

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION**

FREDERICK J. COLOSIMO,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting Commissioner
of Social Security,

Defendant.

No. 1:18-cv-00170-FDW

DECLARATION OF FREDERICK J. COLOSIMO

I, Frederick J. Colosimo, declare as follows:

1. I am the plaintiff in the above-captioned matter. I have actual knowledge of the matters stated in this declaration.
2. I was born in Johnstown, Pennsylvania, and my family moved to Paterson, New Jersey when I was six months old. I attended Catholic grammar and high school there, and began my university education in Paterson as well. I then moved to finish my college education at Rollins College in Winter Park, Florida. That was where I met Harvey Lucas, the love of my life.
3. Before we met, Harvey served in the U.S. Army, and I served in the U.S. Army Reserves for six years. I still treasure a photo I have of Harvey in his uniform (Harvey is on the left below):



4. I met Harvey in 1971 at the home of a friend in Fort Myers, Florida. We had mutual friends who knew us separately, and thought we might make a good match. Little did they know that we would hit it off instantly, and find a lifetime of love and devotion with each other.

5. I remember that meeting Harvey felt like magic. When we first met, he looked like a young Neil Diamond. He was perfect for me, I was perfect for him, and it was love at first sight. Harvey and I were 30 and 27 years old, respectively.

6. One of the best ways to describe our relationship is that we never went to bed having an argument. In fact, we almost never fought, and I remember being upset with him only once during our 43 years. It was while we were living abroad for a job Harvey had taken, and he was driving our car a little harder than I thought he should. He hit some jagged ice and we were

temporarily marooned in the middle of winter on the side of the road. That was the only real argument we ever had.

7. Our harmonious life together had a lot to do with Harvey's kind and generous spirit. He was so easy-going and agreeable. In my eyes, he was perfect in every way. We were really in love, and we were just so happy to be together.

8. Harvey was appreciated and loved by others as well. He frequently found ways to mentor others. After he retired, he got a job as an evening manager for a large conference center at Appalachian State University in Boone, North Carolina. He tried to help everyone there, including the young wait staff, and they all thought he was incredible.

9. When we first met in 1971, we knew right away that we were destined to spend our lives together. Harvey had just purchased a home for his mother in New Jersey, and was living there with her. After we met, however, he decided to move to Florida so that we could be together. It took him a couple of months to make the transition to Florida, and he moved in with me right away. We were never apart again.

10. Harvey got a job in Ocala, Florida with Martin-Marietta Corporation ("Martin-Marietta"), later known as Lockheed Martin. Soon after he took that job, the company asked him to accept a temporary assignment in Germany. I had finished college, so there was no question in my mind about going with him. We did not realize that we would be stationed there for two years, but it ended up being some of our most wonderful years together. We lived in Kronberg im Taunus, Germany, and were the only Americans in this little hill town. I got a civilian job with the Air Force as a pay clerk. It was a wonderful, wonderful experience, and these two years were a very happy time for us.

11. When we returned from Germany, I eventually got a job as a mail carrier in Eustis, Florida, while Harvey continued to work for Martin-Marietta. We remained in Florida for close to another decade. After I had worked as a mail carrier in Eustis for eight years, I recall that we went on vacation to Boone, North Carolina. A chef at a restaurant told us to drive eight more miles up the road to see the town of Blowing Rock. We followed his advice, and were so glad we did.

12. Blowing Rock is a beautiful town. It has a little over 1,000 residents, and reminded us so much of our time in Kronberg. Harvey said, "Look, there's a Post Office down there. Go and talk to the Postmaster." So I did. The Postmaster said, "You'll never believe this. We haven't had an opening in 30 years, but I have an opening that closes today at 5 pm. I would love to have you here." I was hired by the Postmaster on the spot, and we packed up our lives in Florida and moved to North Carolina. Harvey eventually took a job with Alcatel in Hickory.

13. During each decade we spent together, starting during the 1970s, Harvey and I talked repeatedly about wanting to marry each other. Same-sex couples could not marry anywhere in the United States in the 1970s, but that did not stop us from dreaming of the day when we could have a wedding like any other couple. Although that prospect seemed far away, we talked about what our wedding would look like; it's just what couples do when they love each other. We would daydream together about what kind of wedding it would be, and where we would have it. I always told Harvey that I wanted a wedding that would have just family and close friends in attendance, and that I wanted us to be married on a beach. Harvey agreed. He was always happy if I was happy.

14. While the last decade of our time together was focused on Harvey's serious health problems, he took care of me too. I had a major stroke in 2003 that left me largely

paralyzed, and unable to walk again for the next six months. I truly believe that Harvey's care saved my life. He took me to the Dominican Republic, and over the course of a couple of weeks, helped me regain strength and mobility by taking me out into the waves. Each day he would take me a little further into the ocean, and I began to recuperate and regain control. We talked during that trip again about the beach wedding we wanted to have, since we were on a particularly beautiful beach there. After we returned home, Harvey remained devoted to my care. He helped me through six months of additional rehabilitation, took me to medical appointments, cooked, cleaned, and helped me bathe myself. With Harvey's support, I was able to make nearly a 100% recovery. Our relationship would come full circle just a short period of time later, when I would do those kinds of things for Harvey during his last decade of life.

15. Harvey and I were committed partners from the beginning, and wove our lives together like other married couples do. We co-owned all of our property over the years, and the various cars we had over the decades. Our checking, savings, and credit card accounts, along with our bank security box, were all jointly held. We paid all of our household expenses from the single checking account that we shared. Harvey had an Individual Retirement Account ("IRA") that was payable on death to me, and he designated me as the beneficiary for all benefits through his employment. We made wills leaving everything to the other person. In 2012, we set up a revocable living trust leaving all of our worldly possessions to whichever one of us was the survivor.

16. In approximately 2004, Harvey suddenly began to have very serious health problems. By the time he was diagnosed as having a serious heart condition, which the doctors found to be likely inoperable, his prognosis was so severe that he could not be left alone. I was forced into early retirement to care for him, but I knew he would do the same thing for me. We

had one car at that point, and were inseparable and went absolutely everywhere together. I had to be on hand all the time to monitor him, and to help him when he went into distress. For example, after they put a defibrillator in, I remember Harvey being in the bathroom one day, and I suddenly heard this horrible noise. Apparently his heart was stopping, and the defibrillator's efforts to restart the heart were so powerful that the defibrillator threw him against the wall, and that was the sound I had heard. That kind of thing could happen at any moment of the day or night, so I had to be on hand to watch him all the time.

17. During those early years, I drove Harvey from one veterans' hospital to the next, throughout Tennessee, North Carolina, South Carolina, and Georgia. His heart was in such bad condition that he was placed on a heart transplant list in 2004. We kept looking for a doctor, any doctor, who could help him. We started with the heart surgeons, the best people we could find. I would tell Harvey, "Whatever it is, we're going to get through this together. We'll pray about it, and do everything we can to get you fixed."

18. In 2005, Harvey had another episode of distress, and was medically evacuated by helicopter to Charlotte, North Carolina because our local medical center determined they could not do anything else to save his life.

19. Five different cardiologists determined that they could not operate on Harvey, but then we found Dr. O'Toole, who was a godsend. Dr. O'Toole was based at the Medical University of South Carolina in Charleston, South Carolina ("MUSC"), and believed that he could do a very dangerous nine-hour procedure to re-route some of Harvey's arteries to induce his own body to force a new artery to the back of his heart. Harvey's recovery from the surgery was lengthy and horrific, but at least temporarily, it was a success.

20. During the years after Harvey was diagnosed with his heart condition, and placed

on the heart transplant list, we were warned not to leave the surrounding area and to remain within three hours of MUSC. That was necessary because if a heart became available, we would need to be at the hospital within a few hours for the transplant to work. This required us to rent places to live in South Carolina beginning in 2004, and later in approximately 2011 to purchase a home in Bluffton, South Carolina, so that we were within range of both Charleston and Hilton Head, since Harvey's medical providers were divided between those South Carolina cities. This, along with the unbelievable medical bills we began incurring, exhausted most of our funds for retirement. However, we were dealing with a survival situation which we would not pull through unless we dealt with it together on a 24-hour basis. (The Certified Transcript in this case says that we divided our time between North Carolina and New Jersey, but that is a mistake. Instead, we divided our time between North Carolina and South Carolina for Harvey's care, spending approximately six months in the summer and fall in North Carolina, and six months in the winter and spring in South Carolina.)

21. We began a dual life in South Carolina, I obtained a South Carolina driver's license, and in 2012, a South Carolina lawyer prepared our revocable living trust to leave all worldly possessions to each other, and documents giving us each power of attorney for the other. We rented, and later purchased, all of our property there jointly.

22. Harvey and I agreed while we lived in South Carolina, as we had agreed throughout our relationship together, that we would love, care for, and support each other as spouses do. We lived that reality openly every day in South Carolina, as we had for years. Just as any other spouse would do in these circumstances, I resided with Harvey and never left his side, monitored Harvey's health, made sure he got all the medication and medical treatment we could find for him, and took care of all his daily needs. Indeed, this was my sole focus after I

entered early retirement specifically for the purpose of caring for Harvey. As we had discussed repeatedly over our decades together, our intention was to be married, and that was how we lived, including during our time in South Carolina. We held ourselves out as one family and economic unit to everyone we interacted with in South Carolina, as we did in other states. Everyone treated us as a unified family unit as well, from our neighbors and friends, to all the medical providers who helped care for Harvey.

23. Our lives changed forever as we adjusted to the care that Harvey needed. We bought walkie talkie radio receivers so that even if we were in different parts of the house, he could summon me at any time to help him. He was unable in the early days after his diagnosis to get up the stairs to our bedroom, so we had him sleep temporarily on the sofa downstairs, while I tried to rest in our bedroom upstairs. Sleep was scarce in those days. I remember feeling so afraid if I slept that he would try to radio me and be unable to reach me. I worried every time the handset beeped, and I was worried when it didn't beep, just wondering when the next call for help would come, and feeling desperate not to miss it.

24. While Harvey was on the heart transplant list, we were required to go to classes to learn about everything we would have to do to keep his new heart beating, if he was fortunate enough to receive one. The classes could be overwhelming sometimes. I am not technologically savvy, and the idea of being responsible for the machinery that would keep his heart beating, and keep him alive, was daunting. As intimidating as that was, I knew we would be exceptionally lucky if we ever found ourselves in that circumstance. Unfortunately, fate would eventually take a different turn, when Harvey was later diagnosed with cancer and taken off the heart transplant list.

25. I spent hours and hours managing all of Harvey's medications. Toward the end of

his life he was taking 35 pills a day. Monitoring his prescriptions, communicating with doctor's offices and the pharmacy to timely refill them, and picking up and tracking the refills was a major undertaking. There was even one pill that had to be specially delivered to our home, and I had to be there to answer the door and sign for it. In the beginning we would sort his pills into pill boxes together, but later on, when he was on significant doses of morphine, I would do it all myself. I remember worrying constantly about what would happen if we ran out of this medication or that one, or what would happen if I accidentally gave him the wrong pill at the wrong time of day. We also struggled with the need to put compression stockings on his calves and thighs every day, because his heart was not strong enough to circulate blood to and from his extremities the way it should. There were days that I struggled so much to get those stockings on him that I had to bring him to the pharmacy to get help from their staff.

26. Making telephone calls to our insurer, Humana, to try to secure approval for Harvey's care became a constant fixture in my life. Even when Harvey's care was fully covered to the limit of our insurance policy, the bills were extraordinary. I did not keep track of the total amount of his expenses, of course—the idea of putting a price on our last years together is intolerable to me—but the expenses were significant. We also had costs that simply would not be covered by insurance, like the hotel bills we incurred. When Harvey had major appointments or procedures in Charleston, I would book a hotel directly across the street, since Charleston can be prone to flooding, and I did not want to risk anything coming between Harvey and the care he needed. We had a couple hotels that would give us special discounts because we were there all the time.

27. It was about the time of 2010 to 2011 when the doctors discovered that Harvey had cancer. Harvey began receiving treatment for his cancer in Savannah, Georgia, requiring us

to travel between North Carolina, South Carolina, and Georgia for his various treatments. Harvey had to be taken off the heart transplant list, and our hope that he might receive a new heart was ended. We focused instead on treating his new disease. As Harvey began chemotherapy and radiation to treat his bone cancer, we were warned again not to leave the surrounding area, as it would pose too great a risk to his health.

28. Harvey eventually progressed to stage four bone cancer. Again we were warned not to travel by air or any long distance. His vertebrae began deteriorating, and he was in extreme pain. We were not able to travel to any state that allowed same-sex couples to marry.

29. Then, there was a period of time where Harvey was starting to do better, in late 2013. It was around this time that we heard a news story about marriage equality coming to New Jersey, and we decided to travel there to marry. My sister still lives in New Jersey, where we had grown up together, and after years of being told that Harvey and I could not leave a certain radius of his medical facilities, we were desperate to have a chance to memorialize our commitment to each other. I had kept up with the news as marriage equality came to other states, but they all seemed so far away – none of them were in the South – and they were not places we could go when Harvey was on the heart transplant list, or during prior stages of his cancer treatment. When Harvey experienced a period of improvement in late 2013, we thought it might be the last chance we would ever have to marry, so we jumped at it.

30. Our decision was not without cost. We knew the trip would be punishing for Harvey. But Harvey's illness had taken so much away from him that we were determined not to let it strip him of his chance to marry too. Being able to get married before he died was Harvey's only wish by that stage in his life. We sensed that if we did not act quickly, the chance might be

lost to us forever given his health. We both felt like we would do anything to get this document to validate our lives together.

31. We were living in Blowing Rock at the time, and had to drive two and a half miles to the airport in Charlotte, and then fly to Newark, New Jersey. As was typical of Harvey, he did not complain on the drive, but I knew it was hard on him. For example, we needed to wrap the seatbelt in a special covering so that it wouldn't hurt him too much, since the seatbelt by itself was too painful on his chest. He was always in pain, but he never complained. By that point we had been to veterans hospitals in Georgia three times so that various kinds of casts and braces could be fitted for him, including a full-body cast to help the doctors precisely target the radiation treatment, and another brace that could help Harvey sit up. We needed a lot of help at the airport to get him through security and to the gate, because of his defibrillator and limited mobility.

32. Harvey and I were married on November 7, 2013, 17 days after New Jersey began allowing same-sex couples to marry. We never got to have the beach wedding we had always dreamed of having, but the wedding was no less precious to us. My sister arranged for the Mayor of Stratford to marry us in a private room at a local Italian restaurant, and my sister and her husband served as our witnesses. Those were the only attendees of our wedding. We did not say our own individualized vows to reduce the strain on Harvey, but the Mayor performed a beautiful wedding service. We were just so overjoyed in our hearts. Harvey looked the happiest I had seen him in a very long time. The photo below was taken on that day; I am on the left, Harvey is on the right, and the Mayor is in the middle.



33. Harvey's health deteriorated after we returned home. The smallest victories seemed momentous in those days. For example, I remember vividly one day when Harvey felt strong enough to take a shower on his own. I stood right at the door throughout, and kept asking if he was okay. He was dizzy when he came out of the shower and I helped dry him, but the sheer fact of having been able to take a shower on his own made him feel so good about himself. It was a glorious thing. Nonetheless, his deterioration continued. We had to bring him to a rehabilitation center in Hilton Head, South Carolina, and then an assisted living facility in Boone, North Carolina.

34. Harvey subsequently began receiving hospice services, which allowed him to come home, which was wonderful. We put a bed in the living room for him, and the hospice workers helped with the constant care that he required. When he reached the point that he was in too much pain to remain home, the hospice sent a special nurse to help me bring Harvey to the hospice facility. She helped me line the back seat of the car with pillows, so that we could lay

him down for the drive to hospice. I remember driving over railroad tracks on the way to the hospice facility, and hearing Harvey moan in pain. He tried throughout his illness never to show that he was in pain, and the sound of his moaning broke my heart.

35. While Harvey was in hospice, my mother was also very ill, and died in Florida. I was unable to attend her funeral because I could not bear the thought of leaving Harvey's side. My whole family understood and supported my decision to stay with Harvey. They knew that we were devoted partners and spouses, and that I was only taking care of Harvey the way he would have taken care of me if the shoe had been on the other foot.

36. During what would turn out to be the final days of Harvey's life in hospice, I was visited by a neighbor and friend named Lorraine. We had come to know each other in Blowing Rock, but she was living significantly farther away by this point. Nonetheless, she made a six-hour roundtrip drive specifically so that she could stand at my door in person, and say these words, "Fred, did you ever really say goodbye to Harvey?" As she spoke to me, I realized that I had been so overwhelmed with the hour-to-hour, minute-to-minute tasks of caring for Harvey at the end, that I had not actually *said goodbye*. I went immediately to the hospice, and spent the entire night sitting in the chair next to Harvey's bed, and talked to him for hours about our 43 years together. I recounted all of our adventures, the places we went, the ups and downs, and through it all, the way we loved each other in sickness and in health. At that point, Harvey was full of morphine to help with his pain, and almost seemed like he was in a coma. But as I spoke, I could see that when I told certain stories, a little smile would come over his face, and I could tell that he heard me.

37. Suddenly his legs started moving involuntarily, and the hospice staff told me that it would not be long before he died. His feet began turning blue, and the hospice staff said that

this meant it would only be a matter of minutes. I told Harvey that he had suffered so much, and it was all right to go, and that he would go see his mother, father, and brother in heaven. I told him that I would be all right. And then he went.

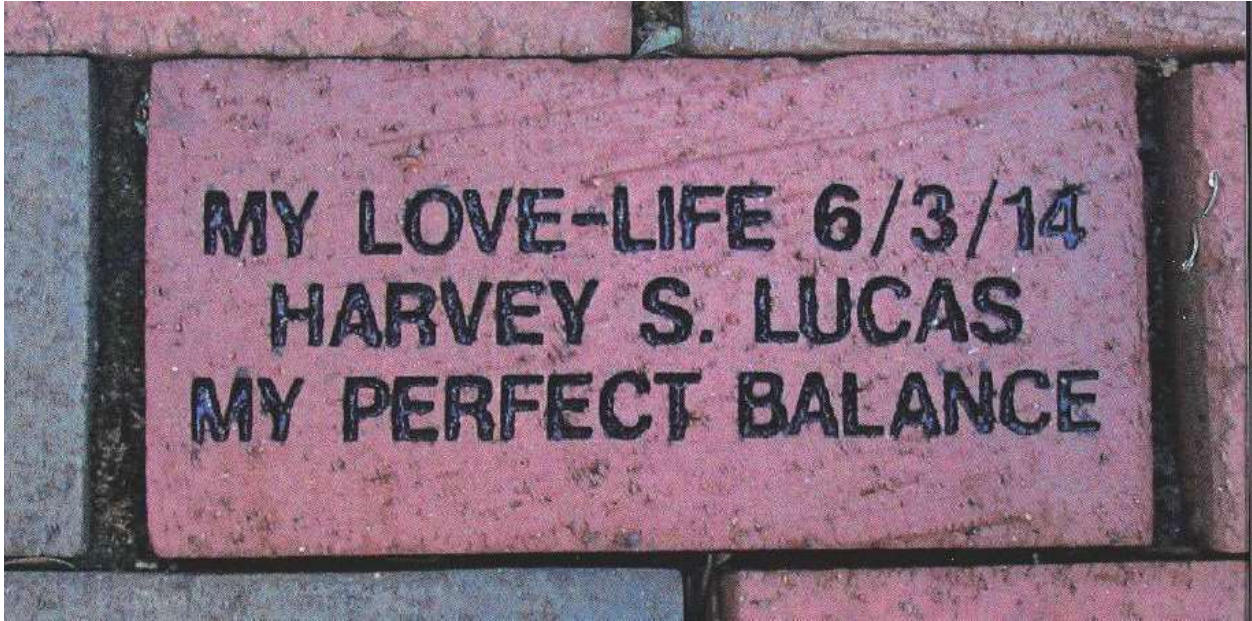
38. The angels who worked at the hospice asked me what I needed. I said I had to go out to the courtyard to catch my breath, and that the only thing I could not bear was to see the staff from the funeral home wheel Harvey out in front of me. They arranged for Harvey to be taken out back. The hospice is affiliated with a beautiful old home just down a brick-lined walkway, and the staff arranged for me to stay in a bed there so I could sleep and recover. When I woke up, they opened the kitchen for me and made me coffee. My heart will never stop brimming with gratitude for the care they gave us in Harvey's final days of life.

39. On the weekend that I prepared this declaration, it was Harvey's birthday. I believe that he is watching over me, and over my efforts to honor our relationship and marriage one last time through this case. Reliving a number of these memories to work on this case has been very painful. But Harvey and I had to wait so long and work so hard to get married, that I am determined to see this through. I still talk to Harvey frequently, and ask his opinion when I am faced with decisions. They say that a loved one can visit you by sending a dime, to let you know they are watching over you. Anytime I need his input, I seem to stumble across a dime. I have found them all over our house, and sometimes while I am out and about. I keep each and every one of them.

40. I began collecting Social Security benefits at age 62 on my earning record, and receive \$900 a month, but I had always earned less money than Harvey did. When Harvey was collecting his Social Security benefits, he received \$1,900 a month. If I were receiving the larger amount I would be entitled to on his earning record, it would change my life. I currently live in a


townhome that is difficult for me to afford. The homeowners association fees are significant, but the ease of maintenance in terms of not having to manage a yard is a huge help for me. I will be 75 years old by the time this declaration is filed, and having to take care of a yard would be very stressful and difficult for me. More importantly, I am surrounded in my current home by neighbors who help take care of me. They check on me to make sure I am doing okay, and they help me with things like my fax machine, which is one of my primary ways to send and receive information. Without the additional income I would receive if I could collect benefits based on Harvey's earning record, however, it is not sustainable for me to remain here. I am looking for another smaller and cheaper home, to relieve some of the current financial stress that I am experiencing. If I were to receive the larger amount to which I would be entitled on Harvey's earnings record, I could stay in my current home, surrounded by neighbors who help take care of me.

41. Harvey was my everything, and I was the same to him. After Harvey died, I had a brick made for the pathway at the hospice to memorialize his stay at the facility during his last days, and the date of his death. The brick now lines the pathway between the hospice where he died, and the home where they let me sleep afterward. The message is short, but it says what is in my heart. I have a picture of that brick, which is replicated below:



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 15th day of January, 2019.


Frederick I. Colosimo

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed in the Court's CM/ECF System on January 17, 2019. I further certify that all case participants are registered CM/ECF users, and that the foregoing document was thereby served on all counsel of record.

s/ Samuel F. Furgiuele, Jr.
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