



the Will that he signed. In *Tompkins*, paraphrasing *Billinghurst*, the Court noted that "where capacity is in any degree doubtful at the time of the execution, there must be proof of instructions, or reading over."<sup>3</sup> In *Billinghurst*, the Court specifically noted that "[c]onsidering that the capacity of the deceased was extremely doubtful at the time of execution. . . when capacity is doubtful at the time of execution, and there is no evidence of instructions, especially where the act is done through the agency of the party interested, the proof of mere execution is insufficient."<sup>4</sup>

In this case, Movant Bernice Caldwell conceded that the Decedent was not mentally impaired, that he was of sound mind, and that he had the capacity to make a Will. There was no allegation or evidence of undue influence in this case. Instead, the Movant argued the Decedent was illiterate and did not understand what he signed.

There is no dispute that the Decedent was illiterate, but illiteracy does not equate to incapacity nor to an inability to understand.

In *Tompkins*, the Court concluded that the Will was invalid and noted that not only was there an absence of proof of the testator's intention, there was *direct* proof that the testator died without knowing contents of his Will. In this case, the Movant put on no proof that the Decedent did not understand the contents of the Will. Respondent Marshall credibly testified that over the years she routinely helped the Decedent with legal documents because he could not read, that she discussed the contents of the Will and the Decedent's intentions with him over a long period of time, and that he communicated to her his desire to leave his property to her so that she could care for his mentally challenged son. The credible testimony of Respondent Patricia Marshall supports the Court's decision that Sumter Mitchell had capacity to execute his Will and understood its contents, and based on the evidence as a whole, the Court did not deem the fact that the Petitioner helped the Decedent prepare the Will to be sufficient to invalidate the Will.<sup>5</sup>

<sup>3</sup> 17 S.C.L. 92, 1 Bail. 92 (1828).

<sup>4</sup> 1 Phill ECC, 197 (1810).

<sup>5</sup> See *Swiger v. Smith*, 426 S.C. 408, 827 S.E.2d 200 (Ct. App. 2019).

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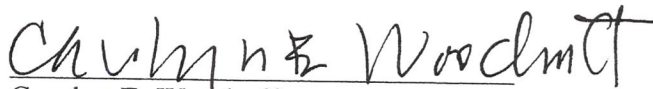
In this case, the Will was properly executed and the contestant neither alleged nor put on proof that it was not. Neither party called the witnesses to the Will to testify. Under the circumstances of this case which were established by both the Petitioner and Respondent Marshall, there is no statutory support or case law for proposition that the burden of proof shifts to the proponent of the Will to call the witnesses to the Will to testify.

Again, the Movant provided no credible evidence that the Decedent did not understand the contents of his Will. On the other hand, Respondent Marshall provided sufficient credible proof that the Decedent gave voice to his intentions in the Will. The Movant's argument discounts the presumption elucidated in South Carolina case law that a testator knows the contents of a properly executed Will, and she provided no credible evidence to the contrary to rebut the presumption. Ex Parte McKie, 107 SC 57, 91 SE 978 (1917).

Where the evidence showed that the Decedent had the mental capacity to make a Will, the Court correctly balanced the evidence put on by Respondent Marshall and the contestant's failure to produce evidence to support her position, to conclude the Decedent signed his Will knowing its contents. The Court declines to amend the Order entered August 16, 2022.

**IT IS SO ORDERED.**

Rock Hill, South Carolina  
October 12, 2022

  
Carolyn E. Woodruff  
Judge of Probate

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

CASE FILE NO.: 2021ES4600206

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2022 OCT 12 A 9:14

COUNTY OF YORK

CAROLYN E. WOODRUFF  
JUDGE OF PROBATE  
YORK COUNTY, SC

IN THE MATTER OF SUMTER MITCHELL, III

COVER SHEET

CHECK ONE:

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ACTION DISMISSED \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:  See attached Order Denying Motion to Amend Or Reconsider;  Statement of judgment by the court.

Dated at York, South Carolina, this 12<sup>th</sup> day of October, 2022.

Carolyn E Woodruff  
Carolyn E. Woodruff  
Judge of Probate

This Order was entered on the 12<sup>th</sup> day of October, 2022, and copies mailed first class the 12<sup>th</sup> day of October, 2022, to attorneys of record or to parties (when appearing *pro se*) as follows:

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