closed at noon on November 24, 2018. Doug went to the Pennington County Sheriff's Office that afternoon and reported that Gloria had stolen the money. The report was eventually resolved by law enforcement as being

"unfounded".

51. Gloria telephoned Robert within a short time after Doug called her and informed Robert that Doug had confronted her about taking the cash from his safe deposit box and threatened to report her to law enforcement.

528. Gloria went to BHFCU on Monday, November 26, 2018 and leased safe deposit box #192. She took the lease form to Marjorie at Fountain Springs where she had Marjorie sign the form as a co-lessee.

53. Gloria contacted Shelly to meet her at BHFCU on Tuesday morning, November 27, 2018. Gloria and Shelly transferred all of the cash ($180,000) that had been in box #191 into box #192.

54. By Thursday morning, November 29, 2018, Robert was in Rapid City with a General Power of Attorney form that he had prepared from online sources. Robert drove 760 miles, one way, to bring the form to Rapid City. The form was a financial durable power of attorney by which named Gloria as Marjorie's attorney-in-fact and Robert as her alternate. Robert and Gloria took the form to Fountain Springs where Marjorie signed it on the morning of November 29, 2018.

55. The General Power of Attorney form that Marjorie signed did not authorize self-dealing.

56. Neither Robert nor Gloria ever provided Doug with a copy of the General Power of Attorney (created off the internet) or disclosed the existence of the document to him.

57. On November 29, 2018 Robert and Gloria used the General Power or

Attorney at the US Bank to authorize Gloria as a POA to write checks for her mother since Cal was not able to do so and because Gloria was in the area and closer to her mother than Doug was.

58. On November 29, 2018 Robert and Gloria used the General Power of Attorney form at US Bank to alter the payable on death designations on Marjorie's checking and savings accounts, *adding Doug* as an equal payable on death recipient on each account. Gloria *was removed* as a payable on death recipient on both accounts in the process of changing the POD designations to *add Doug* as a recipient.

59. The Court finds that *Doug actually benefitted* from the changes that were made on November 29, 2018 when he was placed back as having 1/3 equal share of Marjorie's checking and savings accounts. The Court also finds it compelling that it was *Gloria and not Robert* who received the power of attorney. Robert was only an alternate. At the end of the day on November 29, Gloria did not benefit from her use of the power of attorney, Doug did, Gloria in fact suffered financially from the changes. And it was Gloria, not Robert who utilized the POA. Robert cannot be seen as either the wielder or primary beneficiary of the use of the POA on November 29, 2018.

60. On November 30, 2018 Gloria hired attorney Mark Walters to prepare a *replacement* power of attorney form for Marjorie to sign. Gloria did not inform Mr. Walters that Marjorie had already signed the General Power of Attorney form that Robert had prepared and brought to Rapid City nor did she provide Mr. Walters with a copy of the General Power of Attorney to review.

61. On Monday, December 3, 2018, attorney Mark Walters, with Gloria present,

met with Marjorie at Fountain Springs nursing home. Marjorie signed and Walters notarized a Financial Durable Power of Attorney and a Health Care Power of Attorney that Mr. Walters had prepared. Both documents were effective immediately. At Gloria's direction, Mr. Walters mailed copies of both of the financial and health care power of attorney forms to Doug on December 6, 2018.

62. Attorney Walters' testimony under direct examination stating that Marjorie possessed sufficient mental capacity *on December 3, 2018* to understand why she was signing the durable powers of attorney that he had prepared was credible.

63. Walters' testimony was further bolstered by a recording of a conversation between Doug and Marjorie on December 3, 2018 where *Marjorie communicates* the reason for appointing Gloria to help with Marjorie's financial matters was that Gloria was closer (to Rapid City and Marjorie) than Doug.

64. At trial Doug elicited the testimony of Dr. Michael Huxford to testify as an expert witness regarding Marjorie's mental capacity (or lack thereof) during the last two or three months of her life.

65. Dr. Huxford is a psychologist who performs neurophychological evaluations. His education, training and background were outlined to the Court who qualified him as an expert.

66. Dr. Huxford applied the standard articulated in *Johnson v. Markve* which discussed capacity to execute a durable power of attorney. The test is whether the person who executed the document possessed "...the mental dexterity required to comprehend the nature and ultimate effect of the transaction in which [she] was

involved." *Johnson ex rel. Markve v. Markve*, 2022 SD 27, ¶31.

67. Dr. Huxford gave the opinion that, "..in November of that year, she did not have the cognitive capacity to understand the complexity of such a document." TT2, at 318-319.

68. However, on cross examination Mr. LaFleur asked Dr. Huxford the following question, "...if someone explained that a power or attorney was to allow your daughter to write checks on your behalf because right now you're hospitalized and you're not able to pay your bills because you're not at home, that would be something Ms. Golden would have been able to understand; correct?" Dr. Huxford responded, "To some degree likely, yes." TT2 pg. 334, lines 3-9.

69. The Court has reviewed the entirety of the transcript of Dr. Huxford's testimony, was present when it was given, and has reviewed the recordings, records, and other information Dr. Huxford based his opinions on. Additionally the Court has reviewed the entirety of the testimony of attorney Walters regarding *his* opinion as to whether Majorie Golden had capacity some five days after signing the General Power of Attorney to comprehend the nature and ultimate effect of the transaction in which [she] was involved. The Court has also reviewed the written arguments and submissions of counsel regarding their thoughts about the weight and effect of Dr. Huxford's and attorney Walters' testimony.

70. The conclusion of the Court is that on both November 29, 2018 and on December 3, 2018 Marjorie Golden did possess the mental dexterity required to comprehend the nature and ultimate effect of the transaction in which she was involved

when she signed the power of attorney documents on both days. Consequently, the General Power of Attorney, as well as the two other durable powers of attorney that Marjorie signed on December 3, 2018, are not void.

71. Within weeks, on December 20, 2018, Marjorie was transferred into hospice care from the Fountain Springs nursing home.

72. On December 20, 2018, at around 9:00 a.m., Robert and Gloria went to the Elk Vale branch and removed all of the cash from box #192. They then drove directly to Sturgis where they jointly leased a safe deposit at First Interstate Bank and stored all of the cash they had just removed from BHFCU. The Court finds the amount transferred was $180,000.

73. Robert's testimony that the amount of the cash that he and Gloria removed from BHFCU and stashed in the safe deposit box at First Interstate Bank in Sturgis on December 20, 2018 was approximately $29,000 was not credible.

74. Marjorie Golden died on the morning of December 22, 2018.

75. Around the time when Marjorie went into hospice care, Doug accessed and cleaned out the floor safe in Marjorie's residence. Doug removed and took possession of the original of Marjorie's Will and the few other documents left in the safe. Doug discovered a key for safe deposit box #191 at BHFCU in the safe. He also observed that Marjorie's prepaid funeral contract and her old "codicil" had been removed from the safe and were missing.

76. On the afternoon of December 21, 2018, Doug opened box #191 at BHFCU using the key he had discovered in Marjorie's floor safe. He found that the box was

empty. It was only through vault video recordings and safe deposit logs obtained by subpoena from BHFCU that Doug eventually learned that Gloria had transferred the cash from box #191 to another box in late November and that Gloria and Robert had removed the cash from BHFCU on December 20, 2018.

77. Doug's testimony that his late father's coin collection included a Mason jar that was partially filled with silver dollars and other similar coins was credible.

78. Robert admitted having removed his late father's coin collection from Marjorie's residence shortly before she died. Robert's denial that he kept the Mason jar containing silver dollars and other similar coins from the collection was not credible.

79. Following Marjorie's death, her share account and certificates of deposit were cashed out and distributed equally in amounts of approximately $40,000 each among Gloria, Robert, Doug and Glen in accordance with Marjorie's longstanding payable on death designations at BHFCU.

80. Robert's testimony that he, Gloria and Glen did not divide any portion of the cash that he and Gloria had stashed in the safe deposit box at First Interstate Bank in Sturgis among themselves was not credible.

81. The testimony of Doug Golden was generally credible. Any inconsistencies between his testimony and the facts as found by the Court were the result of imperfect recollection rather than from giving false testimony.

82. The testimony of Shelly Holsworth was credible and her testimony regarding the amount of cash found in the safe deposit box at BHFCU on October 15, 2018 was particularly credible. Any inconsistencies between her testimony and the facts as found

by the Court were the result of imperfect recollection rather than from giving false testimony.

83. The testimony of Robert Golden was generally not credible. Roberts testimony was generally avoidant, deceitful, and untrustworthy.

84. The testimony of Glen Golden was only intermittently credible.

85. Based upon the equal distribution provision of Marjorie's Will and the Court's finding that the amount of cash that originated from Marjorie's safe was $180,000, Doug is entitled to gross distribution of one-fourth of that amount or $45,000. This gross distribution must be reduced by Doug's proportionate share of the estate expenses that were properly paid from Gloria's Pioneer Bank check account. Gloria's estate, Robert and Glen must disgorge the gross amount of $15,000 each to fund the distribution to Doug.

86. Because Court has found Marjorie's actions of March 12, 2018 were not the result of undue influence there is no requirement that Robert and Glen disgorge $42,007.30 each they received from the two accounts.

87. Because the Court has found Marjories actions of March 12, 2018 were not the result of undue influence, there is no requirement that Gloria's estate, Robert and Glen disgorge $5,152.89 each they received by collecting one-third shares from the IRA.

88. The checking account that Gloria opened at Pioneer Bank in Rapid City on January 2, 2019 was intended for the collective personal use of the respondents. The first two deposits into the account were with the respondents' personal funds rather than

any of the estate's money.

89. After the probate litigation was underway, the respondents agreed among themselves to have Gloria deposit $30,000 from the cash Robert and Gloria had stashed in their First Interstate Bank safe deposit box on December 20, 2018 into the Pioneer Bank checking account. The deposit was made on February 21, 2019.

90. Based upon the Court's findings that the amount of the cash that Robert and Gloria removed from BHFCU on December 20, 2028 was $180,000 and that the respondents deposited $30,000 of that amount into Gloria's Pioneer Bank checking account, the Court further finds that Gloria, Robert and Glen kept $150,000 of the estate's money and divided it among themselves.

91. Doug Golden was entitled under Marjorie Golden's Will to the future possession of the cash that had been located in her home safe.

92. Marjorie's estate owned or had a possessory interest in the property.

93. The estate's interest in the property was greater than Robert Golden's interest.

94. Robert exercised dominion or control over or seriously interfered with the estate's interest in the property.

95. Robert's conduct in transferring, hiding, and being untruthful and deceitful about his involvement in the ultimate disposition of the cash from the home safe deprived Doug of his interest in obtaining future possession of his share of the property.

96. Gloria Holsworth died on June 11, 2020. Gloria's estate was substituted as a respondent party in the probate action pursuant to an order entered on July 21, 2020.

97. Robert went to First Interstate Bank in Sturgis on November 17, 2020 and had the lock drilled to access the safe deposit box he and Gloria had leased. Bank personnel noted on their forms that no contents were observed and that the box was empty.

98. Robert's testimony, on multiple occasions, that the amount of the cash that he and Gloria had removed from BHFCU on December 20, 2018 was "$29,000" or "$29,200" was not at all credible.

99. All three respondents intentionally withheld information about the amount, the location and the division among themselves of the cash that Robert and Gloria had removed from BHFCU on December 20, 2018 after the probate litigation was underway and when responding to Doug's discovery requests during the probate litigation.

100. The respondents reimbursed themselves for the personal funds they had originally pooled for Gloria to open the Pioneer Bank checking account after Gloria deposited $30,000 of the estate's cash into the account on February 21, 2019. After these reimbursements were made, all of the monies in the Pioneer Bank checking account belonged to the estate.

101. After the $30,000 of the estate's money was deposited into Gloria's Pioneer Bank checking account on February 21, 2019 and while the probate litigation was underway, the respondents continued to use the estate's funds for their own purposes, including for paying their attorney fees, until the Court issued a temporary restraining order barring further use of the account on October 15, 2019.

102. The respondents improperly used $5,948.56 of the estate's money from the

Pioneer Bank checking account to pay their former attorney Brian Utzman.

103. The respondents improperly used $167.17 of the estate's money from the Pioneer Bank checking account to pay Kieffer Sanitation for continuing garbage service at Marjorie's former residence after the service should have been discontinued by approximately two months after her death.

104. The respondents improperly used $202.26 of the estate's money from the Pioneer Bank checking account to pay Midco for continuing phone and cable service at Marjorie's former residence after the service should have been discontinued by approximately two months after her death.

105. The respondents improperly used $1,800 of the estate's money from the Pioneer Bank checking account to pay Ron Junge for repairs to the sunroom at Marjorie's former residence, solely benefitting Robert and Gloria rather than the estate.

106. The respondents improperly spent a total of $8,117.99 of the estate's money from the Pioneer Bank checking account for their own purposes rather than for the estate's benefit.

107. A total of $4,984.64 from the $30,000 of the estate's money deposited into the Pioneer Bank checking account was properly used for expenses of the estate, consistent with the Court's order which allowed expenses for taxes, insurance and necessary utilities of Marjorie's former residence and bare lot to be paid by the estate until the ownership of those properties was transferred to the three respondents as intended by the two Beneficiary Deeds.

108. Ownership of the decedent's real properties was transferred to the three

respondents effective on March 5, 2020 when a Partial Decree of Distribution was recorded. Pursuant to the Court's order filed on November 19, 2018, the estate will not be liable for any expenses related to the decedent's real property that were incurred after March 5, 2020.

109. Robert failed to provide satisfactory documentary proof that he incurred expenses related to the decedent's real property prior to March 5, 2020 for which he would be entitled to be reimbursed by the estate.

110. The current balance in the Pioneer Bank checking account, along with any remaining balance in the estate checking account that Doug opened after being appointed as personal representative, are assets of the estate that are distributable in four equal shares when the estate is ready for final distribution and closing.

111. Robert and Glen failed to truthfully disclose on the record what amounts the respondents divided among themselves from the $180,000 that they accessed at the safe deposit box at First Interstate Bank in Sturgis on December 28, 2018 or at any time thereafter. Accordingly, there is no factual basis in the record that would enable the Court to equalize whatever amounts the three respondents divided among themselves from the $180,000 cash that Robert and Gloria removed from BHFCU on December 20, 2018.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the Estate of Gloria A. Holsworth, Robert Golden, Douglas Golden and Glen Golden as parties and over the subject matter in

probate action 51PRO18-228.

2. This Court has jurisdiction over the nonprobate transfers being contested in probate action 51PRO18-228.

3. This Court has jurisdiction over plaintiff Douglas Golden and defendant Robert Golden as parties and over the subject matter in tort action 51CIV22-0462.

4. Marjorie Golden's Will executed on April 12, 2002 was properly admitted to probate without objection on January 25, 2019.

5. Circumstantial evidence has the same weight as direct evidence and a cause of action or a right to a remedy can be satisfactorily proven solely through circumstantial evidence, including from inferences reasonably drawn from the evidence.

6. A cause of action exists for an individual who was effected by the alteration of a payable on death designation as the result of undue influence although the remedy is restricted to voiding the improper designation and no recovery for damages may be had in tort.

7. The four factors which must be shown to prove that undue influence was exerted, whether upon a Will or a payable on death designation, are: 1) the decedent's susceptibility to undue influence; 2) an opportunity to exert such influence and effect the wrongful purpose; 3) a disposition to do so for an improper purpose; and 4) a result clearly showing the effect of undue influence.

8. Undue influence can only be exerted upon a person who possesses sufficient mental capacity to make a testamentary or payable on death disposition of their property. Although the exertion of undue influence can only occur when sufficient

mental capacity exists, a person's declining mental capacity may be considered as evidence in determining whether the factor of susceptibility has been established when undue influence is at issue.

9. Advanced age and physical frailty may also be considered as evidence in determining whether the factor of susceptibility has been established when undue influence is at issue.

10. The burden of proving that a payable on death designation was altered as the result of undue influence is by a preponderance of the evidence.

11. The Plaintiff has not met his burden of proving undue influence, judgment is for the Defendant on this claim.

12. The burden of proving that a power of attorney was used to engage in self-dealing is by a preponderance of the evidence.

13. The Plaintiff has not met his burden of proving self-dealing, judgment is for the Defendant on this claim.

14. A cause of action in deceit exists in favor of a party who suffered damages because another party intentionally suppressed facts that the latter party was bound to disclose or who gave information of other facts which were likely to mislead for want of communication of the actual facts.

15. The burden to prove that a person committed deceit is by a preponderance of the evidence.

16. The Plaintiff has not met his burden of proving deceit, judgment is for the Defendant on this claim.

17. A cause of action in tort exists for an individual who was deprived of a distribution or a portion of a distribution provided for by a Will to recover from a wrongdoer who converted property that was otherwise to have been distributed to that individual through a decedent's estate.

18. A cause of action in conversion exists against a party who appropriated property that belonged to an estate and who intentionally kept the existence, amount and location of the property secret and hidden from the discovery process and from the estate for more than two years after the opening of a contested probate action.

19. A cause of action in conversion is available to a person who is entitled to the future possession of property that is distributable under a Will and who has been wrongfully deprived of that property.

20. To prove that Robert Golden committed conversion, Doug Golden was required to prove, by a preponderance of the evidence, that 1) he was entitled under Marjorie Golden's Will to the future possession of identifiable property; 2) Marjorie's estate owned or had a possessory interest in the property; 3) the estate's interest in the property was greater than Robert's; 4) Robert exercised dominion or control over or seriously interfered with the estate's interest in the property; and 5) Robert's conduct deprived Doug of his interest in obtaining future possession of his share of the property.

21. Conversion is a continuing tort.

22. The burden to prove that a person committed conversion is by a preponderance of the evidence.

23. The Plaintiff has met his burden of proving conversion, judgment is for the

Plaintiff on this claim.

23a. **The Plaintiff has failed to meet their burden for awarding Doug Golden punitive damages against Robert Golden for the tort of conversion. The Motion for Award of Punitive Damages is *DENIED.***

24. Attorney fees may not be awarded to a party in a probate action who successfully litigates to recover what the decedent intended for them to receive when the award would be made against another individual litigant in the action.

25. Doug is entitled to a fourth of the home safe funds. One-Fourth of the $180,000 the Court has found to be in the safe is $45,000.

26. The sum of $1,246.16, comprising one-fourth of the $4,984.64 properly used from Gloria's Pioneer Bank checking account to pay expenses of the decedent's estate, will be attributed to Doug and will be offset against the distribution Doug is to receive from his one-fourth share of the $180,000 in cash that Robert and Gloria removed from BHFCU on December 20, 2018.

27. Doug is entitled to a distribution of $43,753.84. This amount is the $45,000 ¼ share of the home safe cash minus $1246.16 which is Doug's ¼ debt/responsibility for expenses of Marjorie's estate.

28. Each of the remaining children, Robert, Gloria's estate, and Glen must reimburse Doug $14,584.61 for the money he is entitled to from the home safe cash.

29. The money Doug found in Marjorie's cash box after Marjorie passed ($8,420) shall be distributed equally to the four children or their estate.

30. Given Finding of Fact #108, "that the respondents improperly spent a total of

$8,117.99 of the estate's money from the Pioneer Bank checking account for their own purposes rather than for the estate's benefit" each of the respondents must pay Doug an additional $676.42 for a total of $2029.25. This amount represents Doug's ¼ share of $8,117.90 which he would have received had the respondents not misspent the estates money.

31. The proceeds of the sale of Marjorie's car for $500 shall be distributed equally to the four children or their estate.

32. The remaining personal property of Marjorie Golden has been sorted through by Shelly and has separated the items by category. The personal property is currently being held at Jon LaFleur's law office waiting to be distributed.

33. The Court finds the proposed disposition of Marjorie's personal effects take place via a Zoom meeting wherein the parties will take turns picking a packet of material from each category. Such disposition will take place at a time convenient for all parties.

34. Dr. Huxford's expert witness fees shall be paid solely by Doug Golden.

35. Any finding of fact or conclusion of law mislabeled should be considered in its proper category.

Dated this 11th day of July, 2024 nunc pro tunc March 22nd, 2024.

Attest:

/s/ _____
Amber Watkins, Clerk of Courts

By _____
Deputy Clerk

BY THE COURT:

_____
Hon. Matthew M. Brown
Circuit Court Judge

FILED
Pennington County, SD
IN CIRCUIT COURT

JUL 12 2024

Amber Watkins, Clerk of Courts
By _____ Deputy