

2011 WL 9371528 (Fla.Cir.Ct.) (Trial Pleading)
Circuit Court of Florida.
Eighteenth Judicial Circuit
Civil Division
Seminole County

Sandra BORDEN, as personal Representative and curator of the Estate of Elsa Marie Borden, Plaintiff,

v.

John MCCORMICK, Defendant.

No. 07CA89909.
May 20, 2011.

Amended Complaint & Demand for Jury Trial

[Shane B. Vogt](#), Esquire, Florida Bar No. 0257620, Williams Schifino Mangione & Steady, P.A., Post Office Box 380, Tampa, Florida 33601-0380, (813) 221-2626 (telephone), (813) 221-7335 (facsimile).

[Kenneth G. Turkel](#), Esquire, Florida Bar No. 0867233, Bajo Cuva Cohen and Turkel, P.A., 100 N Tampa Street, Ste. 1900, Tampa, Florida 33602-5853, (813) 443-2199 (telephone), (813) 443-2193 (facsimile).

Plaintiff, Sandra Borden, as personal representative and curator of the Estate of Elsa Marie Borden (“Borden”), by counsel, sues Defendant, John McCormick, Esq. (“McCormick”), and alleges as follows:

Parties, Jurisdiction & Venue

1. This is an action for damages arising from legal malpractice in an amount in excess of \$15,000.00, exclusive of interest and costs.
2. Plaintiff, Sandra Borden, is the daughter, personal representative and curator of the Estate of Elsa Marie Borden (“Borden”).
3. Defendant, John McCormick (“McCormick”), is an individual residing in Orange County, Florida.

The Borden Family & Estate Plan

4. Elsa and Gail Borden were the Borden Milk heirs. They were married for over forty-nine years, and spent the later part of their lives in Florida, where they raised two daughters, Sandra and Lynda. The Borden's were fortunate enough to enjoy significant wealth from the family business, including stocks, bonds, cash, real property, jewelry, and other valuables.
5. The Borden family maintained a close and open relationship. Gail and Elsa encouraged their daughters to have open and honest discussions with them regarding a myriad of issues, including their health, the family's finances, and the family's long-standing estate plan.
6. Lynda and Sandy recall discussing these issues with their parents, and even accompanied them on trips to their lawyer, John McCormick's, office when various estate planning documents were executed.

7. During his lifetime, Gail Borden handled the family's finances. The family's assets were held in trust to protect and be passed to the Borden girls, and eventually grandchildren. The family's financial and estate plan was always to live off of the interest generated by their assets and never to touch the principal—so that the assets would pass to Sandy and Lynda, and the grandchildren.

8. In the early 1980's, Randall Moore (who also attended high school with Sandra Borden) served as a financial officer at Shearson Lehman, and was the financial advisor for Gail Borden's extensive brokerage account.

9. In the mid-80's, Randall Moore left Shearson Lehman under questionable circumstances. At that same time, Gail Borden complained to Shearson Lehman about Moore after Moore appeared uninvited at Gail Borden's house and tried to pressure him into signing documents involving financial transactions. The Borden's had no contact with Mr. Moore after he left Shearson Lehman.

10. McCormick was the long-time attorney and friend of Gail and Elsa Borden. He enjoyed a close personal and professional relationship with the Gail and Elsa for nearly thirty years. In that capacity, he advised Gail and Elsa on matters involving their estate and became well-aware of the Borden family's plan for their estate to pass to their daughters and grandchildren. McCormick had copies of the Borden's estate planning documents dating back to 1974 and, as early as 1981, prepared estate planning documents for the Bordens, (including wills, family trusts, and related documents) commensurate the Borden's long-standing estate plan to benefit Sandy, Lynda, and their grandchildren.

11. In 1988, McCormick was involved in (although did not prepare) the Borden's purchase of \$1,000,000.00 life insurance trusts as part of their estate plan.

12. Gail Borden passed away on September 11, 1991. After their father's death, Sandra and Lynda frequently spoke with their mother, often on a daily basis. They discussed finances and health issues, vacationed together, spent holidays together, and visited each other often. Lynda lived a short distance from Elsa, and spent a great deal of time with her.

13. After Gail's passing, the proceeds of his life insurance and other assets passed to Elsa. On May 12, 1993, Elsa created a new account with Solomon Smith Barney (f/k/a Shearson Lehman), and completed the New Account Application attached as **Exhibit "A."** At that time, Elsa's net worth was \$3.5 million, and the interest income of \$50,000 per year on her investments was sufficient to pay all of her living expenses.

Randall Moore's Undue Influence of Elsa Borden

14. After Gail Borden passed away, Randall Moore ("Moore") surreptitiously appeared at his funeral, without invitation. At the time, Moore was 48 years-old. Moore moved back to Winter Park from Mississippi after a divorce from his second wife, and began appearing at locations and events frequented by Ms. Borden, then-aged 75, so that they would "run into each other."

15. Moore, with knowledge of the Borden's substantial estate, took advantage of Elsa's vulnerable state after the loss of her husband of nearly fifty years.

16. Although Lynda and Sandra had some concern about the age difference between Randall Moore and their mother when he and Elsa first began spending time together, they were happy to see that their mother was socializing, and initially had no reason to suspect that Mr. Moore had any ill-intent or ulterior motives.

17. Within a short time of beginning to court Elsa Borden, Moore began isolating her from her family and friends.

18. By September 1994, Moore was successful in convincing Elsa to sell the long-time Borden residence home in Winter Park near Lynda, and to use Elsa's own assets to purchase a new residence in a secluded, gated community in Oviedo, many miles away.

19. Moore acted as Elsa's legal representative at the closing of the house, and had the new residence titled jointly in both of their names. At the time, Lynda and Sandy were not aware Moore's name appeared on the title and were not given the gate code for the community.

20. As Moore began spending more time with Elsa and exerting more control over her life, Lynda and Sandy began to become more concerned and started asking questions about Mr. Moore and his past. On July 30, 1995, Sandy approached Moore and spoke with him privately about her mother.

21. Following this incident, Moore's isolation of Elsa grew dramatically. Sandy was for the most part cut-off from all communication with Elsa, and Moore severely limited the time Lynda spent with her mother. Moore also cut-off Elsa's communication with most of her long-time friends. Moore monitored Elsa's conversations with everyone, and would often speak for her on the phone and in other social settings.

22. In September 1995, Sandy tried to communicate with her mother via a letter in which she expressed her concerns about Moore. Moore was able to intercept the letter. Not until years later would Elsa know of the existence of Sandy's letter and attempt to communicate privately with her mother.

23. On November 7, 1995, Moore and Elsa Borden secretly married. No one in the Borden family was told of the marriage. On Thanksgiving, Elsa and Randy called Lynda over to the house in Oviedo and told her that they had married, despite Elsa's assurances that she never wanted to re-marry.

John McCormick's Role in Moore's Undue Influence

24. John McCormick played a necessary and pivotal role in Moore's undue influence of Elsa Borden. Ultimately, Moore was successful because of numerous documents McCormick drafted and witnessed, as well as the credence McCormick's involvement lent to Moore's improper conduct, along with McCormick's repeated failures to act on behalf of his long-time friend and client, Elsa Borden.

25. On November 14, 1995, seven days after Elsa Borden and Randall Moore were secretly married, McCormick prepared and allowed Elsa to execute new estate planning documents that drastically altered her and Gail Borden's long-standing testamentary plan for their daughters and grandsons. A copy of the November 14, 1995 Trust Agreement and Last Will and Testament are attached hereto as Exhibits "B" and "C," respectively.

26. Moore physically drove Elsa to McCormick to obtain these modifications of Elsa's will and family trust, which nearly eliminated Sandy and Lynda's benefit, and made Moore the primary beneficiary of the estate.

27. That same day, McCormick prepared and executed a Warranty Deed transferring title to the Borden family home at 915 Old England Avenue, Winter Park, FL 32789 to Pieter and Elizabeth Van Munching, a copy of which is attached as Exhibit "D."

28. On November 14, 1995, McCormick had actual knowledge, by virtue of his involvement in the *In re. Guardianship of Dorothy Helling* proceeding (Orange County Circuit Court Case No. 1995-CP-000915-0), of the problem of undue influence involving his **elderly** clients. In fact, on June 26, 1995, Judge James Stroker ruled against McCormick's client, an alleged undue influencer, and appointed another person guardian for another one of McCormick's clients, Dorothy Helling, and stated as follows:

THE COURT: Well, the evidence and the document itself indicates that she was in a confused and agitated state of mind at the time that this occurred. The person that you're proposing as guardian, who apparently recognized that agitated and confused state of mind, deemed it appropriate at that point for her to round up neighbors and a notary to allow her to disinherit all of her family members, presumably to her own benefit. That being the case, it would be a clear conflict of interest for me to, at this time, appoint her as guardian of the property, at least, because the likelihood is that everything you see there, including this and that, is quite subject to being set aside. So...I think the subject is going to be more undue influence than it is incapacity. Of the six or seven criteria - case law criteria for undue influence, I can easily identify, from what I've heard today, at least three. And so the fact that she was involved in the procurement - the fact that she was primarily caring for her at the time and had excluded others - so there's...clearly going to be grounds for at least raising the issue... of undue influence.

29. McCormick was also aware of the presumption of undue influence recognized under Florida law, and the factors giving rise to that presumption under *In re. Carpenter's Estate*, 253 So.2d 697 (Fla. 1971). Specifically, if a substantial beneficiary under a will occupies a confidential relationship with the testator and is active in procuring the will, the presumption of undue influence arises.

30. Nevertheless, despite his awareness of this presumption, as well as his knowledge of Judge Stroke's admonition on June 26, 1995 that "capacity" and "undue influence" are not one in the same, McCormick allowed and assisted Randall Moore in actively procuring substantial changes to Elsa Borden's estate planning documents in his favor.

31. On November 22, 1995, McCormick prepared and executed a general durable power of attorney from Elsa, individually, in favor of Randall Moore, which gave Moore control over Elsa's finances, health decisions, and estate. A copy of the Power of Attorney is attached as Exhibit "E."

32. At the time each of these documents were executed, Elsa's age, physical condition, situation following the death of Gail, the age difference and difference in strength between Moore and Elsa Borden, were all readily apparent to McCormick. Also obvious were the drastic alterations in the estate plan in favor of Moore, and the fact that Moore procured those changes and accompanied Elsa Borden to McCormick's office when the documents were executed. McCormick also was aware of the marriage just days before the execution of the documents, as well as the sale of Elsa's family home and relocation to Oviedo.

33. McCormick did not, however, even inquire of Elsa concerning the nature of her estate or determine why she was making such substantial changes.

34. Moore then continued to increase Elsa's isolation from her family and friends. Moore's actions to isolate, control, and manipulate Elsa included, but were not limited to: restricting access to her residence by friends and family; monitoring and screening Elsa's phone conversations; intercepting mail; controlling all of Elsa's finances; accompanying Elsa to all social events, activities, medical, legal and financial appointments; restricting Elsa's access to transportation, making her totally dependent on Moore for transportation; and disparaging her family and friends.

35. Over the next several years, Moore lived off of Elsa's money and continued to acquire hundreds of thousands of dollars from Elsa's brokerage account.

36. In 2000, when Elsa's health began to rapidly decline, Moore became more aggressive with his misappropriation of Elsa Borden's assets and increased his control over Elsa. Once again Moore obtained McCormick's assistance to achieve his goals.

37. On January 21, 2000, Moore prevented Elsa from leaving her house for a family dinner. Following that incident, Sandra Borden, upon advice of the police, filed an **elder abuse** report.

38. After Sandra filed the **elder abuse** report, she called McCormick and told him about the report and the incident that occurred on January 21, 2000. McCormick responded by indicating that it was “very interesting” because “Randy and Elsa had made an appointment to visit with him.” Sandra asked McCormick to please speak with Elsa alone.

39. A couple of days later, Sandra Borden contacted McCormick to find out what happened at the meeting with Moore and Elsa. McCormick told Sandy he was not able to meet with Elsa alone, and that Elsa looked very frail. McCormick also stated that he was “so, so sorry” and that “Randy is always with [Elsa], and he is a very intimidating person.”

40. Unbeknownst to Sandy, on January 26, 2000, Moore brought an affidavit he prepared to McCormick's office with Elsa for her to sign, a copy of which is attached as Exhibit “F,” to use to refute the allegations made by Sandra in the **elder abuse** report. This affidavit, like many that would follow, is patently bizarre and totally uncharacteristic of Elsa Borden. Nevertheless, McCormick witnessed the affidavit prepared by the very person who was the subject of the **elder abuse** report—thereby indicating his approval, as Elsa's attorney, to the contents thereof. Again, at that time, the indicia of undue influence were obvious to McCormick.

41. On February 7, 2000, Elsa Borden suffered a stroke and was taken to the Winter Park Hospital. On February 11, 2000, Elsa was transferred to the Florida Hospital stroke recovery unit. On February 13, 2000, Sandra and Lynda Borden were able to visit with Elsa after-hours.

42. On February 15, 2000, Elsa and Lynda went to the Florida Hospital to visit with their mother. Moore had previously hired someone to make sure Elsa had no family visitors.

43. The following day, when Moore learned that Sandy and Lynda had been permitted to visit with Elsa, he became enraged and told the hospital administrator that Sandy and Lynda were there to “kill Elsa.” He threatened to “sue the hospital and have everyone arrested,” and asserted that he “spoke for Elsa,” while waiving the power of attorney McCormick prepared in the air.

44. Moore did this while on the phone with John McCormick—screaming on the phone that he had the power of attorney. Eventually, the police removed Elsa from her room, as she was trembling in fear.

45. Notably, on February 15, 2000, McCormick provided a certification of this November 22, 1995 Power of Attorney for Randall Moore. A copy of the Power of Attorney with the February 15, 2000 certification is attached as **Exhibit “E.”**

46. The next day, Sandy and Lynda went to McCormick's office and explained what happened at the Florida Hospital the night before. They told McCormick about Moore's control and manipulation of Elsa, and pleaded with him for his help because he “was the only one who could do anything to protect Elsa.” They literally begged him to do something to help her.

47. At this time, Sandra and Lynda had no knowledge of the substantial changes to Elsa's estate plan in which McCormick had participated and were unaware of any financial transactions between their mother and Moore. Rather, their only concern was to try to protect their mother.

48. McCormick responded by telling Sandy and Lynda that “Randy thinks you are jealous” and told them to “go the medical route.” McCormick admitted that he was “intimidated by Randy,” and told Sandy and Lynda that “Randy always gets his way.”

49. Despite Sandy and Lynda's pleas for help, Mr. McCormick did nothing to help his long-time friend and client. To the contrary, he continued to help Moore.

50. The **elder abuse** investigation continued for the next several months. Meanwhile, Lynda and Sandy continued to try to do what they could to help their mother, while Moore continued to isolate her and deplete her estate. Sandy and Lynda started

contacting as many people as they could to find out more information about Randal Moore. They spoke with his brother, Wayne Moore, and his ex-wives, Anne Robinson and Deborah Waud, who both indicated that they suffered **abuse** at the hands of Moore.

51. Sandra and Lynda also contacted Elsa's family physician, Dr. Donald Dunlap, who recommended a psychiatrist, Dr. Muller, to speak with Elsa. Moore refused to take Elsa to a psychiatrist. Dr. Muller raised the possibility of a Baker Act proceeding as a means to protect El

.52. On April 17, 2000, the family participated in a conference with Dr. Dunlap, and followed-up with discussions with Dr. Muller about the potential for a Baker Act proceeding.

53. On April 18, 2000, Lynda and Chris Borden tried to talk to Elsa at her home, alone. Moore prevented them from doing so.

54. On April 19, 2000, despite McCormick's knowledge of the drastic alteration in Elsa's estate plan in favor of Moore, secured by Moore, as well as Sandy and Lynda's pleas for help, the pending **elder abuse** investigation, and the fact that Elsa was recovering from a stroke suffered just two months prior, he witnessed another affidavit and power of attorney in favor of Randall Moore, copies of which are attached as Exhibit "G" and "H" respectively.

55. This second power of attorney is significant because it was given by Elsa in her capacity as trustee, as "Elsa M. Borden, Trustee U/A dated 11-14-95," thereby giving Moore power over Elsa's trust.

56. McCormick admittedly knew that the affidavit would be used against Elsa's family and that there was a "conflict" being involved with it.

57. McCormick even instructed his assistant, Anne Rodgers, to prepare a Memo to document McCormick's file about the surrounding circumstances, a copy of which is attached as Exhibit "I" in an attempt to protect himself. Even so, Ms. Rodgers describes the circumstances under which Elsa came to the office, describes how Moore prepared the documents she was there to sign, and recognizes that Elsa's health condition had "greatly deteriorated" since her stroke, and that she seemed confused when moving from paper to paper

58. Moore then used the new power of attorney for Elsa's Trust which he secured with McCormick's help to accomplish a \$1,000,000 "Inter Vivos Gift" from Elsa's Trust, and appoint himself a trustee of Elsa's Trust.

59. On April 26, 2000, McCormick also witnessed another bizarre affidavit, a copy of which is attached as Exhibit "J," which was, again, totally uncharacteristic of Elsa and prepared by Moore to be used against Elsa's family.

60. On May 8, 2000, Moore took Elsa Borden to Solomon Smith Barney (f/k/a Shearson Lehman) and accomplished the transfer of \$809,470.00 in bonds and \$00,000.00 in cash from Elsa's trust to himself by using the documents McCormick drafted and witnessed including, most notably, the November 14, 1995 Trust Agreement, which was faxed to Solomon Smith Barney that very same day.

61. Moore continued to take Elsa back to McCormick to execute additional modifications to her estate plan and additional affidavits for McCormick to witness and Elsa to sign, which he used to refute claims that he was taking advantage of Elsa. Among the most notable of these affidavits is one which severed all contact between Elsa and her family shortly after Mother's day, on May 16, 2000. Copies of these affidavits are attached as Exhibit "K."

62. McCormick acknowledged that these affidavits are "strange," knew they would be used to support Moore, knew there was a conflict in preparing them, knew about the factors and indicia of undue influence, and nevertheless continued to witness and allow Elsa to sign them.

63. In September 2000, Moore sought to further secure his control over Elsa and ability to continue to exercise control over her by taking her for an alleged “competency exam” with Dr. E. Michael Gutman, forensic psychiatrist. Again, Mr. McCormick would play an important role in assisting Mr. Moore and furthering his efforts to control Elsa.

64. When Moore took Elsa to Dr. Gutman for her alleged “competency” exam, Dr. Gutman called McCormick during the exam, told McCormick that Elsa and Moore were in his office for the exam, and asked Mr. McCormick if it is appropriate for the three of them to discuss Elsa's finances.

65. McCormick, despite knowledge of all of the modifications to the estate planning documents, bizarre affidavits, Elsa's stroke and “greatly deteriorated” health condition, Moore's ability to intimidate, the pending **elder abuse** investigation, and Lynda and Sandy's pleas for Mr. McCormick to help Elsa and separate her from Moore, told Dr. Gutman that it was “appropriate” for the exam to continue and for Elsa's finances to be discussed. McCormick then tried to protect himself by documenting his own file with a memo about his conversation with Dr. Gutman, and a memo “To Whom it May Concern,” describing his relationship with Elsa and her physical and mental condition.

66. McCormick clearly understood and appreciated that his involvement in preparing and witnessing numerous legally significant documents was very important, and was trying to justify his actions after the fact.

McCormick's Acts and Omissions as Elsa Borden's Lawyer in the Baker Act & Guardianship Proceedings

67. On December 4, 2000, Sandra Borden filed a Baker Act proceeding involving her mother, including a Petition to Determine Incapacity, for Appointment of a Guardian, for Appointment of an Emergency Guardian, and Application for Appointment as Guardian. Sandra sought to be appointed emergency temporary guardian of the person and property of Elsa Borden, and an injunction freezing Elsa's financial accounts and prohibiting Moore from interfering with Elsa's care. At that time, Sandy had in place a comprehensive treatment plan for her mother in California.

68. On December 5, 2000, Judge Stephenson entered an order Appointing Sandy Borden Emergency Plenary Guardian of Elsa Borden's person and property, a copy of which is attached as **Exhibit “L,”** and an Order Freezing Assets and Enjoining Randall Moore from Interfering with evaluation and Care, a copy of which is attached as **Exhibit “M.”**

69. That same day, Carol Donahue, Esq., Sandra's lawyer, sent a copy of the Order freezing Elsa's assets to James Thomas, Solomon Smith Barney, which ended Moore's ability to deplete Elsa's accounts, a copy of which is attached as Exhibit “N.”

70. Solomon Smith Barney froze the accounts upon receipt of the letter and Order. At that point, Elsa Borden had been saved from Moore's undue influence and **abuse.**

71. Randall Moore again sought McCormick's help, and used the very documents McCormick executed and witnessed to regain control over Elsa.

72. At this very same time, McCormick was still intimately involved in legal battles involving Dorothy Helling and whether the estate planning documents McCormick prepared for her were procured through undue influence. In June 1999, McCormick was deposed in a probate case challenging Dorothy Helling's will after she passed away. In January 2000, McCormick testified at the trial in the Helling case.

73. McCormick had referred Dorothy Helling's alleged undue influencer to his daughter's lawyer, Jack Nichols, for representation in the Helling probate action. McCormick also referred Moore to Jack Nichols for representation.

74. Following the Helling trial in January 2000, an appeal was filed.

75. On *November 29, 2000*, attorney Nichols sent McCormick a copy of the Initial Brief in the Helling appeal, which specifically addresses the presumption of undue influence arising under *In re. Carpenter's Estate*, and then details how McCormick was personally involved in the events giving rise to the presumption. Mr. McCormick read the brief and commented to Nichols about it before *December 6, 2000*.

76. That same day, *December 6, 2000*, after McCormick referred Moore to Jack Nichols for representation in Elsa Borden's Baker Act case, because he knew there was a conflict involving the documents McCormick was involved with, McCormick filed a Notice of Appearance in the Baker Act case on behalf of Elsa Borden even though she already had a court appointed attorney. At the same time, Moore filed an Emergency Petition for Injunction seeking to set aside the Baker Act Orders, and used the Affidavits McCormick witnessed in support of the petition.

77. In support of his petition, Moore relied not only upon the affidavits McCormick witnessed, but also the exam conducted by Dr. Gutman which McCormick never should have allowed to continue, and certainly should not have endorsed.

78. After receiving Moore's Petition, Judge Stephenson called Sandra Borden on her cell phone as she and Elsa were preparing to leave for California, and demanded that she return to court for an emergency hearing.

79. During the hearing held on December 7, 2000, Moore used the affidavits to argue that the Baker Act proceeding should be dismissed.

80. McCormick attended the hearing on behalf of Elsa, sat at the same table with Moore and Nichols, and helped Moore argue his case.

81. McCormick completely failed to take any action as Elsa's attorney at the Baker Act hearing to protect Elsa's rights and interests. He did nothing, other than bolster Moore's claims by sitting by his side.

82. McCormick never advised Judge Stephenson about any of the estate planning modifications he was personally involved in, the factors and indicia of undue influence associated therewith that he personally observed, the "intimidating" nature of Moore, the fact that he considered the affidavits "strange," or any of the other facts and circumstances of which he was aware as described above.

83. At the conclusion of the hearing, Judge Stephenson dismissed the Baker Act proceeding and returned Elsa to Moore. In reaching his decision, Judge Stephenson specifically relied upon the affidavits and stated that "I've read what your mother has said."

84. Sandra Borden appealed Judge Stephenson's decision. However, following the hearing, Moore once again seized the opportunity to benefit from McCormick's involvement, and took Elsa back to McCormick to continue executing affidavits to support his case.

85. McCormick continued representing Elsa in the Baker Act case, despite his clear conflict of interest, and continued arguing in support of Moore and his positions.

86. Despite everything that had occurred, and all of the knowledge McCormick had about how Moore used the affidavits, McCormick not only witnessed additional affidavits, he also prepared and witnessed another modification of Elsa Borden's estate planning documents.

87. As part of the appeal process, Elsa, Randall Moore, and Sandra had to prepare statements of the evidence presented to Judge Stephenson because there was no transcript of the December 7, 2000 emergency hearing. McCormick continued to work hand-in-hand with Moore, even filing a “joint” objection to Sandra Borden's statement of the Evidence.

88. On May 17, 2002, Florida's Fifth DCA reversed Judge Stephenson's dismissal of the Baker Act proceedings.

89. Unfortunately, by that time, Sandra had already been forced to take other actions to try to protect her mother. On July 23, 2001, Sandra Borden filed a Petition to Determine Incapacity and for the Appointment of a Guardian, as well as for the Appointment of an Emergency Temporary Guardian, for Elsa. By then, Elsa had suffered another stroke.

90. On July 28, 2001, an emergency hearing was held to address the petitions and other related issues. Once again, Mr. McCormick appeared as counsel for Elsa Borden, yet took sides with Moore. During the July 28, 2001 hearing, McCormick not only relied upon and adopted Moore's arguments, but also represented to the court that he was at the hearing acting as Moore's lawyers “assistant.” And, once again, McCormick remained silent and did not take any action to protect Elsa, nor advise the Court about his involvement in the substantial modifications to Elsa's estate plan, wills and trusts, transactions involving Moore, the powers of attorney, the circumstances surrounding Dr. Gutman's exam, McCormick's “intimidation” by Moore, or that Moore had even paid McCormick for his services as Elsa's lawyer.

91. Likewise, McCormick never sought to withdraw as Elsa's lawyer. In fact, McCormick never even spoke with Elsa outside the presence of Moore while he served as her lawyer in the Baker Act or guardianship proceedings.

92. On August 22, 2001, the Court issued letters of emergency limited temporary guardianship for Elsa.

93. McCormick continued to advocate Moore's position, even going so far as to file a motion seeking to enjoin the enforcement of the court's August 22, 2001 orders appointing a neutral temporary guardian for Elsa Borden.

94. On November 19, 2001, an order was entered determining Elsa Borden to be totally incapacitated. The legal battle raged on over who should serve as Elsa's guardian. The Borden family sought to have Theresa Barton continue as guardian. Moore sought his own appointment.

95. Moore continued to use McCormick's work to support his position by attaching the November 22, 1995 Power of Attorney McCormick prepared, and later certified, in support of his Guardianship Application. Moore used the powers of attorney, affidavits, and his position as trustee (all accomplished by virtue of the documents McCormick drafted and witnessed) to maintain and fight for control over Elsa.

96. After a heavily contested trial to determine who should be appointed Elsa's guardian, the Court, by Order dated January 9, 2002, as amended on January 18, 2002, appointed Paula Burke.

97. Additional battles ensued to try to gain control over the Borden family trust, which Moore refused to release.

98. Eventually, Elsa's new lawyer, Linda Hankins, demanded that Moore turn the trust over to Elsa's guardian and in support of this demand stated in a letter dated July 12, 2002, that “The affidavits Mr. Moore prepared for Elsa to sign indicate that she was transferring the funds to him because she was mad at her daughters. I am sure that was not the case, and she did not understand what she was signing.”

99. By this time, McCormick's repeated failures to act on behalf of Elsa, failures to advise the Court of critical information of which he was aware concerning Elsa, her estate, Moore's control over the same due to documents Mr. McCormick prepared and witnessed, had not only caused Elsa to suffer substantial financial losses, but also caused substantial additional legal battles and associated fees and expenses, which never would have been necessary if the December 2000 Baker Act orders were left in place.

100. Eventually, Elsa's entire estate was gone.

101. Moore fled to Thailand shortly after Elsa passed away - even going so far as to have the proceeds of the house Elsa purchased wired to him in Thailand.

102. Eventually, the marriage between Elsa and Randy was annulled.

McCormick's Malpractice

103. McCormick owed a duty of care to Elsa while he was serving as her attorney before, during, and after the Baker Act and guardianship proceedings, and breached that duty of care because he was aware of facts giving rise to a presumption of undue influence exerted over her and of conflicts of interest in serving as her lawyer, and, nevertheless, failed to withdraw from representing her, participated in the undue influence, and failed to take any other form of protective action(s) for Elsa. In fact, he repeatedly failed to take any reasonable steps to ensure that Elsa's rights and interests were being protected.

104. McCormick ignored well-recognized, obvious signs of undue influence, and allowed himself to be intimidated by Moore; while Elsa's family pled with Mr. McCormick for his help in stopping Moore's emotional, physical, and economic **abuse**. Despite these cries for help, McCormick took sides with Moore, and provided active assistance to him, which allowed Moore to retain control over Elsa and her assets until she passed away.

105. Despite clear and unequivocal signs of undue influence, McCormick also prepared and allowed Elsa to execute documents substantially modifying her estate plan and giving Moore reign over the Borden estate. It was and should have been readily apparent to McCormick that the changes to Elsa's long-standing estate plan were the result of undue influence at the hands of Randall Moore.

106. Quite simply, McCormick failed in every aspect of his most fundamental duties as Elsa Borden's lawyer in her estate planning and during the Baker Act and Guardianship cases.

COUNT I

(Legal Malpractice - McCormick)

107. Plaintiff realleges paragraphs 1 through 106 above.

108. McCormick owed a duty of care to his client, Elsa Borden.

109. McCormick breached his duty of care by failing to take reasonable steps to ensure that Elsa Borden's rights and interests were being protected ignoring clear warnings and legally recognized factors of undue influence.

110. McCormick breached his duty of care by allowing Elsa to modify her estate planning documents and execute documents giving Moore control over the Borden estate and the ability to eventually take Elsa's assets, despite clear and unequivocal signs of undue influence.

111. McCormick breached his duty of care by allowing Elsa Borden to execute wills, trusts, amendments thereto, powers of attorney and what he has admitted were "strange" affidavits, while being unduly influenced by Moore.

112. McCormick also breached his duty of care by failing to properly advise and counsel Borden during the psychological evaluation by Dr. Gutman - which Moore, to McCormick's knowledge, attended and participated in.

113. McCormick breached his duty of care by representing Elsa in the Baker Act and Guardianship proceedings, and failing to take necessary, reasonable, and prudent steps on her behalf to protect her rights and interests.

114. McCormick breached his duty of care to Elsa Borden by failing to exercise the degree of care which a reasonably prudent lawyer would use under like circumstances, as her estate planning lawyer and as her lawyer in the Baker Act and Guardianship cases.

115. As a direct and proximate result of McCormick's negligence, Plaintiff suffered damages, including the loss of her entire \$3.5 million estate.

WHEREFORE, Plaintiff demands judgment against Defendant, John McCormick, for damages, pre-judgment interest, costs, and such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail to Nicole Maglio, Esq., 621 N.W. 53rd Street, Suite 310, Boca Raton, Florida 33487 and to Kenneth G. Turkel, Esq., Bajo, Cuva, Cohen, & Turkel, P.A., 100 N. Tampa Street, Suite 1900, Tampa, Florida 33602 on this 20th day of May, 2011.

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