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[1] All of the names in this brief have been changed to protect client privacy.

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PART ONE
Statement of the Proceedings Below

Appellant brings this appeal of an Order of the Honorable Judge Patricia Lightfoot of the Probate Court of Yoknapatawpha County compelling Eula Tull ("Appellant") to submit to DNA testing for the purposes of determining whether Addie Bundren's ("Appellee") minor child, P.B., are both the biological children of Vernon Tull ("Decedent"). Appellee's Motion to Determine Heirs was filed on October 29, 2018. R. 63. Appellant's Response to Caveator's Motion to Determine Heirs was filed on November 28, 2019. R. 80. The lower court's Order compelling Appellant to submit to DNA removal and analysis was entered on February 25, 2019. A Notice of Appeal was timely filed on March 29, 2019. R. 1.

Statement of Facts

Vernon Tull died intestate on March 23, 2018. After settling his funeral arrangements, Vernon's daughter, Eula Tull, petitioned the Probate Court of Yoknaptawpha County to administer Vernon's estate. As Vernon's only child and sole heir, Eula anticipated a relatively straightforward process. However, two months after Eula filed the Petition for Letters of Administration, the Appellee, Addie Bundren, intervened. Mrs. Bundren claims that her thirteen-year-old son, P.B., is Vernon's biological child, and therefore entitled to a share of Vernon's estate.

Mrs. Bundren claims that P.B. is the product of an extramarital affair that she had with Vernon Tull over thirteen years ago. This is the first time that Mrs. Bundren has made this claim. During Vernon's life, Mrs. Bundren never requested that Vernon submit to a paternity test; Mrs. Bundren never attempted to edit P.B.'s birth certificate to reflect Vernon's alleged paternity; and P.B. didn't grow up as part of Vernon's family. Vernon never provided child support to P.B., and Mrs. Bundren never requested such support.

Mrs. Bundren was married to her current husband, Anse Bundren, at the time of P.B.'s conception and birth. On the day P.B. was born, Anse signed P.B.'s birth certificate and gave the child his last name. P.B. has lived with Anse for thirteen years. P.B. is Anse Bundren's legal son, and Anse is the only father that P.B. has ever known.

Mrs. Bundren requested a DNA test to substantiate her claim that P.B. is Vernon's biological child. Because Vernon was cremated, Mrs. Bundren moved the lower court to compel Eula Tull to submit to a DNA test. The lower court held a hearing on the motion on February 11, 2019. At the hearing, it was undisputed that P.B. is the legal son of Anse Bundren. See, Transcript of Motion Hearing at page 13. (Future references to this transcript will be made as "MT. #"). It was also undisputed that during Vernon's life, neither Vernon nor Mrs. Bundren ever attempted to establish that Vernon was P.B.'s biological or legal father. (MT.13-

14). During the hearing, Mrs. Bundren entered nothing into evidence and called no witnesses to support her claim that P.B. is Vernon Tull's child.

The lower court granted Mrs. Bundren's motion on February 25, 2019. It is from this order that Eula appeals.

Method of preservation

1. Issue one was preserved by Appellant's Response to Motion to Determine Heirs, filed on November 28, 2019. R. 80.

2. Issue two was preserved by Appellant's argument concerning Appellee's lack of sufficient evidence to show good cause that Vernon Tull is the biological father of P.B. as required by O.C.G.A. § 53-2-27. T-14-15. The lower court's Order was a ruling against Appellant's argument. R. 92.

PART TWO
Enumeration of Errors

1. The trial court erred in ordering Appellant to submit to a DNA test. O.C.G.A. § 53-2-27 does not grant the lower court the authority to compel a party with an uncontested biological relationship to the decedent to submit to DNA removal and analysis to prove paternity. Because the statute does not grant the lower court the authority to issue the order, the DNA removal and analysis would amount to an unconstitutional search contrary to Appellant's Fourteenth Amendment Right to Privacy.

2. The trial court erred in holding that Appellee met the statutory requirement to show good cause and therefore the DNA test ordered by the lower court would amount to an unreasonable search as it does not meet the statute's probable cause requirement. An unreasonable search would be contrary to Appellant's Fourteenth Amendment Right to Privacy.

Statement of Jurisdiction

The above case is still ongoing in the Probate Court of Yoknaptawpha County; this direct appeal is being filed pursuant to the Collateral Order Doctrine. The Georgia Court of Appeals has held that an order which:

> (1) [C]ompletely and conclusively decides the issue on appeal such that nothing in the underlying action can affect it; (2) resolves an issue that is substantially separate from the basic issues in the complaint; and (3) might result in the loss of an important right if review had to await final judgment, making the order effectively unreviewable on appeal […]

is directly appealable to the Court of Appeals notwithstanding the ongoing status of the case. *Murphy v. Murphy*, 747 S.E.2d 21, 23 (Ga. App., 2013).

The instant issue meets the *Murphy* test. First, whether or not Appellant can be compelled to submit to DNA testing was completely and conclusively decided by the Probate Court. There is no other action pending in the instant case that would affect this decision, and the lower court has already issued an order compelling Appellant to submit to the DNA test. Once Appellant is compelled to submit to DNA testing, nothing in the underlying case can affect that decision. Second, the issue of whether or not Appellant can be compelled to submit to DNA removal and analysis is substantially separate from the underlying issue in this case which is whether or not P.B. can be named as an inheritor of Decedent's estate; the issue on appeal concerns Appellant's privacy interest in her own genetic

information while the former concerns intestate estate administration. Finally, enforcement of this order will result in the loss of Appellant's Fourth Amendment Right of protection against unreasonable searches. Once gone, this right cannot be restored, making any review on appeal little more than an academic exercise. Because of the reasons set forth above, the lower court's order compelling appellant to submit to DNA testing requires the immediate attention and review of this Court.

PART THREE

I. THE LOWER COURT BASED ITS ORDER ON AN INCORRECT CONFLATION OF THE TERMS "PARTY IN INTEREST" AND "PARTY IN INTEREST WHOSE RELATIONSHIP TO THE DECEDENT IS IN CONTROVERSY." THEREFORE, THE LOWER COURT'S ORDER IS BASED ON AN INCORRECT INTERPRETATION OF O.C.G.A. § 53-2-27.

Standard of Review

"[I]nterpretation of a statute is a question of law, which is reviewed de novo on appeal. Because the trial court's ruling on a legal question is not due any deference, [the Court of Appeals applies] the 'plain error' standard of review." *Hart v. State*, 738 S.E.2d 331, 332 (Ga. App., 2013) (internal citations omitted). The lower court's holding reflects a misinterpretation of the term "interested party whose kinship to a decedent is in controversy" used in O.C.G.A. § 53-2-27; it is this misinterpretation that requires a de novo review from this Court.

Argument and Citation to Authorities

a. A "party in interest" and a "party in interest whose relationship to the decedent is in controversy" are two separate and distinct parties under O.C.G.A. § 53-2-27.

Though the lower court does not mention the statute in its order, O.C.G.A. § 53-2-27 governs DNA testing for the purposes of proving paternity in the context of estate administration. In O.C.G.A. § 53-2-27, the legislature grants the lower court the authority to compel two parties to submit to DNA analysis and removal: (1) the decedent and (2) the party whose kinship to the decedent has not been established.

O.C.G.A. § 53-2-27(a) reads:

> When the kinship of any party in interest to a decedent is in controversy in any proceeding under this article, a superior court may order the removal and testing of [DNA] samples from *the remains of the decedent* and from *any party in interest whose kinship to the decedent is in controversy* for purposes of comparison and determination of the statistical likelihood of such kinship (emphasis added).

In granting Appellee's motion, the lower court incorrectly conflates the terms "interested party" and "interested party *whose kinship to the decedent is in controversy*" when a clear reading of the statue, both on its own and in the context of the rest of the Code section, supports the conclusion that the legislature intended to distinguish between these two parties.

1. **"Whose relationship to decedent is in controversy" is a restrictive clause that distinguishes between two separate parties of interest in O.C.G.A. § 53-2-27.**

"Whose kinship to a decedent is in controversy" is a restrictive relative clause that limits the meaning of the noun phrase "a party in interest." "A restrictive clause restricts or defines the meaning of a noun or noun phrase and provides necessary information about the noun in the sentence."[2] Introduced by the pronouns who, that, which, and **whose**, a restrictive clause is not separated from the rest of the sentence by a comma and "is essential to the meaning of a sentence because it limits the thing it refers to."[3]

The phrasing at issue is a restrictive relative clause. "Whose relationship to the decedent is in controversy" is not preceded by a comma and is introduced by the pronoun "whose." "Whose relationship to the decedent is in controversy" is

[2] Walden University Writing Center, *Grammar: Relative, Restrictive and Non-Restrictive Clauses*, available at https://academicguides.waldenu.edu/writingcenter/grammar/clauses; *See also* The Writing Center at The University of North Carolina at Chapel Hill, *Relative Clauses*, available at https://writingcenter.unc.edu/relative-clauses/.

[3] Center for Writing Studies, University of Illinois at Urbana-Champaign, *Grammar Handbook: Restrictive and Nonrestrictive Clauses*, available at http://www.cws.illinois.edu/workshop/writers/restrictiveclauses/; *See also* British Council, *Relative pronouns and relative clauses*, available at https://learnenglish.britishcouncil.org/english-grammar-reference/relative-pronouns-and-relative-clauses.

used to limit the meaning of the noun phrase "any party in interest" to mean a party whose biological relationship to the decedent has not yet been proven, or is "in controversy." Established English grammatical rules make this interpretation unequivocal.

"Where the language of a statute is plain and susceptible to only one natural and reasonable construction, courts must construe the statute accordingly." *Hart v. State*, 738 S.E.2d 331, 333 (Ga. App., 2013) (internal punctuation and citations omitted). The above interpretation is the natural and plain meaning of the statute, based on universally agreed upon English language grammatical rules. O.C.G.A. § 53-2-27 only grants the lower court the authority to compel the party "whose relationship to the decedent is in controversy" to submit to a DNA test – in this case, that party is P.B., not Appellant. Construing the statute to include a court's authority to compel a party in interest whose relationship to the decedent is not in controversy contravenes the plain and natural reading of the statute.

2. O.C.G.A. § 53-2-27 differentiates between "party in interest" and "party in interest whose relationship to the decedent is in controversy" throughout the statute.

The above interpretation is not purely semantic. The legislature distinguishes between "a party in interest," and a "party in interest whose kinship to the decedent is in controversy" throughout O.C.G.A. § 53-2-27. A clear reading of the statute supports the conclusion that the legislature uses the term "party in interest" to

describe a party asserting a right to share in the estate, and "a party in interest whose kinship to the decedent is in controversy" to describe a party who is asserting a right to share in the estate based upon an unproven biological relationship with the decedent.

O.C.G.A. § 53-2-27(b) refers to a "party in interest" twice. In the first reference, the statute reads: "[t]he order [for DNA testing] may be made only on motion for good cause shown and upon notice to all parties in interest […]." Section B goes on to state that "[s]uch motion, when made by a party in interest, shall be supported by affidavit setting forth: (1) The factual basis for a reasonable belief that the party in interest whose kinship to the decedent is in controversy is or is not related […]." In Section B, the legislature clearly establishes that a "party in interest" is a party who is asserting a right to share in the estate and that a "party in interest whose kinship to the decedent is in controversy" is a party who is attempting to prove a biological relationship to the decedent in order to assert a right to share in the estate. When referring to who should be given notice about a court's order to compel DNA testing, the legislature includes all parties with an asserted interest in the administration of an estate. However, when referring to those parties whose relationship to the decedent must be supported by factual evidence in the form of an affidavit, the legislature refers only to those parties with controversial relationships to the decedent, e.g., parties whose biological

relationships are unproven. Section C of the statute repeats the distinction stating, in relevant part, "[u]pon request, the movant shall deliver to all parties in interest a copy of a detailed written report […]" about the DNA findings. Again, the legislature clearly establishes that one can be a party in interest (e.g., a party to the lawsuit), entitled to information about potential claimants, without having a controversial relationship with the decedent.

In sections A, B, and C the legislature uses the term "party in interest" to refer to a party who has an interest in the estate administration and "a party in interest whose kinship to the decedent is in controversy" to refer a party whose kinship to the decedent is unproven – the legislature never conflates the two terms.

3. Evidence considered by the lower court does not support its interpretation of the statute.

The lower court's interpretation of the statute is inconsistent with the evidence it considered before issuing the order. According to O.C.G.A. § 53-2-27, upon considering "a factual basis for a reasonable belief that a party in interest whose kinship to the decedent is in controversy is or is not related," the "court may order the removal and testing of [DNA] […] from the remains of the decedent and any party in interest whose kinship to the decedent is in controversy."

If the statute applies to Appellant as the probate court believes it does, then the affidavits and testimony offered by Appellee to support her motion should have

presented facts which demonstrated a "factual basis for a reasonable belief that [*Appellant*] is or is not so related [to Decedent]." O.C.G.A. § 53-2-27 (b)(1) specifically refers to gathering evidence which illustrates a potential kinship between the decedent and the party who the court *must compel* to submit to a DNA test. Appellee did not offer any affidavits or provide any evidence during the motion hearing that was relevant to Appellant's biological kinship to Decedent, even though it was Appellant who Appellee moved to be compelled to submit to a DNA test. Instead, the court heard and considered testimony and evidence that Appellant provided to support a factual basis for a reasonable belief that Decedent and P.B. were related, even though P.B., through Appellee, is consenting to the DNA test, so he does not require a court order to compel him to submit to examination. The court's interpretation and application of the statute are simply not consistent with the clear reading of the statute.

4. **The General Assembly is aware that dead bodies are often unavailable for DNA testing and intentionally crafted a statute that does not grant courts authority to compel uncontested biological family members to submit to DNA testing.**

The lower court's ruling contravenes legislative intent. Bodies of deceased people are often unavailable due to cremation or disappearance – if the legislature intended to allow courts to compel family members whose relationship to the

decedent is not in controversy to submit to DNA tests, then the legislature would have specifically included that authority in the statute.

In O.C.G.A. § 53-2-27 (b)(2), the legislature gives alternatives for disinterment when a party seeks to obtain the decedent's DNA for paternity testing. The legislature writes that, before a party can request disinterment, they must show that "reliable DNA samples from the decedent are not otherwise available from any other source." Section (b)(2) would allow for a movant to show that a decedent had blood samples or semen samples in a hospital, or that samples from a previous DNA test were still available to test against the controversial party's DNA. Section (b)(2) illustrates that the legislature crafted O.C.G.A. § 53-2-27 while considering how bodies can become either unavailable or difficult to access after death. Had the legislature intended for a court to be able to compel DNA testing of a proven biological family member when the body of the decedent was unavailable, then the legislature would have added another sentence to Section (b)(2) or another subsection to Section (b) explicitly granting the court this authority. The section could have easily read: "When samples of a decedent's DNA are unavailable due to cremation or disappearance, the trial court shall have the authority to compel a party of interest who is also an uncontested biological relative of the decedent to submit to DNA removal and analysis for purposes of comparison and determination of the statistical likelihood of kinship between the uncontested

biological relative and the party whose kinship to the decedent is in controversy." The fact that the legislature did not add this language to the statute evidences an intent to limit the parties that a trial court can compel to submit to DNA testing to only those who are asserting an unproven biological relationship to the decedent.

b. Compelling Appellant to submit to a DNA testing constitutes an unreasonable search as O.C.G.A. § 53-2-27 does not grant the lower court the authority to compel a party in interest whose kinship to a decedent is not in controversy to submit to DNA analysis and removal.

There are two principal DNA testing methods used to determine paternity: a buccal swab and a blood test. It is undisputed that both methods constitute a search under the Fourth Amendment. *See Maryland v. King*, 133 S. Ct. 1958, 1963 (2013); *see also Birchfield v. N. Dakota. William Robert Bernard*, 136 S.Ct. 2160, 2173 (2016). Because DNA testing under O.C.G.A. § 53-2-27 is not conducted for purposes of criminal law enforcement, it is properly classified as an administrative search. *See City of L. A. v. Patel*, 135 S.Ct. 2443, 2542 (2015). Administrative searches are authorized by statutes put in place by democratically elected political bodies. While this court has not addressed the reasonableness of administrative searches, it is well-settled law in other jurisdictions that an administrative search is unreasonable if the statute does not authorize it. *See State v. Spring*, 0330034C; A122897 (OR 8/31/2005) (Or., 2005) ("An administrative search is reasonable if it is conducted […] pursuant to a policy authorized by a politically accountable

lawmaking body […].”). *See also Tarabochia v. Adkins*, 766 F.3d 1115, 1129 (9th Cir., 2014) (holding that a search of a fishing boat was not reasonable as officers did not conduct the search “pursuant to any statutory authority.”) *See also State v. Kriegbaum*, 215 N.W. 896, 898 (Wis., 1927) (holding that “[a] search made pursuant to warrant issued by a justice of the peace to whom the Legislature had not granted the power to issue such a warrant is an unreasonable search, and in violation of the defendant's constitutional rights under this section of that fundamental law.”); *See also Glover v. City of N.Y.* (E.D. N.Y., 2018) (“An administrative search under a scheme that meets [the Burger] criteria nonetheless can be unreasonable under the Fourth Amendment if it exceeds its statutorily authorized scope."). When a court compels a search in reliance on statutory authority, the statute must actually authorize the search. If the statute does not authorize the search, then the search is unreasonable.

In O.C.G.A. § 53-2-27, the General Assembly took care to identify the party that could be compelled to submit to DNA tests, and distinguished that party from other interested parties to the estate administration. It is made clear from the arguments above that this legislative authority does not extend to Appellant or any party in interest whose relationship to the decedent is not in controversy. Because O.C.G.A. § 53-2-27 does not provide legislative authority for a court to compel a party whose kinship to the decedent is not in controversy to submit to a DNA test,

the search is unreasonable and a violation of Appellant's Fourth Amendment Rights Against Unreasonable Searches.

II. APPELLEE DID NOT PUT FORTH SUFFICIENT EVIDENCE TO SUPPORT HER CLAIM THAT DECEDENT IS THE BIOLOGICAL FATHER OF P.B. IN ACCORDANCE WITH O.C.G.A. § 53-2-27.

Standard of Review

The Court of Appeals applies the clearly erroneous standard of review to factual findings made by the trial court. *State v. Enich*, 788 S.E.2d 803, 806 (Ga. App., 2016). Even considering this highly deferential standard, the lower court's conclusion that the testimony offered by Appellee met the good cause standard required by OCGA § 53-2-27 should be reversed.

Argument and Citation to Authorities

a. Appellee failed to rebut the presumption of Anse Bundren's paternity.

Georgia courts have routinely held that "[a] child's legal father is defined as the man married to the biological mother at the time the child was conceived or born […]." *Williamson v. Williamson*, 690 S.E.2d 257, 258 (Ga. App., 2010) (internal citations and punctuation omitted). Per O.C.G.A. § 19-7-46.1(a), "[t]he appearance of the name […] of the father, entered with his written consent, on the certificate of birth […] shall constitute a prima-facie case of establishment of paternity […]."

Appellee failed to rebut the presumption that Anse Bundren is P.B.'s father. It is uncontested that Appellee was married to Anse Bundren when P.B. was conceived and born. MT-13. It is also uncontested that Anse Bundren signed P.B.'s birth certificate, and that Anse Bundren is still designated as P.B.'s father on his birth certificate. MT-13.

During the motion hearing, Appellee stated that Anse Bundren had taken a DNA test which proved that he is not P.B.'s biological father.[4] MT-13. However, Georgia courts have previously held that a DNA test alone is not enough to rebut the presumption of paternity. In *Baker v. Baker* 276 Ga. 778 (2003) the Supreme Court of Georgia addressed a case in which a husband married his wife while she was several months pregnant with the child of another man. When the child was born, the husband was listed as the father on the child's birth certificate and provided emotional and financial support to the child throughout the marriage. When the husband later filed for divorce, he sought custody of the child. The wife opposed custody, arguing that her former husband was not the child's biological father. DNA tests confirmed that the husband was not the child's biological father, and the trial court held that this DNA test rebutted the presumption of paternity. In reversing the trial court's holding, the Supreme Court noted how difficult it would

[4] The results of this alleged DNA test were not offered into evidence.

be for a presumptive legal father to rebut the presumption of his paternity for the purposes of ceasing child support payments.

> In that scenario, a presumed father must clear a very high hurdle, as he is required to show the following: (1) that genetic testing has determined he is not the child's biological father; (2) that he has not adopted the child; (3) that the child was not conceived by artificial insemination while he and the biological mother were married; (4) that he has not acted to prevent the biological father from asserting his parental rights; (5) that he has not married the biological mother and voluntarily assumed the obligation to pay child support; (6) that he has not made a sworn statement he is the father; (7) that he is not voluntarily listed on the child's birth certificate as the child's father; (8) that he has not made a written voluntary statement to support the child; (9) that he has not proclaimed himself to be the child's biological father; and (10) that he has not ignored official notice to submit to genetic testing. Unless all these showings are made, a child support obligor seeking to delegitimize a child will not succeed and will continue making child support payments.

Baker v. Baker, 582 S.E.2d 102, 276 Ga. 778, 787-783. The *Baker* Court noted that the husband was married to the wife before she gave birth; voluntarily designated himself as the father on the child's birth certificate; and held himself out as the child's father "all with the full knowledge and support of the child's mother." *Id.* at 783.

The facts in *Baker* support a similar holding in the instant case. Appellee was married to Anse Bundren at the time of P.B.'s conception and birth. Appellee offered no testimony or evidence that Anse Bundren assumed that the child she was carrying could be any other than his own. Anse Bundren signed the child's birth certificate, and Appellee has offered no testimony or evidence to support a

claim that, in living with the child for thirteen years and sharing the child's last name, Anse Bundren has acted as anything other than P.B.'s father. Appellee is not able to overcome the presumption of P.B.'s paternity with a mere DNA test.

b. Appellee failed to show good cause as required by O.C.G.A. § 53-2-27.

In addition to failing to rebut the presumption of Anse Bundren's paternity, Appellee offered no testimony or evidence to support a factual basis for a reasonable belief that Decedent is P.B.'s biological father.

First, Appellee offers no evidence of a sexual relationship between herself and Decedent around the time of P.B.'s conception. Appellee offers no statement or testimony from witnesses who can attest to her romantic relationship with Decedent; she offers no evidence of gifts received or letters exchanged between herself and Decedent which would illustrate some sort of romantic relationship; she offers no pictures of herself and Decedent together during the time of this alleged relationship. Moreover, Appellee is the only person still alive who has access to information that would support her claim. During the motion hearing, Appellant could not have offered any evidence to challenge Appellee's claim, as Appellant was unaware of this issue during her father's life.

The statements that Appellee did offer in support of her argument were irrelevant, nonprobative, and not supported by evidence. Appellee began her argument by stating that she and Appellee had "knowledge of each other" for a

long time and that Appellee met P.B. once when he was younger. MT-16. Appellee went on to state that she and Appellant were first introduced when Decedent was on his deathbed, and that Decedent told Appellant, "Eula, this is Addie." MT-16. These facts don't speak to Decedent's kinship to P.B., but simply to the fact that Appellee is someone who Decedent knew – Decedent should not be presumed to be the father of the children of all of his former friends and acquaintances.

Appellee goes on to offer a series of unsubstantiated and often nonsensical statements concerning times in which P.B. has been acknowledged as Decedent's son. Appellee states that P.B. was presented as Decedent's son at Decedent's funeral, a statement that Eula denies, and Appellee offers no funeral program or witness testimony to corroborate this statement. Appellee then mentions "another paternal order as far as [Decedent's] motorcycle club," but she never clarifies what this "order" actually is, she never introduces a copy of said "order" into evidence, and she never presents any witnesses from said "motorcycle club" to testify to this "order". MT-17. Appellee goes on to make vague references to "other witnesses" and "other family members" who also knew that P.B. was Decedent's son, but again she never mentions anyone by name and she never presents any witnesses to the court to offer testimonial evidence. MT-17.

Good cause requires more than what Appellee offered during the motion hearing. If the good cause requirement can be reached in a case like this – where

the mother has failed to rebut the presumption of the husband's paternity; where the movant has offered only unsubstantiated rumors, vague references to witnesses not brought before the court, and irrelevant facts to support her paternity claim; and where the mother has offered no evidence to support the claim that she was even in a sexual relationship with the decedent at the time of the child's conception – then the threshold for good cause is so low that the statute shouldn't even include the requirement. The legislature included the good cause requirement in order to ensure that, in the times in which family members are trying in earnest to settle the estates of their deceased loved ones, only those who could put forth reliable evidence that they were related to the decedent could stall and burden the estate administration by requesting DNA testing. The evidence that the Appellee offered did not set forth a factual basis for a reasonable belief that P.B. is Decedent's child and therefore Appellant should not be compelled to submit to DNA testing.

c. Appellee's failure to show good cause makes the lower courts order an unreasonable search because Appellee failed to meet the statute's probable cause requirement.

"In order to claim the protection of the Fourth Amendment against unreasonable search and seizure, a defendant must demonstrate that he personally has an expectation of privacy […] and that his expectation is reasonable." *State v. Carter*, 681 S.E.2d 688, 690 (Ga. App., 2009). This Court has previously held that

a person has a reasonable expectation of privacy in their DNA or genetic information. *See Generally*, *State v. Gerace*, 437 S.E.2d 862 (Ga. App., 1993). All searches must be supported by probable cause, including administrative searches. "In administrative searches, the probable cause standard is measured by balancing the need for the inspection in terms of the goals of the code enforcement against the intrusiveness of the search."[5] However, in O.C.G.A. § 53-2-27, the General Assembly added an additional layer of privacy protection in the form of the "good cause" requirement, which demands that a petitioner put forth "a *factual basis* for a reasonable belief that the party in interest whose kinship to the decedent is or is not so related […]."

Appellee can certainly argue that the State of Georgia has a strong interest in discovering a child's paternity in order to determine financial and familial obligations to the child. But, in this context, Appellee must also show that she showed good cause for a reasonable belief that P.B. is Decedent's biological child – a bar which she has failed to clear. Appellee has not offered any evidence of a sexual relationship between herself and Decedent. Appellee has not offered any evidence showing that Decedent ever took any responsibility, formally or

[5] Ryan Nasin, *Administrative Inspections: The Loophole in the Fourth Amendment*, 31 Touro L. Rev 829, 838 (2015) *available at* https://digitalcommons.tourolaw.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=2675&context=lawreview.

informally, emotionally or financially, for P.B. during his lifetime. Appellee has not rebutted the presumption that Anse Bundren is P.B.'s father. Appellee has not met her obligation to show good cause as is required by the statute.

Appellee could also argue that the lower court's order does not unreasonably burden Appellant's privacy because a buccal swab is a minimal, noninvasive intrusion. However, this Court should recognize that, despite buccal swabs being a relatively minor physical intrusion upon a person's privacy, a buccal swab in this context cannot be limited to a mere physical invasion. In this context, a buccal swab is also the destruction of the memory of a person you loved, the life you thought you knew, and the family you thought you had.

III. THE LOWER COURT'S RULING RUNS AFOUL OF WELL-ESTABLISHED GEORGIA PUBLIC POLICY WHICH FAVORS LEGITIMACY.

"The public policy favoring the presumption of a child's legitimacy is one of the most firmly-established and persuasive precepts known in law." *Baker v. Baker*, 276 Ga. 778, 779 (Ga., 2003). The main goal of Georgia courts and the legislature when creating presumptions about paternity has always been to protect paternal bonds and relationships, not to destroy them. Anse Bundren and P.B. have had a father-son relationship for thirteen years and Anse Bundren is still P.B.'s legal father. The actions that Appellee has taken in the instant case will not serve to

build a father-son relationship between P.B. and Decedent, but will only compromise the existing legal and emotional father-son relationship that P.B. has with Anse Bundren.

The Supreme Court of Georgia has previously held that Georgia's "public policy will not permit a mother ... to enlist the aid of the courts to disturb the emotional ties existing between a child and his legal father after sitting on [her] rights for the first [phase] of the child's life." *Id.* At 276. (internal citations and quotations omitted). If Appellee believed that P.B. was Decedent's biological child, then the correct time to assert that claim would have been thirteen years ago. This Court's precedent should encourage people to settle issues of paternity while all parties are still alive and available to be tested. This Court should not sanction the kinds of activities that shatter familial ties over the pursuit of a potentially fruitless claim. Affirming the lower court's order to compel Eula Tull to submit to a DNA test would only encourage this kind of behavior.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the decision below.

This submission does not exceed the word count limit imposed by Rule 24.