

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE PROBATE COURT

Case No.: 2021-ES-46-00206

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2022 AUG 16 A 11: 19

CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

Bernice Caldwell,)
Petitioner,)

ORDER

vs.)

Patricia Marshall, in her own right and as)
Personal Representative, Dennis Mitchell,)
Sharon M. Culp, Thomas Lemont Davis,)
Sumpter O'Neal Caldwell and Latrenda)
Robinson,)

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Feb 22 2024

SC Court of Appeals

Respondents.)

THIS MATTER comes before the Court for a determination of the validity of the Last Will and Testament of Sumter Mitchell III (hereinafter referred to as the Decedent).

The Summons and Petition were filed June 3, 2021. A hearing was held July 18, 2022. Present were Petitioner Bernice Caldwell, represented by attorney J. Martin Foster, and Respondent Patricia Marshall, represented by attorney Charles Baxter Burnette, IV. Also present were Respondents and witnesses Sharon Culp and Latrenda Robinson (individually and as Guardian *ad Litem* for Dennis Mitchell), and Respondent Sumter O'Neal Mitchell.

The case also involves a dispute over title to real property located at 1118 Green Street Extension in Rock Hill, South Carolina (hereinafter referred to as the Subject Property). The Subject Property was devised to Respondent Marshall by the Decedent, who died November 9, 2020. Respondent Marshall executed a deed of distribution naming herself as grantee pursuant to the Decedent's Will. The deed of distribution was recorded in the York County Register of Deeds on March 9, 2021.

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Carolyn E. Woodruff
PROBATE JUDGE, YORK COUNTY, SC

Petitioner contests the validity of the Will on the grounds of incapacity and undue influence, and alleges that Petitioner is equitably entitled to the Subject Property. Petitioner alleged the Decedent did not have capacity to devise the Subject Property and was subject to undue influence by Respondent Marshall. Petitioner further alleged that she made improvements to the Subject Property with the expectation of receiving ownership.

After hearing the evidence presented, the Court concludes (1) the Decedent's Last Will and Testament executed March 19, 2019 (hereinafter referred to as the 2019 Will) is valid, (2) the Petitioner is not equitably entitled to ownership of the Subject Property, and (3) the Petitioner is entitled to recover from the assets of the Estate the expenses for which she documented payment: the costs of adding decks to the Subject Property in the amount of \$3,717.69 and property taxes in the amount of \$50.79.

Findings of Fact

The 2019 Will was executed March 19, 2019 at the residence of Respondent Marshall. Respondent Marshall testified that Decedent, who was her brother, brought a Will template to her and directed her to write her name in the document's blanks naming her as the devisee of the Decedent's property. Respondent testified that Decedent had no issue of mental incapacity but was illiterate and often relied on her to fill out legal documents. She testified that the process of completing the blanks in the 2019 Will took place over a period of time and the Decedent directed that his real estate be devised to Respondent Marshall with the understanding that his mentally challenged son, Dennis Mitchell, could live in the Subject Property. Respondent testified that after the document was completed she read and explained the 2019 Will to the Decedent; the Decedent approved the terms of the 2019 Will; and the Decedent signed the 2019 Will. She also testified that shortly thereafter in the presence of two witnesses, the Decedent acknowledged his signature and identified the 2019 Will as his Last Will and Testament, and the witnesses signed the document.

Petitioner, who currently occupies the Subject Property pursuant to a lease agreement, testified the Decedent verbally promised her title to the Subject Property by telling her "to move in and not move out."

Although the Petitioner's testimony went back and forth about whether the Decedent was of sound mind: he was of sound mind when he told her to move into the house and not move out, he knew exactly what she was doing when she made repairs, he was clear headed until he was on morphine two weeks before he died, when they talked he seemed to know what he was talking about, and at times he appeared to be declining mentally, she gave no testimony about the Decedent's state of mind at the time he signed the 2019 Will.

She stated she had no proof of the Decedent's mental capacity at the time he signed the 2019 Will. The Petitioner did not dispute the Decedent's signature on the 2019 Will. Petitioner did not produce any testimony that the 2019 Will was improperly witnessed.

Both Petitioner and Respondent Marshall testified that Respondent Dennis Mitchell is "mentally challenged," but there was no evidence presented to the Court that he had been adjudicated to be an incapacitated person. He was not present at the hearing although he was represented by Latrena Reeder as his guardian *ad litem*.

Witness Sharon Culp testified that she did not notice a lack of capacity in the Decedent.

No professional testimony was given.

Conclusions of Law

I. Validity of the Will

The Court concludes the Petitioner did not prove the Decedent was incapacitated at the time he signed the 2019 Will, or that he was unduly influenced by Respondent Marshall. The fact that Decedent was illiterate and Respondent Marshall was the scrivener and devisee does not

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negate Decedent's ability to execute a valid Will and understand its terms. Swiger by and through DeHaven v. Smith, 426 S.C. 408, 827 S.E.2d 200 (2019).

A. *Mental Incapacity*

The test of whether the Decedent had the capacity to make a will is whether he knew (1) his estate, (2) the objects of his affections, and (3) to whom he wished to give his property. Hellams v. Ross, 268 S.C. 284, 233 S.E.2d 98 (1977); In re Washington's Estate, 212 S.C. 379, 46 S.E.2d 287 (1948); Hembree v. Estate of Hembree, 311 S.C. 192, 428 S.E.2d 3 (Ct.App.1993). "Generally, when the formal execution of a will is admitted or proven, a *prima facie* case in favor of the will is made out." Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982).

Here the evidence supports the conclusion that the Decedent understood the contents of his estate, how the estate was being devised, and to whom the Subject Property was being devised. Respondent Marshall is entitled to rely on the legal presumption that upon proof of due execution by a competent testator, the testator knew the contents of the instrument, which casts the burden on the Petitioner/contestant to prove the testator's lack of knowledge. Pursuant to In Re McNeill's Estate, 259 SC 55, 190 SE2d 754 (1972) and Ex Parte McKie, 107 SC 57, 91 SE 978 (1917), if no further showing is made other than that the will was executed by a capable testator, the proponent has succeeded in establishing the essential fact of knowledge of contents. In this case, there was no disinterested third party or expert witness testimony presented by either the Petitioner or Respondent Marshall that the Decedent did not duly execute and understand the terms of his Will. Respondent Marshall, as a proponent of the Will, may rely on the presumption which, in the absence of other proof, is sufficient to establish the Decedent knew the contents of the 2019 Will.

It is settled law that when the formal execution of a will is admitted or proved, a *prima facie* case in favor of the Will is made out, and as a general rule the burden is then on the

contestants to prove undue influence, incapacity or other basis of invalidation, and such burden remains upon the contestants throughout. In determining whether the contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants. Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969).

Viewing the evidence in a light most favorable to the Petitioner, the Court concludes the Petitioner did not carry the burden of proof which requires clear and convincing evidence of a lack of capacity and undue influence.

B. Undue Influence

There was no evidence of undue influence in this case. While Respondent helped the Decedent with his affairs due to his illiteracy and was named his agent pursuant to a power of attorney, which indicates the Decedent interposed a special confidence in Respondent Marshall and creates a presumption of undue influence, there was no testimony which established clearly and convincingly that Respondent unduly influenced him to sign the 2019 Will. Any presumption was rebutted.

"General influence is not enough. A contestant must show that the influence was brought directly to bear upon the testamentary act." Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "The influence must be of such a degree that it dominated the testator's will, took away his free agency, and prevented the exercise of judgment and choice by him. If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." In re Last Will and Testament of Smoak, 286 S.C. at 424, 334 S.E.2d at 809.

As pointed out in Howard v. Nasser 364 S.C. 279, 613 S.E.2d 64, 68-69 (Ct. App. 2005):

We emphasize that although 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. See

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S.C. Code Ann. § 62-3-407 (Supp. 2004) ("Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof."); *Calhoun*, 277 S.C. at 530, 290 S.E.2d at 417 ("The contestants continue to bear the burden of proof throughout the will contest."); *Smith v. Whetstone*, 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where will is formally executed the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end").

While the Petitioner and Respondents other than Patricia Marshall may be disappointed in the Decedent's 2019 Will, South Carolina case law is very clear that a testator may devise his or her estate to those he chooses regardless of what those omitted may find satisfactory. See *Matheson et al. v. Matheson*, 125 S.C. 165, 118 S.E. 312 (S.C. 1923) and *Lee's Heirs v. Lee's Executors*, 329 S.C. 251, 495 S.E.2d 454 (1997)).

The Court concludes that the 2019 Will is valid. Respondent Marshall is the sole devisee under the 2019 Will.

II. Equitable Ownership

The Court also concludes the Petitioner is not entitled to equitable ownership of the Subject Property. The Petitioner admitted she was a tenant. She signed a lease in order to provide an address so she could obtain food stamps for her son. She and the Decedent did not sign a contract for her to make improvements in exchange for ownership. She testified at one point that she did not have an understanding with the Decedent about what would happen to the Subject Property after his death, and that she didn't know why the Decedent wanted her to stay in the Subject Property. She later testified that she believed the Decedent intended to give her the Subject Property based on his ambiguous and open ended statement that she should move in and not move out, but she had no written or verbal contract that the Decedent intended to give her the Subject Property. She had no knowledge it was mortgaged. She testified that she did not intend for Dennis Mitchell to live there even though he was on the lease, but that he would be welcome, and made the inconsistent statements that the Decedent did not want to hurt her siblings by giving the Subject Property to her, but that he wanted her to have it.

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• To avail herself of the equitable remedy of promissory estoppel, the Petitioner must show an unambiguous promise, a reliance on that promise, that the Decedent expected the reliance, and that she sustained injury in reliance on the promise. Petitioner did not prove these elements. The promise to be enforced must be unambiguous with clearly articulated, enforceable terms. See A&P Enterprises, LLC v. SP Grocery of Lynchburg, LLC, 422 S.C. 579, 812 S.E.2d 759 (S.C. Ct. App. 2018). The Petitioner did not provide evidence to show that the Decedent made a clear promise or an inconsistent disposition of the Subject Property which was sufficient for the Court to conclude that she is entitled to an equitable ownership interest in the Subject Property.

There was testimony by Respondent Marshall that the Decedent wanted her to preserve the property for the use of his mentally challenged son, Dennis Mitchell. Even the Petitioner acknowledged that Dennis Mitchell was on the lease because the Decedent wanted to ensure him a place to live. Unfortunately, no person alleged a constructive trust of the Subject Property for the benefit of Dennis Mitchell, so that is not an option for the Court to consider.

III. Recovery of Expenses

The Court declines to apply the betterment statutes set forth in S. C. Code Ann. § 27-27-10 as they apply to disputes about title to property and here the relationship is that of landlord and tenant. Case law supports the conclusion, however, that the Petitioner is entitled to reimbursement of some of the funds she spent on improvements. Gheen v. Gheen, 276 S.C. 404, 279 S.E.2 361 (1981). The Petitioner alleged and testified that she made significant improvements to the Subject Property but the only evidence the Court finds probative is that Petitioner and Respondent Marshall agreed that the Petitioner paid for decks added to the house and provided paid receipts in the amount of \$3,717.69. The Court also concludes there was no dispute that the Petitioner paid the 2021 property taxes in the amount of \$50.79. None of the other expenses were credibly substantiated. The other receipts were admitted into evidence to

show what she “said she paid,” but are not receipts marked as paid. The Petitioner had no proof of property taxes paid other than those for 2021.

The Court concludes the witnesses credibly testified the Decedent had knowledge of the improvements being made and the Petitioner testified that at some point she intended to become the owner even though she could not establish a credible basis for that belief. In *Gheen* the Court stated “that a tenant who in good faith makes improvements to the leasehold, with knowledge and consent of the lessor, with the intent of enjoying them in the event he becomes the owner, is entitled to reimbursement for the value of the improvements to the estate.” *Gheen*, 276 SC 404, 408.

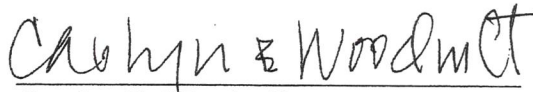
Attorneys' Fees

Pursuant to S. C. Code Ann. §§62-1-111 and 62-3-720, Respondent Marshall's attorney's fee may be paid from the assets of the Estate to the extent available. The Petitioner is responsible for her attorney's fees.

IT IS ORDERED that:

- a. The Last Will and Testament executed March 19, 2019, by Sumter Mitchell III is valid and Respondent Marshall is the sole devisee;
- b. The Petitioner is not equitably entitled to ownership of the Subject Property; and
- c. The Petitioner is entitled to recover from the assets of the Estate the expenses for which she documented payment: the costs of adding decks to the Subject Property in the amount of \$3,717.69 and 2021 property taxes in the amount of \$50.79.

York, South Carolina
August 15, 2022


Carolyn E. Woodruff
Judge of Probate

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

CASE FILE NO.: 2021 ES 460276

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COUNTY OF YORK

2022 AUG 16 A 11: 24

IN THE MATTER OF SUMTER MITCHELL, III

CAROLYN E. WOODRUFF
JUDGE OF PROBATE
YORK COUNTY, SC

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; Statement of judgment by the court.

Dated at York, South Carolina, this 15th day of August, 2022.

Carolyn E. Woodruff

Carolyn E. Woodruff
Judge of Probate

This Order was entered on the 15th day of August, 2022, and copies mailed first class the 16th day of August, 2022, to attorneys of record or to parties (when appearing *pro se*) as follows:

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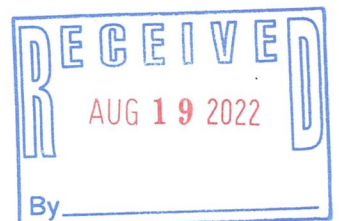
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