

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CARLA COWAN)
)
) Petitioner,)
)
) v.) C.A. No. 2018-0915-SEM
)
 JAMES E. FURLOW)
)
) Respondent.)

and

IMO THE ESTATE OF ALVIN) ROW 168416 FC-SEM
DAVID SMITH, JR.)

MASTER’S FINAL POST-TRIAL REPORT

Final Report: June 30, 2023
Date Submitted: March 7, 2023

Carla Cowan, Newark, Delaware; *Petitioner*.

Kathleen DeLacy and Martin D. Page, REGER RIZZO & DARNALL LLP,
Wilmington, Delaware; *Counsel for the Respondent*.

MOLINA, M.

Pending before me are fiduciary duty claims and exceptions to an estate accounting. The discreet legal questions are whether the personal representative of the estate was validly appointed and if, after his appointment, he exercised his authority appropriately. But to the litigants, this matter is about much more. It is about family and the decedent's legacy. The family member driving this litigation has zealously advocated for these interests and has represented herself throughout this process. But her advocacy has, unfortunately, veered, at times, into vexatious litigant territory. As a result, this litigation has been protracted and difficult.

In this final report, I recommend that the family member's claims be dismissed in full, and judgment be entered in favor of the personal representative. I do so based on the record developed at the one-day trial for the pending civil action and the one-day trial for the exceptions pending in the related estate. On that record, I find no fault in the personal representative's appointment, nor his handling of the estate thereafter. I also find the objecting family member's post-trial motions unpersuasive. Thus, I recommend that the claims against the personal representative be denied, the civil action and Register of Wills exceptions be dismissed with prejudice, and the estate move toward closure.

I. BACKGROUND¹

The parties' disputes concern the late Alvin David Smith (the "Decedent") and the administration of his estate (the "Estate").² The Decedent's niece, Carla Cowan (the "Petitioner") challenges the administration of the Estate by James E. Furlow (the "Respondent").

A. The Decedent

I begin with the most important, albeit absent, party: the Decedent. The Decedent was the only son of Alvin Dempsey Smith and Myrtle Washington Smith,

¹ The facts in this report reflect my findings based on the record developed at trial on February 14, 2023 and February 15, 2023. *See* Docket Items ("D.I.") 225, Register of Wills ("ROW D.I.") 84. I grant the evidence the weight and credibility I find it deserves. Citations to the trial transcripts are in the form "Tr. #" and "ROW Tr. #." D.I. 231. ROW D.I. 87. The parties' jointly submitted exhibits are cited as "JX ___." Certain exhibits proffered by the Petitioner at trial are cited as "Pet. Ex. ___." Those exhibits have a different numbering scheme because the Petitioner reordered and renumbered her exhibits before trial and had various binders prepared. *See* Tr. 41:13-42:4. Ultimately, and at the Petitioner's request, I used the exhibit binder prepared by the Petitioner that had various exhibits backwards. Tr. 43:8-17. The numbering of the exhibits in this report and the judicial action form for the trial reflect this numbering scheme. *See* D.I. 225. The exhibits admitted during the civil action trial were JX 4, JX 15, JX 16, JX 24, and JX 50, as well as a transcript from C.A. 2019-1038-SEM, D.I. 36, and the ROW docket. The exhibits admitted during the Register of Wills trial were JX 1, JX 6, p. 2 of JX 7, JX 9, JX 21, JX 56-67, Pet. Ex. 4-6, and an appraisal filed in C.A. 2019-1038-SEM, D.I. 1, Ex. I. Given the overlap in claims and issues, and with the consent of the parties, I have considered all the evidence together. *See* ROW Tr. 3:21-4:7.

² There is a dispute regarding the Decedent's name, specifically whether he is "Alvin David Smith Jr." The Decedent does not appear to be a true "Jr." because he does not have the same middle name as his father. *See, e.g.,* Tr. 63:21-23. *See also* Pet. Ex. 24. Thus, I exclude the "Jr." from his name herein.

who passed in 2005 and 2006, respectively.³ Mr. and Mrs. Smith also had two daughters, the Decedent's sisters—Jacqueline Mills (Pollard) and Gwendolyn Pollard.⁴ Jacqueline Mills, who predeceased her parents, passed in 2000, leaving behind five (5) children: the Petitioner, Renita Thomas, Jacqueline Myra Martin, Herman Thomas, and Robert Thomas.⁵

The Respondent is not related to the Decedent. Rather, per the Respondent, he and the Decedent were friends.⁶ The Respondent first met the Decedent around 2011 when the Decedent called him seeking help with his garbage disposal.⁷ The Respondent is a general contractor, who advertised through Angie's List.⁸ That is where the Decedent found him.⁹ After the initial garbage-disposal job, the Respondent and the Decedent became friends.¹⁰ During their friendship, the Decedent did not mention his family to the Respondent.¹¹

³ JX 24. *See also* ROW D.I. 14.

⁴ JX 24. *See also* ROW D.I. 14. Although it appears Jacqueline Pollard and Gwendolyn Pollard were not Mr. Smith's biological children, his obituary reflects that he treated them as his own and I do the same herein. JX 24.

⁵ ROW D.I. 14.

⁶ Tr. 85:17.

⁷ Tr. 86:17-23, 89:16-18.

⁸ Tr. 85:2-7, 86:17-18.

⁹ Tr. 86:17-18.

¹⁰ Tr. 89:10-12.

¹¹ Tr. 89:13-15.

In the months leading up to his death, the Decedent was suffering from cancer and was on hospice.¹² Although the testimony was unclear, it appears he lived alone, perhaps with the comfort of a pet cat.¹³ The Petitioner represented that she and the Decedent were close and she visited the Decedent's home, but did not see the Decedent, about one week before his death.¹⁴ She questions the severity of his illness, but contends he was thinking about his estate planning and proposed his wishes to her and her husband through a telephone conversation.¹⁵

On November 5, 2017, the Decedent passed away, intestate.¹⁶ The Decedent died in his home at 406 S. Gerald Avenue, in Newark, Delaware (the "Property").¹⁷ Detective Daniel Vucci from the New Castle County Police was there on the day of

¹² See Tr. 32:16-17; ROW Tr. 121:8.

¹³ See Tr. 58:23-1. See also ROW Tr. 24:15-20 (explaining the cat's name was Gray Girl). Although there were insinuations at trial that the cat was wrongfully given to a neighbor, the Petitioner seeks no relief related to such. ROW Tr. 24:22-25:4; D.I. 1.

¹⁴ Tr. 282:11-13.

¹⁵ Tr. 14:4-23. The Petitioner's husband testified that his understanding of the Decedent's intent was for his personal belongings to be divided between the Petitioner and Jackie Mills, for Gwendolyn Pollard to not receive any portion of the Estate, and for the Petitioner to administer the Estate. Tr. 14:16-23. But, to date, no one has uncovered a will directing such disposition.

¹⁶ D.I. 209.

¹⁷ *Id.* Detective Vucci described the Property as "crowded, maybe a little bit of hoarding, kind of." Tr. 34:4-5. Per Detective Vucci, it was not tidy and "[t]here was a lot of stuff in the house[.]" Tr. 34:4, 8-9.

the Decedent's death.¹⁸ He responded to the Property, where the paramedics had already pronounced the Decedent dead.¹⁹ While police and paramedics were at the scene, two African American males arrived.²⁰ Detective Vucci recalls that the males "claimed to be family members," but the police did not document their names or other information, nor could Detective Vucci positively identify the Respondent as one of those males.²¹

The Respondent testified that he and his son, Joshua McGill, were the two individuals that Detective Vucci recalled.²² During trial, the Respondent testified that he was on his way to church when his son called and told him that the Decedent died.²³ He explained that his son was notified of the Decedent's death by hospice, because his son was listed as a contact for the Decedent.²⁴ This conflicts with the Respondent's testimony in the action he filed to sell the Property to pay debts of the Estate (the "Sale Action").²⁵ There, he provided two different stories as to how he

¹⁸ Detective Vucci currently works within the Major Crimes Division, investigating robberies, shootings, homicides, and other serious crimes. Tr. 32:16-21. At the time of the Decedent's death, however, he was a patrol officer. Tr. 32:2-6.

¹⁹ Tr. 32:12-14.

²⁰ Tr. 30:5-22.

²¹ Tr. 29:17-20, 30:18-22, 29:12-16.

²² Tr. 153:12-17.

²³ Tr. 90:5-11.

²⁴ Tr. 125:10-14.

²⁵ C.A. No. 2019-1038-SEM, D.I. 36.

learned of the Decedent's death, either (1) "[t]he officers called" him or (2) "the hospice called [him] to say that [his] friend died[.]"²⁶ Either way, someone called the Respondent, told him the Decedent died, and he went immediately to the Property.²⁷ When he arrived, he saw "a lot of people outside, like, ambulance, the police, and" was asked by the police if he knew the Decedent.²⁸ Contrary to Detective Vucci's recollection, the Respondent testified that he identified himself as the Decedent's friend.²⁹

In the middle of November, the Decedent had a small funeral at Congo Funeral Home (the "Funeral Home").³⁰ Only the Respondent, the Respondent's son, and a couple of people from the Funeral Home attended.³¹ Both parties submitted bills from the Funeral Home.³² Both bills reflect total payment for services of \$2,500.00 and list the Respondent's son as the purchaser of the services.³³ The bill presented by the Petitioner specifies that the Decedent was cremated and includes

²⁶ *Id.*

²⁷ Tr. 90:10-11.

²⁸ Tr. 90:14-16.

²⁹ Tr. 90:14-17.

³⁰ ROW Tr. 161:2-11.

³¹ ROW Tr. 161:8-11.

³² JX 1, JX 57.

³³ JX 1, JX 57.

an additional \$495.45 as a “finance charge.”³⁴ The bill presented by the Respondent also includes terms for a financing plan, but does not include any additional charges from that financing plan.³⁵

B. The Estate

Months went by without anyone opening an estate for the Decedent. The Respondent testified that he and his son were unable to locate the Decedent’s family and he stepped up to open an estate so he could work through problems at the Property.³⁶ Specifically, the Respondent’s son, who had access to the Property, told the Respondent that “[w]ater was coming through the front door.”³⁷

But the Respondent was not the first to try to open the Estate. On January 16, 2018, the Respondent’s son filed a petition to serve as the personal representative of the Estate, claiming to be the Decedent’s nephew.³⁸ The Register of Wills rejected the petition on January 17, 2018, based on Mr. McGill’s criminal record.³⁹

³⁴ JX 1.

³⁵ JX 57.

³⁶ Tr. 92:14-22.

³⁷ Tr. 93:1-2, 94:8-12. *See also* JX 50 (reflecting confirmation from the water company that water was rushing out of the Property).

³⁸ ROW D.I. 1.

³⁹ *Id.*

Then, on March 12, 2018, the Respondent filed a petition to serve as personal representative of the Estate.⁴⁰ The Respondent made his application without the assistance of an attorney and, during the process, provided the Register of Wills with his identification and the Decedent's death certificate.⁴¹ The Respondent testified that he informed the Register of Wills that he was the Decedent's friend and did not claim a familial relation to the Decedent.⁴² He was granted letters March 12, 2018 and, thereafter, began administering the Estate.⁴³

The Petitioner's husband, Billy Cowan, testified that he and the Petitioner did not know the Decedent died until May or June of 2018.⁴⁴ At the time, they were living in Kentucky, but they traveled to Delaware to meet with the Respondent and discuss the Estate.⁴⁵ During their first meeting, Mr. Cowan initially thought the

⁴⁰ ROW D.I. 4.

⁴¹ Tr. 98:24-99:2.

⁴² Tr. 99:3-9. The Petitioner raised concerns about how the Respondent's name appeared on the Decedent's death certificate. JX 4. The death certificate admitted into evidence shows a series of amendments but does not show what the original text was. JX 4. The informant's name and relationship were both amended on March 23, 2018. *Id.* The Petitioner testified that the relationship was originally listed as "nephew" but provided no evidence showing that was on the original death certificate. Tr. 149:17-20, 151:11-15. The Respondent testified that she gave the original version of the death certificate to the FBI. Tr. 266:22-267:2.

⁴³ ROW D.I. 4.

⁴⁴ Tr. 15:5-9. They learned the sad news from Linda Hartwell (relationship unknown) and believe that Gwendolyn Pollard, the Decedent's sister, purposefully kept the news from them. Tr. 15:5-11.

⁴⁵ Tr. 15:12-16. The Petitioner explained that they arrived at the Property around 2:00 a.m., knocked, heard dogs barking inside, but received no answer. ROW Tr. 102:19-103:4. They

Respondent “was a good guy,” and the Decedent’s friend, who wanted to do right by the Decedent and the family.⁴⁶ But that perception changed when Mr. Cowan heard from others that the Respondent did not, as he told Mr. Cowan, pay for the Decedent’s funeral expenses personally.⁴⁷ That caused Mr. Cowan to doubt the Respondent and his motivations for serving as personal representative.

The Petitioner’s sister and the Decedent’s niece, Renita Thomas, testified similarly. Ms. Thomas learned of the Decedent’s death from the Petitioner around October of 2018.⁴⁸ She struggled, at first, to believe that he had passed, and the nieces and nephews were not informed.⁴⁹ She called her aunt, Gwendolyn Pollard, and found her answers evasive and concerning.⁵⁰ Ms. Thomas also questioned the Respondent’s role and confirmed that she did not, as a member of the family, give the Respondent permission to enter the Property or petition to act on behalf of the Estate.⁵¹ The Petitioner’s brother, Robert Thomas, testified similarly. He was not

returned at 2:00 p.m., when someone answered the door and helped them contact the Respondent. ROW Tr. 103:5-22. They struggled, however, with arranging an in-person meeting with the Respondent. *See* ROW Tr. 103:23-104:14.

⁴⁶ Tr. 15:16-16:5.

⁴⁷ *Id.*

⁴⁸ ROW Tr. 30:23-31:1.

⁴⁹ Tr. 54:5-10. Ms. Thomas testified to a close relationship with the Decedent; she helped him clean his house and named her children after him. Tr. 55:18-19.

⁵⁰ Tr. 54:10-20.

⁵¹ Tr. 50:3-8. Like the Petitioner, Ms. Thomas wants the Respondent removed from his fiduciary role. Tr. 53:2-4. As does their brother, Robert Thomas. Tr. 78:21-79:2.

immediately informed of the Decedent's death, nor did he have any communications with the Respondent about the Estate around the time it was opened.⁵² Mr. Thomas recalls meeting the Respondent for the first time around November or December of 2019.⁵³

On or around January 3, 2019, the Respondent engaged counsel to represent the Estate.⁵⁴ As the personal representative, the Respondent dealt with (i) the Property, (ii) marshalling other assets, and (iii) the Register of Wills requirements. I address these matters in turn.

i. The Property

After the Respondent was appointed as the personal representative of the Estate, he took control of the Property, secured it, and worked to repair it.⁵⁵ The Respondent testified that the plumbing needed significant work and submitted a

⁵² Tr. 77:6-9.

⁵³ Tr. 76:22-77:1.

⁵⁴ ROW D.I. 20.

⁵⁵ See Tr. 115:18-22. The Petitioner testified that she took out homeowner's insurance on the Property. ROW Tr. 92:10-1; JX 4. The exhibit submitted by the Petitioner shows the monthly and annual rates and discounts for insurance but does not show any payments made by the Petitioner. Pet. Ex. 4; The Respondent testified a trial that he took out insurance on the Property. Tr. 114:18-22. This contradicts his previous testimony in the Sale Action where he testified that he did not insure the Property because nobody was living there. C.A. No. 2019-1038-SEM, D.I. 36, p. 38. The Respondent also introduced evidence of insurance on the Property through a screenshot of an insurance policy in an email. JX 67.

water bill and plumbing invoice in support.⁵⁶ The total repairs cost \$26,300.00.⁵⁷ Per the Respondent, the water damage ruined the Decedent's personal property.⁵⁸

The water damage was confirmed by the testimony of Mr. Thomas. Around November or December of 2019, Mr. Thomas met with the Respondent to see the Property and "check things out."⁵⁹ Mr. Thomas explained that, at that time, the Property had furniture, carpet, and drywall removed and pipes exposed.⁶⁰ The Property looked to Mr. Thomas "like it may have water damage."⁶¹ In that condition, per Mr. Thomas, the Property was not habitable.⁶²

After these issues were repaired, the Respondent allowed his stepbrother, Michael Saunders, to stay in the Property free of charge for a period of

⁵⁶ JX 50.

⁵⁷ JX 62.

⁵⁸ Tr. 180:21-24. Renita Thomas, the Decedent's niece, testified that she was the Decedent's housekeeper "a long time" before his death. ROW Tr. 11:9-12. *See also* Tr. 22:6-7. She explained the contents of the house at that time as follows: a large flat screen TV, a bed, a security system, a laptop, a washing machine and dryer, a dresser and bureau, a guitar, two smaller TVs, silverware, a Nuwave oven, a microwave, a refrigerator, two guns, and other minor personal belongings. ROW Tr. 11:16-20:6. The Respondent testified that when he examined the Property, he found the flat screen TV, appliances, and personal effects, and that they were all damaged by the water. ROW Tr. 195:14-196:14. The Respondent then disposed of those items. ROW Tr. 196:16-18. The Respondent did not find any firearms. ROW Tr. 196:8-10.

⁵⁹ Tr. 77:22-78:4.

⁶⁰ Tr. 80:17-21.

⁶¹ Tr. 82:12-13.

⁶² Tr. 80:22-81:1.

approximately six (6) months “[t]o watch over the [P]roperty.”⁶³ Mr. Saunders had two small black dogs living at the Property with him.⁶⁴ While Mr. Saunders lived in the residence, the Respondent visited often and never noticed any damage to the Property.⁶⁵ The Respondent testified that he instructed Mr. Saunders to vacate the Property as soon as he obtained counsel, at his counsel’s suggestion.⁶⁶ The Respondent then inspected the Property when Mr. Saunders left and determined that he did not cause any damage to the Property.⁶⁷

Then on December 27, 2019, the Respondent initiated the Sale Action by filing a petition in this Court seeking permission to sell the Property to pay debts of the Estate.⁶⁸ That petition was granted, the Property was sold, and the case was closed on December 6, 2022.⁶⁹

⁶³ ROW Tr. 146:8-24, 222:14-22.

⁶⁴ ROW Tr. 148:13-20.

⁶⁵ ROW Tr. 147:1-6.

⁶⁶ ROW Tr. 147:20-148:6.

⁶⁷ ROW Tr. 148:7-12. The Petitioner argues the appraisal obtained by the Respondent in connection with the Sale Action showed damages caused by the Respondent, and specifically by the dogs the Petitioner alleges the Respondent allowed to stay in the Property. The appraisal reflects the Property was not habitable and needed repairs but did not indicate any damage specifically attributable to the dogs. C.A. No. 2019-1038-SEM, D.I. 1, Ex. I.

⁶⁸ C.A. No. 2019-1038-SEM, D.I. 1.

⁶⁹ C.A. No. 2019-1038-SEM, D.I. 71. The Petitioner introduced evidence of outstanding property taxes on the Property around the time of the Decedent’s death, and during the administration of the Estate. JX 6. The bills show that on October 2, 2017, there were

ii. Marshalling the Assets

As the personal representative, the Respondent had to marshal the Decedent's other assets. To do so he searched for vehicles and bank accounts.⁷⁰ The vehicle search confirmed that the Decedent did not own any vehicles when he passed, but that he formerly owned two vehicles that were transferred before his death.⁷¹ The Respondent also searched for any bank accounts held by the Decedent.⁷² The Respondent obtained date of death balances for the Decedent's savings account and three checking accounts at Wells Fargo.⁷³ The accounts had date of death balances of \$10,058.32, \$7,396.75, \$538.77, and \$516.38, respectively.⁷⁴ The date of death

\$1,314.40 in outstanding taxes and on August 31, 2020, that number had increased to \$7,009.04. JX 6.

⁷⁰ JX 63. The Petitioner argues that the vehicle search was ineffective because it included the suffix "Jr." ROW Tr. 199:11-15. But the search also used a social security number, which matched the Decedent's and should have produced valid results. JX 63.

⁷¹ JX 63. The first vehicle was a 2011 Ford Expedition. JX 63. The search indicates that the Ford Expedition was transferred out of the Decedent's name on October 11, 2017, before the Decedent passed away. *Id.* The second vehicle was a 2007 Ford Explorer. *Id.*

The Petitioner testified that the Decedent owned three vehicles at the time of his death. These included a green car, white van, and Ford Expedition. Tr. 234:22-235:1; 272:20-24. The Petitioner provided the VIN number for the Ford Expedition, which matched the VIN number of the Ford Expedition identified in the Respondent's vehicle search. Tr.235:5-7; JX 63. The Petitioner questioned the Respondent about the location of the three vehicles the Decedent allegedly owned, but the Respondent did not have any recollection. Tr. 179:8-21. The Petitioner testified that she saw the Ford Explorer in front of the Decedent's house. Tr. 273:1. She did not, however, introduce any evidence in support of her testimony, nor to combat the veracity of the Respondent's vehicle search.

⁷² ROW Tr. 165:7-16.

⁷³ JX 59.

⁷⁴ *Id.*

balance form also indicated that the Decedent had a safe deposit box with Wells Fargo and that it was closed on December 5, 2017, after the Decedent's death.⁷⁵ The Respondent testified that he did not close the box and did not know who did.⁷⁶

The Respondent also testified that he did not know about the Decedent's accounts until after he was appointed as the executor of the Estate.⁷⁷ At that time he discovered the accounts, there was no money remaining.⁷⁸ The Respondent testified that the money was removed by his son, without the Respondent's permission or instruction.⁷⁹ The Respondent's son withdrew approximately \$18,000.00.⁸⁰ When the Respondent discovered the money was missing, he contacted the police and filed suit against Wells Fargo.⁸¹ The Respondent settled with Wells Fargo for \$3,500.00.⁸² The Respondent did not report this settlement to the heirs, other than through the accountings he filed with the Register of Wills.⁸³

iii. The Register of Wills Requirements

⁷⁵ ROW Tr. 171:7-9.

⁷⁶ ROW Tr. 171:1-12.

⁷⁷ ROW Tr. 172:3-5.

⁷⁸ ROW Tr. 172:20-22.

⁷⁹ ROW Tr. 172:12-16.

⁸⁰ D.I. 209.

⁸¹ ROW Tr. 173:23-174:16. *See also Est. of Alvin David Smith, Jr. v. Wells Fargo, C.A. No. 2020-0695-SEM (Del. Ch.).*

⁸² ROW D.I. 41, p. 4. *See also* ROW Tr. 174:22-24.

⁸³ ROW Tr. 254:7-12.

As he worked to administer the Estate, the Respondent also needed to comply with the Register of Wills requirements. In his appointment order, he was required to file an inventory by June 12, 2018, and a first accounting by March 12, 2019.⁸⁴ The Respondent filed an inventory of the Estate on July 16, 2018.⁸⁵ This inventory reflected that the Estate contained real property worth \$200,000.00 and no other assets.⁸⁶ After receiving the assistance of counsel, on June 21, 2019, the Respondent filed an amended inventory (the “Inventory”).⁸⁷ The Inventory reflected that the Estate contained real property worth \$125,000.00 and miscellaneous personal property worth \$100.00.⁸⁸

On September 12, 2019, the Respondent filed his first accounting for the Estate (the “First Accounting”).⁸⁹ The First Accounting reflected principal totaling \$18,510.22, disbursements of \$2,933.75, and a remaining balance of \$15,402.13.⁹⁰ The Respondent filed a second and final accounting on April 11, 2022 (the “Second

⁸⁴ ROW D.I. 4.

⁸⁵ ROW D.I. 11.

⁸⁶ *Id.*

⁸⁷ ROW D.I. 26.

⁸⁸ *Id.*

⁸⁹ ROW D.I. 31.

⁹⁰ *Id.*

Accounting”).⁹¹ The Second Accounting reflected receipt of principal totaling \$88,071.81, disbursements of \$83,861.29, and a remaining balance of \$18,944.43.⁹²

The Petitioner filed exceptions to the First Accounting and the Second Accounting on April 22, 2022 (the “Exceptions”).⁹³ The Exceptions were sent to the Respondent, who responded on May 2, 2022.⁹⁴ The Petitioner answered the Respondent’s response on May 13, 2022.⁹⁵ Ultimately, a trial was held on the Exceptions on February 15, 2023.⁹⁶

C. The Disputes

Pending before this Court are the Exceptions, filed in the Register of Wills proceeding, and the claims brought by the Petitioner in C.A. No. 2018-0915-SEM (the “Civil Action”). The posture of the Exceptions is addressed above. Herein, I address the winding road that is the Civil Action.

⁹¹ ROW D.I. 41.

⁹² *Id.* The Respondent introduced evidence of the legal fees and expenses, reflected on the Second Accounting as disbursements, at trial. JX 65. The Respondent testified that the expenses benefitted the Estate and that he reviewed the invoices and found the amounts reasonable. ROW Tr. 236:14-237:2, 238:14-239:3. The Respondent also introduced a water bill for the Property and insurance on the Property, in the form of emails. JX 66, JX 67. The Petitioner challenged the veracity of these exhibits. ROW Tr. 208:14-209:2, ROW Tr. 216:11-15. I chose to admit them and give them the weight and credibility I find they deserve, which is minimal. ROW Tr. 210:9-12, 220:14-16.

⁹³ ROW D.I. 45. The Exceptions were unsigned, but the signature page was later submitted. *See* ROW D.I. 49.

⁹⁴ ROW D.I. 46.

⁹⁵ ROW D.I. 48.

⁹⁶ ROW D.I. 84.

On December 19, 2018, the Petitioner filed a petition for removal of the Respondent as the personal representative of the Estate (the “Petition”), initiating the Civil Action.⁹⁷ When the Respondent did not respond to the Petition, the Petitioner filed a motion for default judgment on February 8, 2019, amended on February 26, 2019.⁹⁸ I heard that motion on May 20, 2019, at which time the Respondent appeared with counsel and I issued an oral final report recommending the motion be denied.⁹⁹ My recommendation was adopted by Chancellor Bouchard on June 5, 2019.¹⁰⁰

Thereafter, the Civil Action has been bogged down by numerous ancillary motions, primarily initiated by the Petitioner. Those motions led to the following:

(1) On September 25, 2019, I issued an order denying the Petitioner’s motion for preliminary injunction;¹⁰¹

⁹⁷ D.I. 1. The Petitioner was joined by Pamela D. Washington, but Ms. Washington was granted leave to withdraw from the matter. D.I. 40-41. The Petition also named Mr. McGill and raised claims that Mr. McGill made multiple fraudulent representations involving the burial of the Decedent. D.I. 1, ¶ 3. But Mr. McGill was voluntarily dismissed from the Petition. D.I. 32.

⁹⁸ D.I. 9, 11-15.

⁹⁹ D.I. 23, 27. Counsel entered her appearance on March 25, 2019 and thereafter asked that the hearing be cancelled, but I denied that request. D.I. 20. The Respondent filed a response to the Petition on May 15, 2019. D.I. 22.

¹⁰⁰ D.I. 24.

¹⁰¹ D.I. 39.

(2) On December 11, 2019, I issued an order denying the Petitioner's motion to compel;¹⁰²

(3) On March 18, 2020, I issued an order denying the Petitioner's motion for contempt and perjury;¹⁰³

(4) On June 4, 2020, I issued an order denying the Petitioner's motion for continuance;¹⁰⁴

(5) On August 25, 2020, I issued a final report recommending that the Petitioner's motion for my recusal be denied (which was adopted by Chancellor Bouchard on August 25, 2020);¹⁰⁵

(6) On December 15, 2020, I issued a final report on various pending matters including motions to consolidate, dismiss, and for fee shifting (which was adopted by Chancellor Bouchard on December 30, 2020);¹⁰⁶

(7) On January 13, 2021, I issued an order denying the Petitioner's request to exhume the Decedent's body for an autopsy;¹⁰⁷

¹⁰² D.I. 47.

¹⁰³ D.I. 55.

¹⁰⁴ D.I. 58.

¹⁰⁵ D.I. 65, 71.

¹⁰⁶ D.I. 91, 98.

¹⁰⁷ D.I. 106.

(8) On March 8, 2021, I issued an order denying another motion for contempt filed by the Petitioner;¹⁰⁸

(9) On August 11, 2022, I issued a final report addressing various pending requests including a frivolous motion for recusal;¹⁰⁹

(10) On September 20, 2022, I issued a final report on fee shifting (which was adopted, with the August 11, 2022 report, by Chancellor McCormick on November 3, 2022);¹¹⁰ and

(11) On January 12, 2023, I issued a final report denying various pre-trial motions.¹¹¹

I direct interested readers to those rulings, and the docket, for the full procedural posture of the Civil Action.

Ultimately, the Petition was tried on February 14, 2023.¹¹² Following trial, the Petitioner filed another motion for contempt and perjury against the Respondent and a motion for contempt against the Funeral Home for failing to respond to the Petitioner's subpoenas.¹¹³ The Respondent filed his opposition to the motion against

¹⁰⁸ D.I. 170.

¹⁰⁹ D.I. 176.

¹¹⁰ D.I. 181, 188.

¹¹¹ D.I. 203. This matter was also briefly before Vice Chancellor Slight on the Petitioner's exceptions; all of which were overruled. *See* D.I. 166.

¹¹² D.I. 225. Before trial started, I ruled on all pending motions. Tr. 4:9-5:11.

¹¹³ D.I. 228-229.

him on March 2, 2023.¹¹⁴ The Petitioner’s unsigned certificate of service reflects the motion against the Funeral Home was served on the Funeral Home by registered mail on or about February 24, 2023; to date there has been no response.¹¹⁵ Ultimately, on March 7, 2023, the trial transcripts were docketed, and I took all pending matters under advisement.¹¹⁶

II. ANALYSIS

As I stated in my letter to the parties following the pre-trial conference, the only remaining issues in the Civil Action are whether the Respondent was lawfully appointed as the personal representative of the Estate and whether the Respondent breached his fiduciary duties while in that role.¹¹⁷ I address those claims first. Then I turn to the Exceptions. Lastly, I address the Petitioner’s post-trial motions.

A. The Respondent was lawfully appointed as the personal representative of the Decedent’s Estate.

The Petitioner argues that the Respondent was not lawfully appointed as the personal representative of the Estate. Under 12 *Del. C.* § 1505(d), “if no petition for administration is filed within 60 days from the date of death, then the Register of

¹¹⁴ D.I. 230.

¹¹⁵ D.I. 229, p. 6.

¹¹⁶ D.I. 231; ROW D.I. 87.

¹¹⁷ D.I. 214. I issued this letter after reviewing the Petitioner’s opening pre-trial brief wherein she made a litany of criminal allegations. D.I. 198 Those claims are outside the scope of the Petition and this Court’s jurisdiction.

Wills shall grant letters of administration to such person or persons as the Register, in the Register’s discretion, shall determine.”¹¹⁸ There is no dispute that the Register exercised this discretion in appointing the Respondent. But the Petitioner argues this Court should reconsider the Register’s decision because the Respondent allegedly misrepresented his relationship with the Decedent and was, thus, appointed under false pretenses. I find no such falsity.

The Petitioner failed to introduce any evidence that the Respondent claimed to be a family member of the Decedent when he petitioned to administer the Estate. The Respondent’s son did—in Mr. McGill’s petition for appointment, he listed himself as the Decedent’s nephew.¹¹⁹ After that petition was denied due to Mr. McGill’s criminal record, the Respondent petitioned and identified himself as a “friend” of the Decedent.¹²⁰ He further clarified to the Register that his son’s representation to the Register of Wills was incorrect.¹²¹ Contrary to the Petitioner’s argument, the Respondent was open and honest with the Register and was appointed by the Register on a truthful record, within the Register’s discretion. This Court should not second guess or reverse that decision.¹²²

¹¹⁸ 12 *Del. C.* § 1505(d).

¹¹⁹ ROW D.I. 1.

¹²⁰ ROW D.I. 4.

¹²¹ *Id.*

¹²² The Petitioner appears to argue that the Respondent should have investigated or searched for the Decedent’s family before petitioning to administer the Estate as a friend.

B. The Respondent did not breach his fiduciary duties as the personal representative of the Decedent's Estate.

The Petitioner contends the Respondent breached his fiduciary duties to the Estate by (1) hiring an attorney to assist him in administering the Estate and billing the attorneys' fees and expenses to the Estate; (2) refusing to step down in favor of a family member taking over as fiduciary; (3) exercising authority over and control of the Property (including permitting his stepbrother to live at the Property, failing to ward against damage to the Property and its contents, and selling the Property); (4) failing or refusing to search for and provide information to the Decedent's heirs; (5) failing to account for Maryland properties; (6) failing to pay the Decedent's medical bills; and (7) failing to timely file an inventory or accounting of the Estate.¹²³

Tr. 62:9-16. The Respondent was not required to do so. Section 1505 of Title 12 of the Delaware Code, through which the Respondent petitioned and was appointed, imposes no such requirement.

The Petitioner argues that, before he petitioned, the Respondent misrepresented his relationship with the Decedent to the police and the Funeral Home. *See, e.g.*, Tr. 45:13-46:1. Although I question whether police would have invited a "friend" onto the Property to see the Decedent's body and whether a funeral home would permit a "friend" to direct a burial, I find these questions are not pertinent to the issue before me. That issue is whether the Respondent was validly appointed as personal representative for the Estate. He was. The Respondent was candid in his petition to the Register and was not appointed, as the Petitioner argues, under false pretenses.

The Petitioner also argues that the Respondent's conduct is like *In re Walker's Est.*, 122 A. 192 (Del. Orph. 1923) but, upon review, I find the case fails to support judgment in the Petitioner's favor.

¹²³ I have only included in this list the alleged breaches that occurred after the Respondent was appointed as the personal representative. Actions taken before the Respondent's

To prevail on her fiduciary duty claim, the Petitioner must prove two elements: “(1) that a fiduciary duty existed and (2) that the defendant breached that duty.”¹²⁴ Her burden is by a preponderance of the evidence.¹²⁵ “Proof by a preponderance of the evidence means proof that something is more likely than not. It means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not.”¹²⁶

The Respondent serves in a fiduciary capacity and is “responsible for compiling the inventory of Decedent’s estate, managing the Decedent’s assets, and paying Decedent’s debts.”¹²⁷ In that role he owes “both a duty of care and a duty of loyalty to the [E]state.”¹²⁸ He also had “a duty to identify the heirs entitled” to

appointment cannot support breach of duties that were not yet owed. *See Hillblom v. Wilm. Tr. Co.*, 2022 WL 17428978, at *8 (Del. Ch. Dec. 6, 2022) (reasoning that one cannot owe a duty before one has the power to carry out that duty).

¹²⁴ *Heller v. Kiernan*, 2002 WL 385545, at *3 (Del. Ch. Feb. 27, 2002).

¹²⁵ *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693, at *1 (Del. Ch. July 6, 2018).

¹²⁶ *Del. Express Shuttle, Inc. v. Older*, 2002 WL 31458243, at *17 (Del. Ch. Oct. 23, 2002) (quoting Del. P.J.I. Civ. § 4.1 (2000)).

¹²⁷ *Dixon v. Joyner*, 2014 WL 3495904, at *3 (Del. Ch. July 14, 2014).

¹²⁸ *In re Est. of Newton*, 2023 WL 3144700, at *3 (Del. Ch. Apr. 28, 2023). The duty of care is judged by a standard of “ordinary care, prudence, skill and diligence” in carrying out duties as the personal representative. *Est. of Chambers*, 2020 WL 3173032, at *2 (Del. Ch. June 12, 2020). The duty of loyalty requires the personal representative “to act, at all times, in the best interests of the estate.” *Id.*

any portion of the Estate.¹²⁹ That identification is essential because it ensures the heirs receive notice of filings with the Register of Wills, and can challenge the fiduciary's conduct through estate exceptions or a civil action.¹³⁰ And, although communication and coordination with heirs "ought to be done as much as reasonably possible," there is no affirmative duty to do so.¹³¹

Taking the Petitioner's alleged breaches in turn, I find:

(1) The Respondent exercised ordinary care in hiring an attorney to assist him in administering the Estate. A personal representative may hire attorneys to assist him in discharging these duties and the fees paid to the attorney for the personal representative are an "expense of the estate."¹³²

(2) The Respondent did not breach his duties by refusing to step down in favor of a member of the Decedent's family. His duty was to ensure the Estate was administered properly and the Petitioner has failed to demonstrate that his decision to stay on was outside the ordinary care expected of a personal representative or against the best interests of the Estate.

¹²⁹ *In re Est. of Johnson*, 1997 WL 599519, at *2 (Del. Ch. July 17, 1997) (citations omitted).

¹³⁰ *See* 12 *Del. C.* § 2302(d).

¹³¹ *In re Gittings*, 1999 WL 1581733, at *9 (Del. Ch. Dec. 30, 1999).

¹³² *In re Pusey*, 1997 WL 311503, at *3 (Del. Ch. May 23, 1997).

(3) The Respondent did not breach his fiduciary duties by exercising control over the Property. The “duties and powers [of an] executor are limited to the administration of the *personal* estate, unless extended by the will to real estate.”¹³³ The Respondent, arguably, exceeded the scope of his authority in exercising control over the Property. But in doing so, he was able to repair the Property and, with this Court’s approval, sell the Property to pay debts of the estate. I find the Petitioner failed to prove that the Respondent’s conduct was against the best interests of the estate, or provided a personal benefit to the Respondent.

(4) The Respondent did not breach his fiduciary duties by failing to search for or communicate with the Decedent’s heirs. The Respondent’s duty to search for heirs arose upon his appointment. But, shortly thereafter, the Decedent’s sister, Ms. Pollard, came forward and identified herself as the sole next of kin.¹³⁴ Early in the administration, the Register noted on the docket:

There seems to be confusion about who are the heirs. I am not going to burden the PR with spending money out of pocket on a genealogical report. That’s not fair to him. If the heirs want to fight about who is the next of the kin to inherit, let *them* spend money for a report and fight in Chancery.¹³⁵

¹³³ *Rambo v. Rumer*, 1866 WL 1051, at *4 (Del. Ch. Feb. 1866).

¹³⁴ ROW D.I. 5.

¹³⁵ ROW D.I. 10 (emphasis in original).

Shortly thereafter, prior counsel to some of the heirs docketed a moiety chart.¹³⁶ On this record, I find the Respondent had no further duty to investigate the heirs. Nor did he have an affirmative duty to keep the heirs informed of his day-to-day steps to administer the estate. Although such communication is encouraged, I find no fault in the Respondent's decision not to engage in extensive communication given the hostilities involved. Finally, even if I agreed that the notice published regarding the Estate was defective, the heirs were quickly joined in the Estate and have had full and adequate notice throughout the process.

(5) The Respondent did not breach his fiduciary duties by failing to locate the Decedent's Maryland properties. The Respondent was appointed to probate the Delaware estate and I decline to fault him for staying within his lane.

(6) The Respondent did not breach his fiduciary duties by failing to pay the Decedent's medical bills. The Respondent exercised reasonable care in addressing the known debts of the Decedent.

(7) The Respondent did not breach his fiduciary duties by failing to timely file an inventory and accountings. The Respondent was late with his filings, but I find no resulting harm to the Estate or the heirs.¹³⁷

¹³⁶ ROW D.I. 14.

¹³⁷ The Petitioner argues that this case represents the same modus operandi as a disciplinary case involving an attorney, Andrew Kaufman, in Philadelphia and the case of *In re Garrett. Office of Disciplinary Counsel v. Kaufman*, No. 2154 Disciplinary Docket No. 3 (Pa. 2015); *In re Garrett*, 909 A.2d 103 (Del. 2006). Mr. Kaufman was charged, alongside a

C. The Exceptions should be dismissed.

Through the Exceptions, the Petitioner asks that the First Accounting and Second Accounting be rejected in full. The Petitioner argues that the Respondent failed to provide sufficient information in support of either accounting and misused assets of the Estate.

Initially, I find the Petitioner's challenges to the First Accounting are time barred. Exceptions to an estate accounting are due within three months after notice of the filing of the accounting.¹³⁸ The Petitioner was notified of the First Accounting on September 11, 2019.¹³⁹ The Exceptions were not filed until April 22, 2022.¹⁴⁰ Thus, the Petitioner's challenges to the First Accounting are time barred and, by failing to timely file exceptions to the First Accounting, the Petitioner has waived the ability to challenge anything reflected in the First Accounting.¹⁴¹

real estate agent, funeral director, and others, with conspiring to steal a decedent's home and defraud the decedent's estate. *Garrett* is a decision by the Delaware Supreme Court wherein the Court ordered the disbarment of a former Delaware attorney for failing to safeguard, and misappropriating, client funds. *In re Garrett*, 909 A.2d at 106. The facts in these cases bear no relation to the matter at hand.

¹³⁸ 12 *Del. C.* § 2302(d).

¹³⁹ ROW D.I. 31.

¹⁴⁰ ROW D.I. 45.

¹⁴¹ ROW D.I. 31. This includes the listed funeral expenses of \$2,500.00; the Petitioner is barred from challenging those by failing to file exceptions to the First Accounting. *In re Est. of Magness*, 1992 WL 187629, at *2 (Del. Ch. July 21, 1992) (denying untimely exceptions to prior accountings).

That leaves the Petitioner’s challenges to anything that is new or altered in the Second Accounting. Under Court of Chancery Rule 198, “the personal representative bears the initial burden of demonstrating that the account was properly prepared.”¹⁴² But, when an exceptant seeks a surcharge, as the Petitioner does in this case, the burden shifts and the exceptant “must demonstrate affirmatively that a surcharge is warranted.”¹⁴³ To do that they must show that the personal representative “improperly or poorly handled the estate, engaged in self-dealing, or improperly depleted estate assets.”¹⁴⁴ Thus, the question before me is whether the Petitioner has demonstrated affirmatively that a surcharge is warranted; I find she has not.

First, I find the Petitioner failed to present affirmative evidence that the expenditures for repairs, water, and the like, were fabricated or not appropriately charged to the Estate. The Petitioner’s suspicion and rhetoric was insufficient to call those expenditures into question, particularly in light of the Respondent’s testimony and documentary support.

¹⁴² *In re Est. of Rich*, 2013 WL 5966273, at *1 (Del. Ch. Oct. 29, 2013).

¹⁴³ *In re Est. of Stepnowski*, 2000 WL 713769, at *1 n.1 (Del. Ch. May 2, 2000). “A surcharge is, essentially, a sanction against a personal representative requiring the personal representative to fund (or refund) the estate.” *In re Clark*, 2019 WL 3022904, at *7 (Del. Ch. July 9, 2019).

¹⁴⁴ *In re Clark*, 2019 WL 3022904, at *7.

Second, the Petitioner failed to present any credible evidence in support of her belief that the Respondent rented the Property and kept the rental proceeds for himself. At trial, the Respondent testified credibly that he did not charge rent for the six (6) months that the Property was inhabited and that the resident did not damage the Property.¹⁴⁵ This testimony is consistent with the timing of the repairs to the Property.¹⁴⁶ On this record, I find no support for an argument that the Respondent should be surcharged for rental value or damage to the Property.

Third, and finally, I find the attorneys' fees were properly charged to the Estate and were reasonable. It is settled that the fees of attorneys representing a personal representative in his fiduciary capacity are expenses of the estate.¹⁴⁷ "The rational[e] behind this rule is that the personal representative and his or her attorney is providing a service to the estate and its beneficiaries by properly and efficiently administering the estate."¹⁴⁸ This includes estate-related litigation.¹⁴⁹ Because the petitioner is seeking a surcharge, she must prove the attorneys' fees and expenses were not relevant, reasonable, and timely.¹⁵⁰

¹⁴⁵ Tr. 193:4-13; ROW Tr. 147:4-6.

¹⁴⁶ JX 62.

¹⁴⁷ *In re Pusey*, 1997 WL 311503, at *3.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Est. of Chambers*, 2020 WL 3173032, at *3.

Here, the fees incurred in the Civil Action and Sale Action were properly charged to the Estate and the Petitioner failed to demonstrate that the fees were not reasonable or relevant. The Estate has been involved in significant litigation in this Court, dating back to 2018, leading to the accumulation of fees that may at first glance appear unreasonable. But where there are multiple disputes, relatively large fees and expenses can be justified.¹⁵¹ Such is the case here. Further, I reject the Petitioner's argument that the Sale Action fees were conclusively denied in that action—my order explained that the fees would need to be disclosed on the Estate's accounting(s) and that any heir could file timely exceptions thereto.¹⁵² The Petitioner filed those exceptions, sought a surcharge, but has failed to meet her burden to prove a surcharge is warranted. On the record before me, I find the attorneys' fees and expenses were reasonable and properly charged to the Estate.

D. The Petitioner's post-trial motions should be denied.

On February 24, 2023, the Petitioner filed a motion for contempt and perjury against the Respondent and a motion for contempt against the Funeral Home for failing to respond to her subpoenas.¹⁵³ I take these motions in turn and find both should be denied.

¹⁵¹ See, e.g., *In re Est. of Childres*, 2021 WL 3283028, at *10 (Del. Ch. Aug. 2, 2021).

¹⁵² C.A. No. 2019-1038-SEM, D.I. 115, p. 10.

¹⁵³ D.I. 228-229.

i. The motion for contempt and perjury against the Respondent should be denied.

The Petitioner argues that the Respondent (1) failed to comply with an order in the Sale Action, (2) failed to inform the Decedent’s heirs about the settlement with Wells Fargo, (3) submitted a fake receipt to the Court at trial, and (4) perjured himself in his testimony regarding who told him that the Decedent had passed.¹⁵⁴ She seeks sanctions, including shifting of her costs, “TREMBLE [sic] DAMAGES” and other equitable relief. I address the motion in two parts (contempt then perjury) and find it should be denied in full.

(a) The Petitioner has failed to demonstrate contempt.

“To establish civil contempt, [the moving party] must demonstrate that the [contemnors] violated an order of this Court of which they had notice and by which they were bound.”¹⁵⁵ The Petitioner must show contempt by clear and convincing evidence, at which point the burden shifts to the alleged contemnors to show why they did not comply.¹⁵⁶ To meet this burden, the Petitioner’s evidence must

¹⁵⁴ Items (1)-(3) are taken directly from the motion (D.I. 228), item (4) is implied from the motion and the Petitioner’s objections at trial. *See, e.g.*, Tr. 131:6-22. I include item (4) as a courtesy and in recognition of the Petitioner’s status as a self-represented party. *See Hall v. Coupe*, 2016 WL 3094406, at *2 (Del. Ch. May 25, 2016).

¹⁵⁵ *Arbitrium v. Johnston*, 1997 WL 589030, at *3 (Del. Ch. Sept.17, 2009).

¹⁵⁶ *Dolan v. Jobu Holdings, LLC*, 2021 WL 3930569, at *2 (Del. Ch. Sept. 3, 2021).

“produce in the mind of the fact-finder a firm belief or conviction that the allegations in question are true.”¹⁵⁷ The Petitioner has failed to meet her burden.

First, the Petitioner’s continued attempt to relitigate the Sale Action, arguing that the Respondent should be held in contempt for failing to permit an inspection of the Property, is frivolous. The sale of the Property was conclusively determined in the Sale Action. Vice Chancellor Slights upheld my final report on exceptions, wherein he expressly warned the Petitioner against continuing with frivolous and wasteful litigation tactics.¹⁵⁸ This motion is exactly that—the Petitioner has no good faith basis to continue litigating issues resolved within the Sale Action.¹⁵⁹

Second, the Respondent has failed to identify a court order requiring the Respondent to notify the heirs of the Wells Fargo settlement. The Respondent, as the personal representative, was authorized to bring an action to recover the funds

¹⁵⁷ *Cerberus Int’l, Ltd. v. Apollo Mgmt., L.P.*, 794 A.2d 1141, 1151 (Del. 2002) (quoting 29 Am.Jur.2d *Evidence* § 157 (1994)).

¹⁵⁸ D.I. 166.

¹⁵⁹ The Petitioner has been provided a fair amount of leeway as a self-represented party. *See, e.g.*, Tr. 17:2-6, 17:11-14. She has also been authorized to proceed *in forma pauperis* (without the payment of fees). D.I. 136. But that permission comes with limits. Under 10 *Del. C.* § 8803, “[w]hen a court finds that a litigant has abused the judicial process by filing frivolous or malicious litigation, the court may enjoin that litigant from filing future claims without leave of court.” The Petitioner is hereby warned that future frivolous filings may result in sanctions including revocation of the permission to proceed *in forma pauperis* in this action and future proceedings.

and to settle that action on behalf of the Estate.¹⁶⁰ And he disclosed the settlement to the heirs by identifying it in the Second Accounting. No more was required.

(b) The Petitioner has failed to demonstrate any improper trial conduct.

Perjury is a criminal offense.¹⁶¹ But “perjury and fabricated evidence . . . are evils that can be exposed at trial and court rules are fashioned to facilitate such revelations.”¹⁶² “To be sure, the primary purpose of a trial is to seek out the truth from all of the strategies, tactics, hyperboles, exaggerations and even, in some cases, blatant dishonesty and falsehoods.”¹⁶³ Cognizant of this purpose and the Petitioner’s self-representative status, I consider her arguments under the lens of fraud, rather than criminal perjury.

The definition of fraud on the court is elusive, but is confined to “the more serious, but fortunately rare, cases involving a corruption of the judicial process itself.”¹⁶⁴ Examples of fraud on the court include “bribery of a judge or juror, improper influence exerted on the court by an attorney, or involvement of an attorney as an officer of the court in the perpetration of fraud.”¹⁶⁵

¹⁶⁰ See, e.g., *Taormina v. Taormina Corp.*, 78 A.2d 473, 477 (Del. Ch. 1951).

¹⁶¹ See 11 Del. C. §§ 1221-35.

¹⁶² *Smith v. Williams*, 2007 WL 2193748, at *5 (Del. Super. July 27, 2007).

¹⁶³ *Id.* at *6.

¹⁶⁴ *Id.* at *4.

¹⁶⁵ *Id.*

I find the Respondent's inconsistent testimony and challenged exhibits do not constitute fraud on the Court sufficient to preclude relief. I have considered the Respondent's conflicting testimony, which undermines his credibility about the day of the Decedent's death. But I find that immaterial to the limited issues before me. Likewise, because the Petitioner sought a surcharge, she bore the burden of proving the challenged expenses was not appropriate. Thus, the documentation submitted by the Petitioner in support of those expenses is not essential to my decision that the Petitioner failed to meet her burden. I gave the documentation minimal weight and find the submission of such does not amount to the perpetration of fraud on the court.

ii. The motion for contempt against the Funeral Home should be denied.

The Petitioner argues that she caused two subpoenas to be served on the Funeral Home (1) on March 15, 2021 commanding the production of documents (the "First Subpoena") and (2) sometime prior to trial, commanding trial testimony (the "Second Subpoena").¹⁶⁶ The Funeral Home failed to respond to either. Thus, the Petitioner asks that the Court hold the Funeral Home in contempt; I recommend otherwise.

Starting with the First Subpoena: This is the second time the Petitioner has sought contempt for the Funeral Home's alleged noncompliance with the First

¹⁶⁶ D.I. 229.

Subpoena. I denied her first motion by order dated March 8, 2021.¹⁶⁷ Therein, I explained that the First Subpoena failed to comply with Court of Chancery Rule 45.¹⁶⁸ The Petitioner has failed to resolve the noted deficiencies and her renewed request should, likewise, be denied.

Regarding the Second Subpoena, I have similar concerns. The version of the Second Subpoena on the docket does not include the text required under Court of Chancery Rule 45(a)(1)(D). Further, the Petitioner has failed to provide any proof of service of the Second Subpoena on the Funeral Home. This deficiency was discussed at trial, where I advised the Petitioner of the need for a proof of service on the docket.¹⁶⁹ Despite that direction, she failed to file a proof of service separately or in support of her motion for contempt. Without that proof of service or the required text, the Second Subpoena is unenforceable and the motion for contempt should be denied.

III. CONCLUSION

For the foregoing reasons, I find judgment should be entered in favor of the Respondent and against the Petitioner. The Respondent was lawfully appointed as the personal representative of the Estate and the Petitioner has failed to prove any

¹⁶⁷ D.I. 113.

¹⁶⁸ *Id.*

¹⁶⁹ ROW Tr. 68:22-69:8, 71:14-18.

breaches of fiduciary duty or surcharge-worthy conduct in connection with the Second Accounting. The claims in the Civil Action and the Exceptions should be dismissed with prejudice and the estate should move toward closure.

This is my final report and exceptions may be filed under Court of Chancery Rule 144. With this report, any prior stay(s) of exceptions, are lifted.