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# G-Bar News



## PRESIDENT'S ARTICLE

**By: E. Grantland Burns**

"Man Jailed for Dropping Pants in Court" was a headline which jumped out at me over the summer in the *Spartanburg Herald*. Since it was a local paper, I read on, thinking I might know the man; or the judge; or maybe the attorneys. Alas, it was an Associated Press article from Connecticut, but more on that later.

I hope you had a great summer and set some time aside for rest and relaxation. I initially wanted this article to include stories from a few of you on "How I Spent My Summer Vacation," but I guess I was so busy resting and relaxing that I never got around to asking. I know John Devlin went to the beach because I caught him enjoying a cigar on a bench outside of the Lilly Pulitzer store in Mount Pleasant. He was relaxed. We had a nice conversation. I hope he got away from there cheaper than I did.

We are now coming into my favorite time of the year. If we can get past these hurricanes, we can look forward to crisp mornings; colorful leaves; and, of course, football. Your Bar has already emerged from its summer break and has started the fall with a bang, hosting a well-attended and fun lobster night in early September, followed by two free CLE sessions where the new lawyer's oath was administered to over 400 members of our Bar. Many thanks to Chris Gantt, Robert Wilcox, and Judge Patterson for planning the event, presenting the seminar, and administering the oath, respectively. Thanks also to Dave Edwards for putting together lobster night on the eve of the CLEs. Our fall calendar remains very busy, with Chief Judge Kaye Hearn from the Court of Appeals speaking at a Bar luncheon at the end of September. Also, the Court of Appeals is holding a term of court in Greenville in November -- which will include a Bar-sponsored reception in their honor on Tuesday, November 16. Finally, it's time to start noting important dates during the holiday season, so please plan to attend the Christmas party on December 9, as well as our Memorial Service and Annual Meeting on December 16. They will be here before we know it.

Back to the headline above, I'll leave you with the relevant portion from the A.P. article:

A man has been jailed for six months on a contempt charge after dropping his pants and mooning a judge. Richard Brown, 38, was jailed Wednesday after an outburst in front of Superior Court Judge Patrick Carroll.

Brown shouted insults and obscenities after the judge had told him to address the court as "sir."

"Sir? Kiss my (expletive), sir!" Brown shouted, dropping the pants of his two-piece prison jumpsuit and pointing his rear end at the judge.

Carroll summarily sentenced Brown to six months in prison for contempt of court.

173th edition

September 2004

- Reception with S. C. Court of Appeals—November 16, Greenville Country Club
- Annual GCBA CLE—December 3, County Square
- Christmas Party—December 9, Greenville Country Club (This is a date change!)
- Memorial Service—December 16, Greenville County Courthouse

### Inside this issue:

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## Verdicts

**Caption:** Frank Spears, III v. Dipple Plumbing, Inc.  
**Case No.:** 03-CP-23-2669R  
**Attorney for Plaintiff(s):** Joseph S. Lyles  
**Attorney for Defendant(s):** James Walsh  
**Cause of Action:** damages, mold  
**Verdict:** Plaintiff, \$4,313 actual damages

**Caption:** Gibran Ameer v. Thomas M. Westmoreland and William Thomas Westmoreland  
**Case No.:** 03-CP-23-3995  
**Attorney for Plaintiff(s):** Vanessa Overbay  
**Attorney for Defendant(s):** David Moore  
**Cause of Action:** damages  
**Verdict:** Plaintiff; \$1,557,000, actual damages

## Bench Bar Committee

Bench/Bar Committee meetings will occur on the last Friday of each month at 2:00 p.m. in Courtroom 7 at the Greenville County Courthouse. Minutes from the meeting held on September 24 will be printed in the next G-Bar News. If you are interested in attending these meetings, or if you have questions or concerns, please contact the Greenville County Bar Association Judicial Liaison, Matt Johnson, at (864) 271-5348.

## Family Court Liaison Report

Present: Judge Aphrodite Konduros, Judge Robert Jenkins, Judge Stephen Bartlett, Judge R. Kinard Johnson, Jr., Paul Wickensimer, Shirley Bruce, Phyllis Holcombe, Terry Reid, Bobbie Hill, Debra Walsh, John Chambers, Eddie Harbin, Catherine Christophillis, Lynne Ray, Jim Sarratt, Amy Sutherland, Thomas Hodges, David Rutledge and Christine Howard.

Attention Attorneys: If you have several cases scheduled to be heard on the agreement docket, notice all your cases early or at the time of your first hearing in case the Judge can hear your cases earlier than scheduled on the docket.

Please double check your captions. The clerk of Court has had several submissions with the incorrect docket numbers, court reporter, etc.

Please remember that Judge Konduros' last name is spelled with an **OS** at the end, not an **AS**.

The next Family Court Liaison meeting will be **October 15, 2004** at **1:00 p.m.** in the **Conference Room in the Judge's Hallway**. Anyone who is unable to attend these meetings but has issues they would like addressed may contact the following lawyers: **Christine M. Howard** (282-8575); **Wallace A. Mullinax** (233-4351); **Robert M. Rosenfeld** (235-9613); or **Thomas W. Traxler** (242-3566).

## Announcements

Dennis Chamberlain is pleased to announce that he is re-opening his law office at 819 East North Street in the Temple Mann Briggs and Hill building (formerly the Piedmont Natural Gas building). Phone: 864-331-3069. Dennis will concentrate on bankruptcy and creditor-debtor relations. He will also continue his work with environmental public interest groups and private groups with public interest environmental issues.

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The Thirteenth Circuit solicitor's Office is pleased to announce the addition of two attorneys. Mitchell K. Byrd, originally from Rock Hill graduated from Wofford College and the University of S. C. School of Law. Charles D. "Denton" Mathews, from Florence, is a graduate of USC and also a May graduate of the University of SC Law School. Both attorneys will be working in the Greenville office.

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Devlin & Parkinson, P.A. is pleased to announce that Emily T. Whitney has become an associate of the firm. She will practice in the areas of professional liability defense, commercial litigation and tort litigation.

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South Carolina Upstate Paralegal Association (SCUPA), formerly known as Greenville Association of Legal Assistants (GALA) meets the second Thursday of each month at the Poinsett Club from 12:30 p.m. until 1:30 p.m. You do not have to be a member to attend. For reservations, please e-mail Barbara Galerno at bgalerno@itatlaw.com.

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Legal Staff Professionals of Greenville extends congratulations to Barbara Owens, Certified PLS. Barbara passed the in-depth certification examination at the NALS Regional Meeting held in Atlanta, Georgia in July. The PLS is an advanced certification for lawyer's assistants and involves passing a four part examination. Attainment of this certification involves personal dedication and is a hallmark of professionalism in the legal field. We are very proud to recognize Barbara for this achievement.

We are currently organizing a study group for legal staff interested in taking the ALS (basic certification), PLS (advanced certification), or PP (professional paralegal) exams. Contact information is listed below.

LSPG extends an initiation to all legal staff to join us on the third Wednesday of each month at 12:30 at the Poinsett Club. Reservations may be made by contacting Fran Powell at fran.powell@nelsonmullins.com or calling 250-2288.

Legal Staff Professionals of Greenville proudly sponsors Probate Court Overview, Friday, October 1, 2004, 9 a.m. to 12:15 p.m. 3.0 hours CLE credit. Cost is \$85 (LSPG members— \$65). Box lunch provided. Mark the date on your calendar now!

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Lawyers needed for Middle School Mock Trial as coaches and judges (here's your big chance to sit behind the bench!). Competition schedule includes one at the Greenville County Courthouse on November 1, 2004. Contact Cynthia Cothran at Cynthia.cothran@sbar.org or by phone at (803) 252-5139 for more details.

### CLE Opportunity:

2004 Property Rights and Land Use Seminar. Friday, October 29, 2004. 8:00 a.m. to 12:45 p.m. Palmetto Expo Center, Greenville, SC. 4.0 attorney CLE credits, 4.0 realtor CEE credits, 4.0 Forestry CFE Credits. SC Landowner Association member fee \$60; nonmember \$80. Contact (803) 252-0699 for details or go online to [www.saveourlandrights.com](http://www.saveourlandrights.com).

### Positions Available/Seeking Employment:

City of Mauldin seeks City Attorney—Send qualification statements from interested attorneys or law firm for services related to providing legal service to the City to Russell G. Treadway, City Administrator by October 13, 2004. The packet is available at [www.mauldin.govoffice.com](http://www.mauldin.govoffice.com) under RFPs. Contact Mr. Treadway for more information at 289-8890.

Looking for a receptionist/light secretarial position in a law firm. Prior law experience at Kimberly Dunham's office. Email [msarb565@hotmail.com](mailto:msarb565@hotmail.com) for a resume.

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## Advertisements

Offices for rent—3 downstairs and 2 upstairs. Conference room, copier, fax and postage machines available. Ready by April 2, 2004. Rent negotiable. Contact 467-0100/230-8540.

Office Suite available—downtown Greenville. Contact Jeff Merriam or Tom Traxler at 242-3566.

Near Courthouse—408 N. Church Street. Call Stephen Yacobi @ 242-3271.

For Lease: 119 Manly Street, one-half block from Bilo Center. Call John M. Dillard at (864) 834-0301.

For Lease: Several professional offices available along with shared facilities. 100 Williams St. at Pettigru. Call 242-5133.

Office building available for rent at 10 Brookside Circle. Call Jim Sarratt or Bill Clarke at 271-4100.

Office space for rent—Contact Kimberly Dunham or Stacy Greene at (864) 282-8686.

Office space available at 101 E. Camperdown Way. Call Rebecca or Tammy at 864-370-9771.

Office space available: 33 Wade Hampton Blvd., Greenville. \$650 per month. Call Cindy at 271-6371..

Lawyer and secretarial space available; Pettigru Street area; sharing fax, copier, and so forth; excellent parking; convenient location; \$550 a month; available November 1st; call 271-4360.

Office Suite for Lease:

Approximately 288 sq. feet of lease space available, reception area and one office. Prestigious downtown location with easy access to all downtown Courthouses. Free parking and easy access to I-385. Utilities include power and water. Access to two conferences rooms. Available of wireless/DSL Internet. Call John at 242-1114.

For lease—historic Pettigru area near Bilo Center. Renovated 119 Manly St., 10 rooms, 3100 sq. ft. \$8.52 per foot. \$2,200 per month net. 834-4415.

## Guest article—South Carolina Court Takes a Close Look at Alzheimer’s Disease—by Frank Dana

A fascinating look at how courts view Alzheimer’s disease is found in the recent South Carolina Court of Appeals decision of *Gaddy v. Douglass, et al.* (SC Ct. App. May 17, 2004). The decision, which is very readable, can be found by computer-savvy readers at <http://www.judicial.state.sc.us/opinions/displayOpinionPF.cfm?caseNo=3797>.

This decision is recommended reading for any attorney who represents families with Alzheimer’s disease since it illustrates so many issues faced by many Alzheimer’s families.

**The Quintessential Ms. M.** The decision concerns a woman, identified only as “Ms. M”, who lives in Winnsboro, South Carolina, and was first diagnosed with “senile dementia of the Alzheimer’s type” in 1996.

Far from being unusual, Ms. M is almost a paradigm for what can (and often does) happen to individuals with Alzheimer’s disease.

In 1988, apparently before any symptoms of Alzheimer’s disease had appeared, Ms. M asked Dr. Gaddy, her physician and also a close family friend, to accompany her to a visit with her estate planning attorney, where she named him as her agent under a durable power of attorney.

In the mid-1990’s, Ms. M began to show symptoms of dementia, and Dr. Gaddy took steps to provide in home care for her. He also had her examined by a Columbia neurologist, who made the initial diagnosis of Alzheimer’s disease.

Ms. M’s relationship with her family was very distant and she had little or no contact with them until March, 1999, when two third cousins of hers visited her and took her to see a Columbia attorney, where she signed a new power of attorney naming the third cousins as her agents. The cousins did not tell the attorney, who had never seen Ms. M before, of her Alzheimer’s disease, and the court notes that the cousins had to remind Ms. M of the purpose of the visit to the attorney several times on the way to Columbia.

Upon their return to Winnsboro, the cousins prohibited Dr. Gaddy from contacting Ms. M and even threatened him with arrest if he visited her.

Dr. Gaddy brought suit three days later to invalidate the new power of attorney.

The suit went to trial in February, 2001 and in May, 2001, after a four day trial, the trial court issued an order in Dr. Gaddy’s favor invalidating the new power of attorney. The Court of Appeals decision was issued in May, 2004 and further appeal to the Supreme Court of South Carolina is still possible at this writing.

**Competency: The Main Act.** Of course, the case concerns the matter of competency, which is always a difficult issue, even in the best of circumstances.

The decision gives some fascinating insight into how the issue of competency might be approached in connection with an Alzheimer’s patient. I’ll discuss a few of these briefly.

**The Doctors.** During the trial, some five physicians testified, including three neurologists, and the court placed great reliance on medical testimony in deciding the competency issue.

**Proximity in Time of Examination.** The Court placed the

greatest reliance on the doctors who had examined Ms. M closest in time to the execution of the power of attorney in question.

**Qualification.** The Court seemed to place greatest reliance on the neurologists, and indicated (more or less) that it agreed with one of the other doctors, an internist, who admitted that she had “less expertise” than a neurologist in evaluating a patient’s mental status. I would also suggest that a psychiatrist is often helpful on competency issues regarding elderly persons, but that the neurologist may be an even more pertinent witness, especially when, as here, the competency problem (dementia) is of a physical nature.

**History.** The Court more or less disregarded the third neurologist’s initial statement that Ms. M was competent and found it significant that he had never reviewed her medical records nor the records of the other neurologists. This would indicate that the Court felt that the medical history, and not just a “snapshot”, was essential in determining the competency of an Alzheimer’s patient.

**Anecdotal Evidence.** Several kinds of anecdotal evidence, meaning non-medical evidence, usually in the form of histories of episodes of the Alzheimer’s patient’s behavior, were considered by the Court.

**Friends.** Our own Judge Frank Eppes testified to Ms. M’s failure to maintain her home, her confusion, her inability to recognize him, and her inability to understand legal matters. The Court also considered similar testimony from a friend and one of Ms. M’s caretakers. It is clear that the Court placed reliance on this testimony, and it is probably important to note that having it presented by a person credible to the Court (for example, a member of the judiciary), probably affects the weight that will be placed on it.

**Ms. M’s testimony.** Interestingly, even Ms. M testified and the court also appears to place much reliance on the cognitive problems revealed by her testimony, suggesting that the court may have felt free to disregard some of the medical evidence had she testified in a competent manner.

It is almost alarming to note that without all of this evidence, it is virtually certain that the third cousins would have remained in control of Ms. M’s affairs.

**Lucid Moments.** One of the doctor’s testimony contained a detailed discussion of the matter of “lucid moments” which is especially interesting in view of how often it is asserted that such moments might allow execution of a will or other document, even by an ostensibly incompetent individual. The court recognized and more less adopted the point of view that the dementia that results from Alzheimer’s disease is a permanent condition, and consequently, a “lucid moment” more or less doesn’t happen with Alzheimer’s disease.

**Tests for Capacity.** The decision describes some the tests commonly used to diagnosis Alzheimer’s disease, but the most common was asking a series of simple and very straightforward questions, such as who the person was, where they are, what the date is, and so forth.

**The Legal Standard.** The Court affirmed the familiar legal principle that “in order to execute or revoke a valid power of attorney, the principal must possess contractual capacity”, and defined “contractual capacity” as “the ability to understand in a meaningful way, at the time the contract is executed, the nature, scope, and effect of the contract.”

Interestingly, the Court declared that the nature of Alzheimer’s disease as a “permanent” and “chronic” mental condition made the testimony of the physicians as to Ms. M’s prior mental condition relevant.

The Court also noted testimony to the effect that a person with dementia resulting from Alzheimer’s disease could appear normal, when in fact, they were unable to understand business and legal matters or make rational decisions.

**Planning Reminders.** The decision provides useful information for attorneys and clients dealing with Alzheimer’s disease.

**Do Your Planning Ahead of Time.** The planning that Ms. M did long before her Alzheimer’s disease developed was the planning that ultimately was effective. I can’t say it often enough: do your planning now, before you really need it.

**Opportunists.** In most families, there are opportunists who are tempted to seize control of a situation, whether or not planning has occurred. Of course, the less that the Alzheimer’s patient has planned for herself, the greater the opportunity. As Ms. M’s case illustrates, the presence of significant wealth (not specifically mentioned, but apparently present) creates an incentive, in this case drawing third cousins to inject themselves in the situation.

**Don’t be Reluctant to Document Competency (or the lack thereof).** One of the lessons of Ms. M’s case is something that most elder law attorneys know quite well: competency is a difficult issue, even in the best of circumstances. Don’t be reluctant to request a medical opinion as to a client’s capacity where it even might be important.

**Importance of Powers of Attorney.** More than anything else, this case illustrates the importance of a power of attorney for anyone who wants to make their own decisions about how their affairs will be handled in the event of their incapacity. It’s quite obvious that even with a lot of planning and attention from a very capable friend and physician (Dr. Gaddy), Ms. M barely escaped the attempt by her third cousins to seize control of her affairs.

**The Moral of the Story.** One of the morals of this story (and there probably are many) is to do your planning, do it early, and document it thoroughly. Even if you do this, watch your back.

**Article supplied by Frank Dana at [www.danalawfirm.com](http://www.danalawfirm.com).**

[Attorneys desiring to submit articles should send them to gbarnews@aol.com. The editorial staff will review them for value to the Greenville County Bar Association. Publication of any articles shall not be deemed an endorsement by the Greenville County Bar Association of any of the opinions expressed in such articles.](mailto:gbarnews@aol.com)