

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE KERSHAW COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

UNPUBLISHED OPINION NUMBER 2022-UP-243  
(S.C.Ct. APP. FILED JUNE 8, 2022)

Appellate Case No. 2022-001379

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S.C. SUPREME COURT

In the Matter of Almeter B. Robinson

Laverne Robinson,

Petitioner,

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.

RETURN

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## QUESTIONS PRESENTED BY PETITIONER

1. Did the Court of Appeals err in affirming the Trial Court's imposition of the burden of proof on the proponent of the will on the issue of undue influence in violation of §62-3-407 S.C. Code Ann.?
2. Did the Court of Appeals err by overlooking 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?
3. Did the Court of Appeals err by citing numerous authorities for the proposition that the contestant of the will has the burden of proof throughout the trial, and then affirming the Probate Judge's August 10, 2018, Order that imposed the burden of proof on the proponent of the will?

## STATEMENT OF THE CASE

Respondents accept the Statement of the Case in the Petition for a Writ of Certiorari.

## RESPONDENTS' ARGUMENTS ON EACH QUESTION

1. Did the Court of Appeals err in affirming the Trial Court's imposition of the burden of proof on the proponent of the will on the issue of undue influence in violation of §62-3-407 S.C. Code Ann.?

There was no imposition of the burden of proof on the proponent of the Will. Judge Branham's Order specifically states, (1) "the burden of proof *rebutting* undue influence falls on the beneficiary" and (2) "[t]he Court finds that the burden to *rebut* undue influence was not met . . . " (emphasis added) Then, contrary to the Petitioner's argument, she goes on to address the facts and circumstances, which unquestionably demonstrate that the Petitioner exercised undue

influence over his mother in orchestrating her execution of the 2015 Will.

2. Did the Court of Appeals err by overlooking 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?

There was no shifting of the burden of proof. The Petitioner seems to equate the Order's recitation of actual facts to a shifting of the burden of proof. This case is replete with facts proving the undue influence imposed by the Petitioner over his mother. These facts have little to do with a presumption of undue influence created by the Petitioner's fiduciary and confidential relationship with his mother. These facts overwhelmingly establish the Petitioner's exercise of undue influence over his mother. The Respondents proved circumstances (ex. threats, restricted visitation, over-control and the altered bequests in the 2015 Will favoring the Petitioner) undeniably supporting a finding of undue influence, without even considering Almeter Robinson's susceptibility to be influenced, her capacity to execute the Will or the Petitioner's confidential or fiduciary relationship with her.

Judge Hood's Order succinctly made the following comments:

Judge Branham's Order discussed individually the following facts: (1) unjust distribution of the rest and residue solely to Appellant; (2) Appellant's total control of his mother, including limiting his siblings' visitation and conversations with their mother; (3) Appellant's confidential or fiduciary relationship with the testatrix; and (4) Appellant's failure to inform the drafter of the Will (Deborah Butcher, Esquire) that all of the property mentioned in the Will was not vested in the testatrix's name.

The Petitioner's Arguments, limited as they are to an analysis of the law, cannot be considered in a vacuum. The law must ultimately be applied to the facts. In this case, when the facts are considered, Judge Branham's Order must be sustained. As pointed-out by Judge Hood, Judge Branham's Order followed the same thought process of the Court in *Howard v. Nasser* regarding evidence, in addition to the confidential and fiduciary relationship, in support of the Will contestants' claims, to wit:

(1) Appellant was the primary caretaker of his mother; (2) Appellant had total control of his mother's person; (3) Appellant excluded or limited his siblings' visitation and conversations with decedent; (4) the 2015 Will was drafted upon information provided solely by Appellant; and (5) Appellant was to receive the entire rest and residue of the estate instead of its being divided by 9 and 10 children as in previous wills.

3. Did the Court of Appeals err by citing numerous authorities for the proposition that the contestant of the will has the burden of proof throughout the trial, and then affirming the Probate Judge's August 10, 2018, Order that imposed the burden of proof on the proponent of the will?

Was the error the citing of numerous authorities or the side-stepping of those authorities?

"Authorities" is one thing but the applicability of such authorities to the facts is something else. The facts in this case control the outcome. The Petitioner would have us think that the subject Will is a "simple will" (routinely exchanged between spouses) accompanied simultaneously by an exchange of durable powers of attorney. Not so. The 2015 Will was a bequest by an elderly mother, which significantly altered her prior Will, generally favoring one of her eight living children – the Petitioner. The power of attorney (executed earlier by Mrs. Robinson) was an instrument prepared by the Petitioner (himself), which, without the knowledge of his siblings, designated the Petitioner as their mother's exclusive agent.

The Petitioner fails properly to construe the subject Unpublished Opinion. While the Opinion does cite several authorities having to do with burden of proof, the Opinion is primarily based upon *Gunnells v. Harkness*, 431 S.C. 116, 847 S.E.2d 97 (Ct.App. 2020), which is cited as authority four times. In that case, which is notably quite similar, fact-wise, to the present case, the Court found that a fiduciary relationship existed, creating a rebuttable presumption of undue influence (with the contestants of the will still retaining the ultimate burden of proof to invalidate the will); but, interestingly, the Court found that the proponent of the will presented sufficient evidence to rebut this presumption. Nevertheless, the Court ultimately concluded that the Will was

a product of undue influence, pointing to the following facts: (1) the Will awarded the entire estate to the proponent; (2) the proponent restricted communication and visitation with the Testatrix; (3) the change in demeanor of the Testatrix; (4) the proponent failed to administer medication to the Testatrix; and (5) the Will was prepared by the proponent's attorney after a meeting, which the proponent arranged and attended.

### RESPONDENTS' QUESTION

Did the Petitioner exercise undue influence over his mother?

Yes, clearly he did. According to *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 222-23, 578 S.E.2d 329, 336-37 (2003), the following factors may prove useful "in determining whether undue influence was exerted over the testator:"

- (1) **Old age and physical and mental weakness . . .**
- (2) **The person signing the paper is in the home of the beneficiary and subject to his constant association and supervision . . .**
- (3) **Others have little or no opportunity to see [the testator] . . .**
- (4) **The Will is different from and revokes a prior Will . . .**
- (5) **It is made in favor of one with whom there are no ties of blood . . .**
- (6) **It disinherits the natural objects of [the testator's] bounty . . .**
- (7) **The beneficiary has procured its execution . . . .**

When this list of factors is applied to the facts of this case, each factor (except factor (5)) is squarely applicable to describe the circumstances surrounding the subject Will and its procurement, as follows:

**Old age and physical and mental weakness.** Almeter Robinson was almost 87 years old. She has only an eighth-grade education, and she was in poor physical health and required 24-hour

care.

**The person signing the paper is in the home of the beneficiary and subject to his constant association and supervision.** Almeter Robinson resided with the Petitioner exclusively beginning in May 2014 and continuing until her death in 2017. The Petitioner often touted the Power of Attorney (prepared by him and signed by his mother) as his authority to be the exclusive caretaker of his mother. The Petitioner's "control" even extended to overriding doctor's instructions for a nurse to regularly check on his mother.

**Others have little or no opportunity to see [the testator].** The Petitioner restricted visitation and communication with their mother by her other children, and he used threats, including threats of physical force, against family-members, in order to demonstrate his complete control over his mother.

**The Will is different from and revokes a prior Will.** The 2015 Will is remarkably different from, and expressly revokes, the two preceding Wills. The primary differences have to do with the residuary estate and the designated personal representative. In her earlier Wills, Almeter Robinson bequeathed her residuary estate to all of her children equally, and in her 2015 Will, Mrs. Robinson bequeathed the entirety of her residuary estate to the Petitioner. In her earlier Wills, she designated Mary (her daughter) as her Personal Representative; and in the 2015 Will, she designated the Petitioner as her Personal Representative.

**It disinherits the natural objects of (the testator's) bounty.** The 2009 Will left the rest and residue of Almeter Robinson's estate equally to her nine (9) children; and the 2015 Will left the entire rest and residue of the estate exclusively to the Petitioner.

**The beneficiary has procured its execution.** The Petitioner arranged for the preparation of the 2015 Will, and he accompanied his mother to the attorney's office to execute the Will. He

also provided instructions to Attorney Butcher and withheld important information regarding property ownership from Ms. Butcher.

[The foregoing was borrowed from Argument I in the Brief of Respondents to the Court of Appeals, pages 5 – 10. Please consult same for a more thorough discussion.]

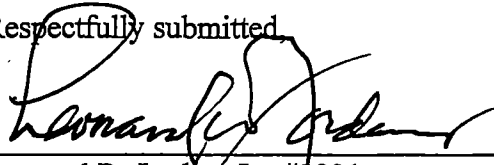
### CONCLUSION

Judge Hood specifically found that, “S.C. Code Ann. §62-3-407 states that the burden of establishing undue influence is on the contestants of a Will. Although this statute is not specifically cited in her Order, Judge Branham’s detailed evaluation of the circumstances of the 2015 Will shows that she not only considered the facts of undue influence presented by Respondents but that she found that Respondents produced sufficient evidence to support a finding of undue influence by Appellant.” (emphasis added)

Judge Branham did not shift the ultimate burden of proof on the issue of undue influence to the Petitioner. She concluded that Respondents, in fact, satisfied the burden of proof by unmistakable and convincing evidence. Although both judges concluded that the Petitioner failed to satisfy the burden to rebut the presumption of undue influence, this point can be considered moot, as the Respondents met their burden of proof on the issue of undue influence, convincingly showing that the Petitioner exerted undue influence over his mother, which improperly affected her judgment and will when performing her testamentary act.

The three appellate court judges followed the law and based their unanimous decision on the overwhelming evidence of undue influence. The Court of Appeals did not err in affirming the Order of the circuit court, which affirmed the Order of the Probate Court.

Respectfully submitted,



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Columbia, South Carolina  
November 4, 2022

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Leroy Robinson and Martha Aiken are

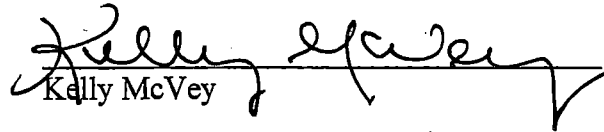
Respondents.

CERTIFICATE OF MAILING

I, Kelly McVey, of Jordan Law Firm, attorney for the Respondent, Martha Aiken, hereby certify that I have, this 4<sup>th</sup> day of November, 2022, served a copy of the attached Return upon John W. Wells, Attorney for Petitioner, by mailing a copy thereof to him, postage prepaid, to the address indicated below:

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