STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Willie A. Rogers and Vennie Rogers,	)	
	)	
Plaintiffs/Appellants	)	**ORDER**
	)	
	)	2012-CP-42-3705
vs.	)	
	)	
	)	
Charles Carr, in his individual and Official Capacity as the Personal Representative of the Estate of Thurman L. Bomar, Deceased, Katherine Christian, and Joyce King	)	
	)	
Defendants/Appellees	)	

This is an Appeal from the Probate Court. The Order of the Probate Court upholds and admits to formal probate a Will that was challenged by Plaintiffs/Appellants. The Will is challenged on the grounds of forgery and undue influence. The exceptions raised on Appeal are mostly related to the forgery issue.

An action to set aside a will is an action at law. In re Estate of Cumbee, 333 S.C. 664, 670, 511 S.E. 2d 390, 393, (Ct. App. 1999). "If the proceeding in the probate court is in the nature of an action at law, the circuit court...may not disturb the probate judge's findings of fact unless a review of the record discloses there is no evidence to support them." Id, "In a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge." Golini v. Bolton, 326 S.C. 333, 342, 482 S.E2d 784, 789 Ct.App.1997).

Although the Will was self proving, the proponents of the Will took testimony from a witness to the Will and from the attorney who prepared the Will. The attorney who prepared the Will testified the Will cover contained the name of the firm in which he was practicing at the time the Will was drawn. He stated that the witnesses to the Will were witnesses who he regularly used during that time period to witness legal documents which he had prepared. One of the witnesses testified. She confirmed that she regularly witnessed documents prepared by the drafting attorney during that time period and she stated that the signature on the Will was her signature. Neither the attorney nor the witness specifically remembered the testator however, and did not recognize a picture of him. Appellant argues that the Court should not have accepted or given any weight to the testimony of these witnesses because they had no specific memory of the testator. I disagree. The Will was drafted over 20 years prior to being offered for probate and it is

not unexpected that these witnesses may not remember the testator personally nor recognize a picture of him. There is evidence to support the finding that the Will was properly executed and not forged.

The proponents of the Will offered into evidence several documents purportedly signed by Thurman Bomar. The documents were offered for comparison of those signatures to the signature on the Will to rebut the forgery allegation. The Probate Court found the signatures on three (3) witnessed and recorded Deeds showed similarities to the signature on the Will. Two (2) affidavits signed by the testator that had been recorded in the Probate Court in the estates of the testator's mother and father were introduced into evidence. The Court found that the signatures on these affidavits were very similar to the signature on the Will. The Probate Judge indicated that he was personally familiar with the attorneys who had witnessed the testator's signature on the Deeds and that he was familiar with the probate court personnel who had notarized the testator's signature on the affidavits and that having known these people, he believed that none of them would knowingly witness or notarize a forged document. The appellant argues that is reversible error for the Probate Court to place any weight on the judge's familiarity with these attorneys and employees. This is not reversible error. The fact that the signatures on these witnessed, notarized and recorded documents resemble the signature on the Will supports the finding of the Probate Court, standing by itself, without regard to the Probate Judge's familiarity with the attorneys and employees. If there is error, it is harmless. The identity of these attorneys and employees has no effect on this Court in its decision on this Appeal.

When the proponents of the Will presented the Will to the Probate clerk for proof and admission into Probate, one of the questions on the form petition asks for identification of intestate heirs. None were listed. The Probate Clerk had written on the Petition, "PR to try and find out additional intestate heirs before closing." Appellants maintain that they are intestate heirs of the decedent and that the proponents offering the Will were aware of that. The Personal Representative stated that although he knew the appellants were relatives of the decedent, he was not at that time certain the appellants were intestate heirs or that they were the only intestate heirs. Appellants argue that the proponents should be disqualified from inheriting from the decedent because they fraudulently omitted identifying the appellants as intestate heirs. I disagree. There is evidence to support the finding of the lower Court. The proponents of the Will are not related by blood to the decedent and it is not unreasonable that they would not be familiar with which of the decedent's relatives would fall into the line of priority as intestate heirs. It is reasonable that the Probate clerk would request that they further investigate this and report back to the Probate Court. Even if the proponents of the Will had knowingly excluded intestate heirs from the petition, while they may have been subject to other penalties, this, in and of itself, would not disqualify them from inheriting from the decedent and would not nullify the decedent's Last Will and Testament.

The Plaintiffs/Appellants alleged in their Complaint that they were heirs-at-law of the testator. The answer of the proponents denied this allegation and requested proof. The question of whether the appellants qualified as heirs at law of the decedent depends upon

whether their mother, Laura Burgan, shared the same father with the decedent. The decedent's father was not married to the mother of Laura Burgan. The Probate Court found that the appellants failed to establish this paternity and that the time for paternity to be established had expired. Appellants submit that this was in error. The Court finds it is unnecessary to address the issue of paternity of the Plaintiff's mother Laura Burgan. There was other substantial evidence tending to prove the validity of the Will. This being so, the issue of whether the appellants qualify as intestate heirs is not important.

The remaining exceptions raised by the appellant, and many of those discussed above, go to the credibility and weight of the evidence. Under the standard of review involved in this case, these questions are for the trial judge unless there is no evidence to support them. In this case there is evidence to support the findings of the Probate Court.

Any evidence of undue influence in the testimony is weak. None of the exceptions raised by the Appellants challenged the Probate Court's finding that the Will is free of undue influence.

After reviewing the transcript, considering the exceptions raised by the appellant, considering the arguments of counsel and applying the standard of review to the evidence, the decision of the Probate Court is affirmed.

IT IS SO ORDERED.

J. Mark Hayes, II
Judge
S.C. Circuit Court

4/19, 2013
Spartanburg, SC

FILED
CLERK OF COURT
SPARTANBURG COUNTY
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M. HOPE BLACKLEY