

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-28-00726

Appellate Case No. 2020-000063

Laverne Robinson,

Appellant,

v.

Willene Brooks, Mary
Green,
Ronnie Robinson, Almeter
P. Harrison, Herbert
Robinson, James Robinson,
Leroy Robinson and Martha
Aiken,

Defendants,

Of whom, Mary Green,
Ronnie Robinson, Almeter
P. Harrison, Leroy Robinson
and Martha Aiken are
Respondents.

Respondents.

PETITION FOR REHEARING

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SC Court of Appeals

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PETITION FOR REHEARING

The Appellant petitions the Court of Appeals for a rehearing of the above captioned case based on the following points that were overlooked or misapprehended by the Court:

- I. The Court overlooked the clear language in the Probate Judge's August 10, 2018, Order shifting the burden of proof from the contestant of the will to the proponent of the will.
- II. The Court cited numerous authorities for the proposition that the contestant of the will has the burden of proof throughout the trial, and then affirmed the Probate Judge's August 10, 2018 Order that imposed the burden of proof on the proponent of the will.

STATEMENT OF THE CASE

This is an appeal from a Petition filed in the Probate Court for Kershaw County on August 14, 2017, seeking to admit a copy of a will executed by Almeter Robinson on February 3, 2015, and have the Appellant appointed as Personal Representative in accordance with the will. An Answer was filed on behalf of Respondents Mary Greene, Ronnie Robinson, Almeter P. Harrison, Leroy Robinson, and Martha Aiken asserting that the February 3, 2015, will had been revoked, that it was executed when the decedent lack capacity or was under undue influence by the Appellant. The Answer was filed on September 15, 2017.

After the Answer was filed, but before the case was tried, the Appellant discovered and filed the original will. Also, after the Answer was filed but before the case was tried, the Respondent Martha Aiken relieved her attorney of record Moultrie B. Burns, Jr. and retained Leonard R. Jordan, Jr. to represent her in this matter.

Almeter B. Robinson died a resident of Kershaw County on February 25, 2017. At the time of her death, Almeter Robinson had no spouse, and the Appellant and the Respondents were her surviving children. Respondent Herbert Robinson died after the case was filed, but before the trial.

The case was tried before the Honorable Debra B. Branham on July 9, 2018. Her Order dated August 10, 2018, ruled that the February 3, 2015, will was properly executed according to §62-2-502; that insufficient evidence of lack of capacity by the testator to execute the will was presented; and that the February 3, 2015, will was invalid because of

undue influence over the testator exerted by the Appellant. (R. p. 1-6)

The Appellant filed and served his Notice of Intent to Appeal to Circuit Court on August 17, 2018. The Appeal was heard by the Honorable Robert E. Hood on September 23, 2019. The Honorable Robert E. Hood issued his Order Affirming the Probate Court Order on October 3, 2019. The Appellant filed a Motion to Alter or Amend a Judgment under Rule 59(e) SCRCPP on October 8, 2019. The Honorable Robert E. Hood issued his Amended Order Affirming Probate Court Order on January 2, 2020. The Appellant filed his Notice of Appeal on January 14, 2020. The Appellant timely ordered a transcript of the September 23, 2019, appeal hearing which was delivered to Appellant's counsel on December 18, 2020. The Court of Appeals issued an Unpublished Opinion on June 8, 2022, affirming the Circuit Court Order dated January 2, 2020.

ARGUMENT

- I. The Court overlooked the clear language in the Probate Judge's August 10, 2018, Order shifting the burden of proof from the contestant of the will to the proponent of the Will.

The key issue in this appeal was whether or not the Probate Judge imposed the burden of proof on the Appellant, the proponent of the will, in violation of §62-3-407 S.C. Code of Laws Ann. If she did impose the burden of proof on the wrong party in violation of a statute, she committed an error of law. No weighing of the evidence is necessary if the trial court committed a reversible error of law.

The clear language on page 4 of the August 10, 2018, Order (R.p.4) is as follows:

"This circumstance is very important for the Court to look at because if a confidential or Fiduciary Relationship between the Testator and the Beneficiary exist, the burden of proof rebutting undue influence falls on the beneficiary." (R. p. 4), emphasis added.

"Argument was made on behalf of the Plaintiff that the burden of proof was met to rebut undue influence by the testimony of the Attorney Butcher wherein she testified that she did not believe that the decedent was under any undue influence of the Plaintiff beneficiary." August 10, 2018, Order pg. 4, (R. p. 4), emphasis added.

The Probate Judge clearly imposed the burden of proof on the wrong party, and the Court of Appeals clearly overlooked this error of law. The above citations from the Probate Judge's August 10, 2018, Order appear nowhere in the June 8, 2022, Unpublished Opinion.

II. The Court cited numerous authorities for the proposition that the contestant of the will has the burden of proof throughout the trial, and then affirmed the Probate Judge who imposed the burden of proof on the proponent of the will.

In its June 8, 2022, Unpublished Opinion, the Court of Appeals correctly cited the law of South Carolina that the contestant of a will has the burden of proof as to undue influence:

S.C. Code Ann. § 62-3-407 (2022) ("Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity."); *Gunnells v. Harkness*, 431 S.C. 116, 122, 847 S.E.2d 97, 100 (Ct. App. 2020)

("A contestant of a will challenging the validity of the will on the basis of undue influence bears the burden of proof and must present evidence showing the testatrix's will was overborne by that of the influencer or someone acting on his behalf.") *Howard v. Nasser*, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005) ("[A]lthough the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will."); *Calhoun v. Calhoun*, 277 S.C.527, 530, 290 S.E.2d 415, 417 (1982)

After citing the correct proposition of law that the contestant of the will, the Respondent in this case, has the burden of proof, the Court of Appeals, without explanation, affirmed the Probate Judge's August 10, 2018, Order which does just the opposite. The Probate Judge imposed the burden of proof on the proponent of the will by clear language appearing not once but twice in the August 10, 2018, Order. The only possible explanation for the ruling in the June 8, 2022, Unpublished Opinion is that the Court of Appeals overlooked the clear language in the trial court's order imposing the

burden of proof on the Appellant as argued above. The Order of the trial should have been reversed.

Respectfully submitted,

June 22, 2022

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Laverne Robinson,

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Willene Brooks, Mary Greene,
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Harrison, Herbert Robinson,
James Robinson, Leroy
Robinson and Martha Aiken,

Defendants,

Of whom, Mary Greene,
Ronnie Robinson, Almeter P.
Harrison, Leroy Robinson and
Martha Aiken are
Respondents.

Respondents.

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on Leonard R. Jordan, Jr., by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2022, addressed to Leonard R. Jordan, Jr., 211 Veterans Road, Suite D, Columbia, South Carolina, 29209.

I also certify that I have served the Petition for Rehearing on Moultrie B. Burns by depositing a copy of it in the United States Mail, postage prepaid, on June 22, 2022, addressed to, Moultrie B. Burns, Jr., Savage, Royall & Sheheen, L.L.P., Post Office Drawer 10, Camden, South Carolina, 29021.

June 22, 2022

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