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S.C. SUPREME COURT

**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**UNPUBLISHED OPINION NUMBER 2022-UP-243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**

In the Matter of Almeter B. Robinson (Deceased)
Laverne Robinson,

Petitioner,

v.

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

Defendants,

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

Respondents.

REPLY

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QUESTIONS PRESENTED

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?

ARGUMENT

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.?

We know that the Probate Judge imposed the burden of proof on the Petitioner proponent of the will on the issue of undue influence because she says that she did. Page 4 of the August 10, 2018, Order is found on page 4 of the Appendix to the Petition for Writ of Certiorari. At the top of page 4 is the heading:

“A Confidential or Fiduciary Relationship between the Testator and the Beneficiary.”

Below the heading, the first sentence reads:

“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 (sic), the burden of proof rebutting undue influence falls on the beneficiary.” Appendix p.4 emphasis added

“This circumstance” refers to the heading quoted above which is the confidential or fiduciary relationship created by the Durable Power of Attorney.

In his Return, the Respondent quotes the second phrase of the first sentence on page 4, which does not convey the true meaning of this passage, which is that the confidential relationship shifts the burden of proof to the Petitioner. The burden of proof to rebut undue influence means that as to each fact relevant to the issue of undue influence, the Respondent did not have the burden of proof to prove the fact, the burden of proof was on the Petitioner to disprove the fact.

Also, in the Return, the Respondent quotes another half sentence from page 4 of

the Order:

“the Court finds that the burden to rebut undue influence was not met.”

Appendix p.4 emphasis added

From this carefully edited quotation, it is not clear that the trial judge refers to the burden of proof. However, together with the preceding sentence, the actual language from the Order is as follows:

“Argument was made on behalf of the Plaintiff that the burden of proof was met to rebut undue influence by testimony of Attorney Butcher wherein she testified that she did not believe that the decedent was under any undue influence of the Plaintiff beneficiary. The court finds that the burden to rebut undue influence was not met in as much as Attorney Butcher testified that she could not recall whether or not she met with the decedent before the will execution or if her staff took the information and prepared the documents.”

Appendix p.4-5

It is clear from the foregoing that the “burden to rebut undue influence” in the Respondent’s quotation refers to the “burden of proof” which cannot be shifted to the proponent of the will, and not to the burden of going forward to present evidence which can be shifted as argued more completely in the Petition for Writ of Certiorari.

The plain language in the August 10, 2018, Order shows that the burden shifted to the Petitioner because of the Durable Power of Attorney was the burden of proof.

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?

The Respondent’s argument on this section ignores the law and the clear language of Judge Branham’s Order and moves along to a recitation of a litany of facts supporting

the conclusion that the will was a result of undue influence. The problem is that as to each fact recited by the Respondent, the burden of proof was shifted to the Petitioner proponent of the will to disprove the fact, and the Respondent Contestant of the will had no burden to prove the fact. Once the burden of proof is shifted to the wrong party, the fact-finding process is so corrupted that each finding of fact is illegitimate. The Respondent complains that the Petitioner's arguments are "limited as they are to an analysis of the law," but the primary duty of appellate Courts is to fix errors of law, which is the point of this review.

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?

As to the Respondent's argument on this issue, he states that the will in question "significantly altered her prior will, and generally favored one of her eight living children, the Petitioner." Changing her prior will was the prerogative of the Testator, and the will at pages 28-312 of the Appendix divides the Testator's land between seven of her eight children. If the Petitioner intended to exert undue influence over the Testator, he failed miserably because he did not get a majority of the property under the will. The Petitioner asks the Court to read the will in question, Appendix p. 28-31, to see whether it unduly favors any child of the Testator.

As to the Respondent's Question Section of the Return, the Respondent returns to his argument of facts supporting the conclusion of undue influence. As to each of the six

(6) facts cited by the Respondent, the Probate Judge imposed the burden of proof on the Petitioner to disprove that fact, rather than imposing the burden of proof on the Respondent to prove that fact which was an error of law. This error of law corrupted the fact finding process for the judge acting as fact finder in the same way that an error of law in a jury charge calls into question the fact finding process of a jury.

CONCLUSION

As pointed out by the Respondent, the Petitioner's argument are limited to an analysis of the law. That is because the improper shifting of the burden of proof to the wrong party is a serious error of law that corrupts the entire fact finding process. If the fact finder is influenced by an error of law, then each and every finding of fact is suspect. Improper shifting of the burden of proof is an error of law that affects the outcome of the case by tainting every finding of fact.

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