

2009 WL 8578359 (Ala.Cir.Ct.) (Trial Pleading)
Circuit Court of Alabama,
Twenty-Fourth Judicial Circuit.
Pickens County

Kris Marie CHILDERS, as Personal Representative of the Estate
of Dayton W. Shepherd, and Lenore E. Shepherd, Plaintiffs,

v.

Arthur Clark GRIFFITH, Wendy Griffith, and A, B and C, that person, firm or corporation guilty
of the matters alleged or who converted or possess any of the Shepherd's assets, Defendants.

No. CV 2009-900021.
May 15, 2009.

Complaint

[Don F. Wiginton](#) (Wig002), Attorney for Plaintiffs, Wiginton & Wiginton, 3 Office Park Circle, Suite 240, Birmingham, Alabama 35223-2513, (205):942-9233, Fax (205) 871-911, Email: don@wiginton.com.

Serve Defendants at: Arthur Clark Griffith, Wendy Griffith, 1213 Judys Lane, Chattanooga, Tennessee 37419-1163.

1. Plaintiff, Kris Marie Childers (“Childers”), is an individual over the age of 9 years and, a resident of Pickens County, Alabama, and who is appointed the Personal Representative of her father's estate, Dayton W. Shepherd, in the Probate Court of Pickens County Alabama (Case No. 2009-034);
2. Plaintiff, Lenore E. Shepherd (“Shepherd”), is an individual over the age of 78 years and a resident of Pickens County, Alabama;
3. Defendant; Arthur Clark Griffith (“Griffith”), is an individual over the age of 19 years and, on information and belief, is a resident of Chattanooga, Bradley County, Tennessee;
4. Defendant, Wendy Griffith; is an individual over the age of 19 years and, on information and belief, is a resident of Chattanooga, Bradley County, Tennessee;
5. Fictitious defendants, A, B and C, are those persons, firms, or corporations who are guilty of the matters alleged herein and/or converted any of the Shepherd's assets;
6. The matters alleged in this complaint occurred in Pickens County, Alabama, and this Court has jurisdiction of this matter pursuant to [§ § 6-3-2 \(3\)](#) and [12-11-30, Code of Alabama](#) 1975;

FACTS

7. Plaintiff Shepherd lives at 501 Love Circle in Aliceville, Alabama, along with her husband, Dayton W. Shepherd (“Dayton”), until he died on March 21, 2009. He became ill in October 2008, and Shepherd needed assistance in caring for him.

8. Her only Child, Childers, assisted Shepherd in caring for her father as she could, but her own husband began undergoing treatment for cancer during this time and required her close assistance. Childers' husband, Randy Childers, was hospitalized on January 28, 2009, for seventeen days and continues radiation treatment for his cancer;
9. As a temporary remedy, Shepherd hired Michael Talley, a sitter from Mississippi, to help with the care of Dayton from approximately early November 2008 to March 10, 2009;
10. While Childers was away with hospitalization treatment of her husband for cancer, Shepherd and her husband were visited by Dayton's cousin, Arthur Clark Griffith, and his wife, Wendy Griffith, who live at 1213 Judys Lane, Chattanooga, Tennessee 37419-1163;
11. Although the Griffiths had never been close to the family, when they learned Dayton was very ill, they came and stayed a few days several times and announced widely in the community that they were going to help Dayton and Shepherd;
12. Their visits were not requested by Dayton and Shepherd and were unannounced and unknown to the plaintiff, Childers;
13. When Childers returned to Shepherd's home on March 10, 2009, she discovered that Griffith had had Dayton and Shepherd execute a complete Durable Power of Attorney ("DPOA") on February 18, 2009, appointing himself as their "attorney-in-fact," and giving himself extraordinary power and authority over the assets of Dayton and Shepherd;
14. Shepherd does not know why she and her husband would appoint Griffith as their power of attorney except that in the confusion and anxiety of their sudden distress over Dayton's medical condition, and in the forced absence of their daughter, they were vulnerable to the deceit, fraud and guile of the "family" interlopers;
15. Upon discovering the true nature of the DPOA, Dayton and Shepherd immediately gave Griffith notice of revocation of the appointment as DPOA;
16. On March 3, 2009, Dayton and Shepherd sold approximately 120 acres in Pickens County, Alabama, to David B. Gentry for the sum of One Hundred Sixty Thousand Dollars (\$160,000). Plaintiffs discovered that only Twenty Thousand Dollars (\$20,000) of that sum was deposited in Dayton and Shepherd's bank account.
17. Plaintiffs discovered Griffith and his wife, Wendy Griffith, took One Hundred Thirty Thousand Dollars. (\$130,000) of the consideration for the land in cash back to Tennessee, without plaintiffs' knowledge or consent;
18. Plaintiffs further discovered that Griffith took the contents of the Shepherds' safety deposit box at the West Alabama Bank;
19. Plaintiffs further discovered that on March 6, 2009, Griffith had Dayton and Shepherd convey their very own home at 501 Love Circle in Aliceville, Alabama, to himself for the sum of Ten Dollars (\$10);
20. Upon discovering these facts, Dayton and plaintiffs retained an attorney, Don F. Wiginton of the firm, WIGINTON & WIGINTON ("Wiginton"), in Birmingham, Alabama, to recover the assets;
21. On March 20, 2009, Wiginton made demand that the Griffiths return all of the property to the Shepherds taken by them;
22. On March 21, Dayton died;
23. On May 6, 2009, the Probate Court of Pickens County, Alabama, appointed Childers as Dayton's Personal Representative and charged her with collecting the assets of Dayton's estate;

24. Childers discovered that the Shepherds' collection of gold coins and a Certificate for One Hundred Thousand (100,000) shares of common stock in PTA Holdings, Inc., that were deposited in the safe deposit box were missing;

25. In spite of the demand from Wiginton that the Griffiths return all of the property taken, the Griffiths refused to return all of the money and property to Shepherd;

26. At Dayton's death on March 21, 2009, the Griffiths had left Shepherd without substantial assets to support herself. Shepherd was a frightened victim of financial crimes against the **elderly**, **elder abuse**, and fraud;

27. In response to Wiginton's demand, on April 2, 2009, the Griffiths deposited One Hundred Twenty-Three Thousand (\$123,000) to Shepherd's bank account and executed a deed prepared by Wiginton which returned Shepherd's home to her;

28. Griffiths refused to return all of the money and property. Specifically, the Griffiths have not returned Seven Thousand Dollars (\$7,000) cash which they took from the closing on March 3, 2009; the Certificate for one hundred thousand shares of PTA Holdings, Inc. (Certificate No. PT 1227); eight gold coins Dayton purchased for Eight Thousand Dollars (\$8,000); Twenty Thousand Dollars (\$20,000) in cash from the residence; Shepherd's two carat wedding ring, and her ruby ring.

CAUSES OF ACTION

COUNT I

(Complaint on Agreement)

29. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs under agreement that it would be returned to plaintiffs upon their request;

30. Defendants breached the agreement by refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

COUNT II

(Open Account)

31. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs under agreement that it would be returned to plaintiffs upon their request;

32. Defendants breached the agreement by refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury,

COUNT III

(Money Taken by Mistake)

33. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs under mistake but promised it would be returned to plaintiffs upon their request;

34. Defendants breached the agreement by refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants. for compensatory and punitive damages in an amount to be determined by the jury.

COUNT IV

(Money Had and Received)

35. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs under agreement that it would be returned to plaintiffs upon their request;

36. Defendants breached the agreement by refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

COUNT V

(Negligence and Wantonness)

37. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants were guilty of negligence and wantonness in taking the cash and property of plaintiffs by misrepresenting to them that it would be returned to plaintiffs upon their request;

38. Defendants breached the agreement by refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

COUNT VI

(Fraud and Deceit)

39. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs using fraud and deceit and stating that it would be returned to plaintiffs upon their request. Plaintiffs relied on the misrepresentations of defendants and permitted defendants temporary control over their funds. Defendants fraud and misrepresentations was a material misrepresentation and the proximate cause of loss to plaintiffs;

40. Plaintiffs were damaged by defendants misrepresentations and fraud in the loss of funds, interest and property by defendants refusing to return plaintiffs' cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

COUNT VII

(Conversion)

41. Plaintiffs re-allege each preceding paragraph of the complaint and further allege defendants took cash and property of plaintiffs and converted it to their own uses and purposes;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

COUNT VIII

(Complaint for Recovery of Chattels in Specie)

42. Plaintiffs re-allege each preceding paragraph of the complaint, and further allege defendants took cash and property of plaintiffs under agreement that it would be returned to plaintiffs upon their request;

32. Defendants breached the agreement by refusing return plaintiffs cash and property upon lawful demand by plaintiffs;

WHEREFORE, plaintiffs demand judgment against defendants for compensatory and punitive damages in an amount to be determined by the jury.

/s/Don F. Wiginton

Don F. Wiginton (Wig002)

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PLAINTIFFS DEMAND TRIAL BY STRUCK JURY!

Serve Defendants at:

Arthur Clark Griffith:

Wendy Griffith,

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Chattanooga, Tennessee 37419-1163

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