STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge for Common Pleas

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SC Court of Appeals

Appellate Case No.: 2023-001842

Dorthea Ryles .....Appellant,

v.

Leon Ryles, Willie N. Ryles, and Theresa Williams, Respondents..... Respondents.
IN RE: The Estate of Edith W. Ryles, Estate File: 2018-Es-21-00899

INITIAL BRIEF OF APPEALLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENTS OF ISSUES ON APPEAL

I. Did the Circuit Court err in its discretion in agreeing with the allowance and support of the testimony of lay witnesses to give expert opinion as to the confusion of the decedent at the time of the signing of the Last Will and Testament and Power of Attorney?

II. Did the Circuit Court err in finding that the Decedent lacked the testamentary capacity to execute the Last Will and Testament and Power of Attorney, although the Decedent had actual knowledge of the nature and extent

III. of her estate, the nature objects of her bounty, and to whom she wished to give her property to?

IV. Did the Circuit Court err in ruling that undue influence was found between the decedent and Appellant?

V. Did the Circuit Court err in its ruling in finding that the Appellant breached her fiduciary duty and in awarding the full amount of damages be reimbursed to the Estate?

STATEMENT OF THE CASE

On August 10, 2018, Edith W. Ryles died testate leaving a Law Will and Testament dated December 15, 2017, and naming Dorthea Ryles as Personal Representative of her Estate. Appellant Dorthea Ryles commenced this action by the filing of the Petition for Formal Testacy and/or Formal Appointment, the Last Will and Testament of Edith Ryles, and the Obituary of Edith Ryles with the Florence County Probate Court on November 26, 2018.

The Florence County Probate Court then appointed Dorthea Ryles the Personal Representative of the Estate of Edith Ryles on November 30, 2018. Tax Notices for the property of Edith Ryles both in Florence County, South Carolina and Essex County, New Jersey, were filed with the Florence County Probate Court on December 11, 2018. Following the Tax Notices, Dorthea Ryles filed a Notice to Creditors for the Estate with Florence County Probate Court on December 28, 2018.

On June 24, 2018, the Order Vacating Final Judgement (Case No.: F-003449-15) was filed with the Florence County Probate Court regarding property located at 200 South 8th Street in Newark, New Jersey owned by Willie and Edith Ryles. On February 5, 2019, PNC Bank filed with the Florence County Probate Court, a claim form regarding the Account No.: ending in 6418 belonging to the decedent, Edith Ryles. PNC bank then filed a Statement of Proof and Claim against the Estate regarding this account on February 3, 2019.

The Respondent Leon Ryles, by way of his Attorney, Brown Johnson, filed a Summons and Complaint regarding the Estate of Edith Ryles against Dorthea Ryles on April 30, 2019. In the Complaint filed by Leon Ryles, he claims that the Decedent was in poor health, both mentally and physically, and that, due to her sickness and infirmities, put her in a condition of great mental weakness and unable to understand and comprehend the Last Will and

Testament dated December 15, 2017. The Respondent, Leon Ryles, claimed that the Decedent lacked sufficient mental capacity to execute a Will and that through undue influence by the Appellant, the Decedent executed the Will. The Defendant, Leon Ryles, stated that the actions of Dorthea Ryles were intentional to interfere with the Respondent Leon Ryles and the other Respondents.

On May 10, 2019, the Inventory and Appraisement of the Estate of Edith Ryles was filed with the Florence County Probate Court, valuing the Estate at $211,700.00. Following this, Ascension Point Recovery Services, LLC, filed a Creditor's Claim and Statement of Creditor's Claim regarding the Sears Gold Mastercard owned by the Decedent on May 13, 2019 in the amount of $1,147.55.

The Appellant, by way of her Attorney, Charlie Blake, filed an Answer on May 17, 2019 with the Florence County Probate Court. Brown Johnson, Attorney for Respondent Leon Ryles, then filed a Notice and Motion to Amend Complaint and a Proposed Amended Summons and Amended Complaint on February 3, 2020 to include Respondents Willie N. Ryles and Theresa Williams. In the Amended Complaint, the Defendants requested that (1) the Will be declared void and be set aside and the that the title to the property in question be distribute to the Intestate Heirs of the Decedent; (2) the Power of Attorney be set aside and the title to all property both real and personal, be distributed to the Intestate Heirs of the Decedent; (3) The Petitioners (in this matter, the Respondents) be awarded actual damages, punitive damages, attorney's fees, and the costs of this action; (4) and all other relief that is just and proper. The Appellant's Attorney then filed on March 11, 2020 the Responses to Petitioners Request for Admission.

Appellant's Attorney then filed an Affidavit on June 25, 2020 where the Appellant denied all claims and stated the Appellant was not interested in Mediation nor a settlement. On July 10, 2020, Attorney Brown Johnson filed an Affidavit on his behalf to verify the Affidavit of

Appellant's Attorney. On May 14, 2021, Proof of ADR was filed by Attorney for the Respondents, where Mediation had been held on May 14, 2021 but it ended in an impasse.

A Final Hearing/Trial on the Merits on the Petition for Formal Testacy was held on July 22, 2021 in front of the Honorable Jesse Cartrette of the Florence County Probate Court. A Proposed Order was sent to the Court by Respondent's Attorney on October 8, 2021 and was filed on October 11, 2021. The Court issued the Order on November 2, 2021, holding that the Last Will and Testament and Power of Attorney of Edith Ryles be set aside based on the evidence and lay testimony presented to the Court proving that Edith Ryles lacked the necessary capacity to execute such documents. The Court found that Dorthea Ryles had undue influence over her mother to execute both of these documents and that she breached her fiduciary duties regarding the funds of the Estate of Edith Ryles in the amount of $212,866.12. The Court then further granted actual damages to the Respondents and ordered that Ms. Dorthea Ryles was to reimburse the Estate for these amounts, as well as attorney's fees and court costs in the amount of $25,987.24.

Appellant timely filed her Notice of Appeal to the court of Common Pleas on November 11, 2021, by way of her counsel, James R. Snell, Jr, appealing the Order issued November 2, 2021. The Appellant then filed the Statement of Issues on Appeal with the Court of Common Pleas on December 17, 2021, stating the following:

(1) the Probate Cout abused its discretion in allowing the testimony of a lay witness to give expert opinions as to the confusion of the decedent at the time of the signing of the Last Will and Testament and the Power of Attorney;

(2) the Probate Court erred in selectively applying credibility to the witnesses' testimony in support of the Defendants (in this matter, the Respondents), but then

disregarding the testimony made to the Decedents testamentary capacity and those in support of the Appellant;

(3) the Probate Court erred in ruling that the Decedent did not meet the stand of testamentary capacity to execute the Last Will and Testament and Power of Attorney;

(4) the Probate Court erred in requiring that the Appellant had to show that the Decedent had actual knowledge of the nature and extent of her estate, the nature of objects of her bounty, and to whom she wished her property to go to instead of requiring the Defendants (in this matter, the Respondents) to show that the Decedent lacked capacity to show or understand those things;

(5) the Probate Court erred in ruling that undue influence was found between the Decedent and the Appellant;

(6) the Probate Court abused its discretion in ordering the Appellant to pay Attorney's Fees;

(7) the Probate Court erred in ruling that the Appellant breached her fiduciary duty;

(8) the Probate Court erred in setting aside the Last Will and Testament and Power of Attorney presented to the Court without asking for a prior Last Will and Testament or Power of Attorney to be presented to dispute the Decedents contested Last Will and Testament and Power of Attorney.

The Appellant, by way of her Attorney, then filed the Appellant's Designation of Matter to be Included in the Record on Appeal with the Florence County Court of Common Pleas on January 17, 2022, along with the Brief of the Appellant. The Respondents, by way of their attorney, filed with the Florence County Court of Common Pleas, Respondent's

Designation of Matters to be Included in the Record on Appeal, on January 25, 2022.

The Court then filed on January 26, 2022, Order Granting Respondent's Motion for Extension, to grant the Respondents to submit their Designation of Matter to Be Included in the Record on appeal by January 28, 2022 and until March 14, 2022 to file their Brief. The Respondents then filed on February 23, 2022 the Brief of the Respondent. In the Brief of the Respondent, the Respondents argued the following:

(1) the Probate Court did not abuse its discretion in allowing the testimony of lay witnesses to give opinions as to the confusion of the decedent at the time of the signing of the Last Will and Testament and Power of Attorney;

(2) the Probate Court did not err in allegedly selectively applying credibility to those witnesses who testified in support of the Respondents, but then disregarding the testimony made regarding the decedent's testamentary capacity by the Appellant;

(3) the Probate court did not err in ruling that the decedent did not meet the standard for mental capacity to execute the Last Will and Testament and Power of Attorney;

(4) the Probate Court did not err and did not fail to require that the Respondents to show the descendant's lack of capacity to understand the nature of her estate. The natural objects of her bounty, and to whom she wished to give her property; the Probate court did not improperly shift this burden to the Appellant;

(5) the Probate Court did not err in ruling that undue influence existed;

(6) the Probate Court did not abuse its discretion in ordering the Appellant to pay attorney's fees;

(7) the Probate Court did not err in finding that the Appellant breached her fiduciary duty; the Appellant violated her duty to keep records;

(8) the court did not err in failing to ask for a prior Last Will and Testament or Power of Attorney.

Following the Brief of the Respondent, the Appellant, by way of her Attorney, filed the Appellant's Reply to the Defendant's Return to Brief of Appellant on March 4, 2022. The Appellant filed the Record on Appeal on March 18, 2022.

The Appellant argued further in the Reply Brief that the Probate Court erred in its discretion to allow the lay witnesses to give expert testimony regarding the Decedent and that the Probate Court erred in ruling that the decedent did not meet the standard of testamentary capacity to execute the Last Will and Testament and Power of Attorney.

This matter was argued before the Florence County Court of Common pleas on November 10, 2022 via Webex in front of the Honorable Clifton B. Newman. Attorney Megan Gresham with the Law Office of James R. Snell, Jr., LLC was present on behalf of the Appellant and Attorney Brown Johnson was present on behalf of the Respondents. The Attorney for the Appellant argued about the lay witnesses being able to testify as to the capacity of the Decedent and the Probate Court's division of the damages. The Attorney for the Respondents argued that there was an abundance of evidence provided to support the Probate Court's findings in that the Decedent lacked sufficient testamentary capacity and the capacity to execute the Power of Attorney, that both documents were as the result of undue influence, and that the Appellant breached her fiduciary duty.

The Florence County Court of Common Pleas then issued an order dismissing the Appeal from Probate Court on December 28, 2022 based on the Orders of Probate Court and the arguments of the parties and that there was an abundance of evidence supporting the findings by Probate Court. The Appellant by way of her Attorney, then filed a Motion to

Reconsider on January 6, 2023 further arguing the following: (1) the Probate Court abused its discretion in allowing lay witnesses to give expert opinions regarding the confusion of the Decedent; (2) the Probate Court erred in requiring the Appellant to show the Decedent had actual knowledge of the nature and extend of her estate instead of requiring the Defendants (in this matter the Respondents) to show that the Decedent lacked the capacity to understand; (3) the Probate Court abused its discretion in ordering Attorney's fees; (4) the Probate Court erred in its ruling that the Appellant breached her fiduciary duty; and (5) the Probate Court erred in ruling that the Appellant should pay the damages to the Respondent's rather than the Estate.

The Florence County Court of Common Pleas then issued an Order Denying the Motion to Reconsider on November 8, 2023 based on the previous hearing the motion filed by the Appellant.

The Appellant, then by way of her Attorney, timely filed a Notice of Appeal with the South Carolina Court of Appeals on November 27, 2023.

STATEMENT OF FACTS

This matter arises out of dispute regarding the Last Will and Testament and Power of Attorney signed and executed by the Decedent, Edith Ryles in the Florence County Probate Court. At its heart, this case presents the question of whether Dorthea Ryles, Appellant, had undue influence over the Decedent, who the Respondents claim lacked the capacity to execute the legal documents in dispute. It is also in question if the Appellant breached her fiduciary duties regarding the Estate's funds for personal gain and to deplete the Estate.

On April 9, 2016, the Decedent was found walking in the street in front of her home in her bathrobe with her walker. Following this, on June 29, 2016, the Decedent executed her Power of Attorney and then on December 15, 2017, executed her Last Will and Testament. In the Power of Attorney, the Decedent gave the Appellant access to her finances.

The Decedent Edith Ryles executed a Last Will and Testament and a Power of Attorney through the Hawkins Tax Service, which she had built a relationship with, along with her late husband, over the years via handling of their tax returns. Although Hawkins Tax Service executed these documents without a law license, it was at the request of the Decedent to have these documents drafted and executed.

Upon the death of the Decedent Edith Ryles on August 10, 2018, an Estate was opened by her Personal Representative, Dorthea Ryles. The Decedent died at the age of 88 and in poor physical health, and, as the Respondents claim, in poor mental health. Upon her death, she owned two residences in New Jersey, one of which the Appellant resided. The other property was the residence of the Decedent's brother, Alfonzo. At the time of the signing of the Power of Attorney, the residence of Alfonzo was being sold for unpaid property taxes. It was upon the Estate being opened that the Prospective Heirs contested the Last Will and Testament of the Decedent and sought for it and the Power of Attorney of the Decedent to be invalidated in the Florence

County Probate Court. (Common Pleas Record on Appeal Pages 87-89).

The Heirs, the Respondents, contested the Power of Attorney on the grounds of breach of fiduciary duties by Dorthea Ryles, the Appellant, and her spending, which they believe significantly affected the Estate. (Common Pleas Record on Appeal Pages 35-36). The Heirs, the Respondents, also contested the Last Will and Testament, stating that the Decedent lacked the mental capacity to execute such documents, as well as claiming that the Appellant had undue influence over the Decedent in execution of these documents. (Common Pleas Record on Appeal 35-37).

Although this case was unable to be successfully mediated, the case eventually was presented to the Florence County Probate Court and an Order was issued on November 2, 2021, regarding the matter of Power of Attorney of the Decedent, the Last Will and Testament of the Decedent, the Fiduciary Duties of the Appellant, and the Defendants' request for damages and attorney's fees. In the Final Hearing, witnesses Vera Askins, Willie Ryles, Officer Justin Chatlost, and Officer Jared Barkdoll were able to testify regarding the relationship they had with the Decedent and what they witnessed regarding her mental capacity. The Appellant was also able to testify as an adverse witness to her relationship with the Decedent, her role regarding the Power of Attorney, her use of the accounts in question by the Respondents, and her role as to the Last Will and Testament.

The Respondents also raised that the Appellant breached her fiduciary duties in her role as Power of Attorney by her spending of the accounts of the decedent. Although there were transactions by the Appellant for personal expenses, the Appellant was also repairing and maintain the property that was to be preserved for the Estate.

This matter went on to be further argued in the Florence County Court of Common pleas based on the disputes of the following: allowing lay witnesses to testify to the confusion of the Decedent; applying credibility to the witnesses of the Respondents over those in support of the Appellant; the Decedent not meeting the standard testamentary capacity to execute the Last Will and Testament and the Power of Attorney; requiring the Appellant to show that the Decedent had knowledge of her Estate versus the Respondents requirement of showing the Decedent lacked capacity to understand; the Last Will and Testament and Power of Attorney were the result of undue influence by the Appellant on the Decedent; ordering the Appellant to pay Attorney's fees; the Appellant breached her fiduciary duty; setting aside the Last Will and Testament and Power of Attorney without asking for a prior Last Will and Testament or Power of Attorney to dispute the matters in question.

STANDARD OF REVIEW

"The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. Code Ann.§ 62-l-308(i); Golini v. Bolton, 326 S.C. 333,482 S.E.2d 784 (Ct. App. 1997) (in a case involving the validity of a decedent's will, an appeal from a probate court to a circuit court must be treated as a case at law); Campbell v. Christian, 235 S.C. 102, 110 S.E.2d 1 (1959) (in a case involving the validity of a decedent's will, an appeal from a probate court to a court of common pleas is considered to be a case at law rather than one in equity).

"The standard of review applicable to cases originate in the probate court is controlled by whether the underlying cause of action is at law or in equity. Howard v. Mutz, 315 S.C. 356, 361-62, 434 S.E.2d 254, 257-58 (1993) (noting the circuit court may not disturb the probate court's findings of fact on appeal in an action at law unless there is no evidence action in which the circuit court may make factual findings according to its own view of the preponderance of evidence). The question of whether an action is set aside a power of attorney and a revocation of a power of attorney on the ground of mental incompetency is at law or in equity has not been previously addressed in South Carolina." In re Thames, 344 S.C. 564, 564-568, 544 S.E.2d 854 (S.C. App.2001).

"When an appeal involved stipulated or undisputed facts, an appellate court is free to review whether the trial court properly applied the law to those facts." J.K. Constr.,Inc. v.W. Carolina Reg'l Sewer Auth., 336 S.C. 162,166,519 S.E.2d 561,563 (1999). "In such cases, the appellate court owes no particular deference to the trial court's legal conclusions." *Id.* In this case, there is no dispute over the facts, but simply a dispute over the capacity of the Decedent to execute legal documents regarding her Estate, whether the Appellant had undue influence over the Decedent, and if the Appellant breached her fiduciary duties. This Court may therefore freely review whether the Court properly applied the law.

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 and this 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, 326 S.C. at 342, 482 S.E.2d at 789 (Ct. App. 1997).

On an Appeal from an Order admitting a Will or copy thereof for Probate, the Court of Appeals will review the Record to see if there was any evidence to reasonably support factual findings of the Probate Court. *Id.* ; Finley v. Gravely, 302 S.C. 220, 394 S.E.2d 847 (Ct. App. 1990) (in a case that involves the validity of a decedent's will, although the court of appeals cannot weigh the evidence, it can and must determine whether the evidence in the record "reasonably supports" the judgement of the circuit court below); Goeth v. Browning, 146 S.C. 7, 18, 143 S.E. 362, 366 (1928) (since the question whether two separate sheets of paper constituted the will of a decedent involved underlying fact issues that were submitted to a jury, the South Carolina Supreme Court could properly determine whether the evidence supported the jury's factual findings-"[w]e find sufficient testimony to sustain the verdict of the jury, and there was no error on the part of the judge in refusing to disturb that verdict").

The question of due execution of a Will and other factual issues are properly submitted to a Circuit Court Jury in a case involving an Appeal to a Circuit Court from a Probate Court decision. In re O'Neill's Estate, 259 S.C. 55, 109 S.E.2d 754 (1972). If it appears, on an Appeal from a Decree of the Probate Court in Probate proceedings, that the case was decided on a question of law without considering the facts and issues of fact were involved, the Circuit Court can order a new trial in the Probate Court. Mordecai v. Canty, 86 S.C. 470, 68 S.E.

1049 (1910).

ARGUMENTS

I. **Did the Circuit Court err in its discretion in agreeing with the allowance and support of the testimony of lay witnesses to give expert opinion as to the confusion of the decedent at the time of the signing of the Last Will and Testament and Power of Attorney?**

In regards to the Estate of Edith Ryles, during the Final Hearing in the Florence County Probate Court, Counsel for the Petitioners, Leon Ryles, Willie Riles, and Theresa Williams, called for witness testimony Officer Justin Chatlosh with the Florence Police Department, Sled Agent Officer Barkdoll, Catherine White, Vera Lewis, Vera Askins, Willie Ryles, and Dorthea Ryles. Officer Chatlosh, Vera Askins, and Willie Ryles testified in the support of the Petitioners and their claim.

Officer Chatlosh testified to being the responding Officer who reported to the Decedent's address on April 9, 2016, after receiving a call that the Decedent was wondering outside of her home at night in her bathrobe. Officer Carlson testified that, "she knew her address, but did not think that the house she was in front of was hers, which it was." (Common Pleas Record on Appeal Page 92 lines 24-25, Page 93 line 1). Vera Askins, a witness of the Petitioners and Niece of the Decedent, testified that, when asked when Edith's health began to fail, "From my recollection, I would say 2014, somewhere along there." (Common Pleas Record on Appeal Page 120, lines, 6-7). Counsel for the Respondents then asked Askins, "Based on your close family connection and your close relationship with your aunt, in your opinion, did Edith have sufficient mental capacity to understand and to know what she was signing, when she signed... a power of attorney?" (Common Pleas Record on Appeal Page 124, lines 5-12). Counsel for the Appellant objected to her being able to testify to this question because Askins had not been qualified as an expert regarding subjects

of this nature, but the Court overruled and allowed her to testify as a lay witness. Askins testified that she did not have the capacity to execute these documents nor the sufficient mental capacity to know her Estate. When counsel for the Appellant asked her during cross-examination about how much time had she has spent visiting her aunt, the Decedent, Askins testified that she visited, "May three times a month". (Common Pleas Record on Appeal Pages 126-127). When asked how long she would stay, Askins stated, "An hour... to the most." (Common Pleas Record on Appeal Pages 126-127). Counsel for the Appellant then went on to ask Askins, "Do the day that this will was prepared, do you know if she was lucid that day?" (Common Pleas Record on Appeal Page 129, Lines 22-24). Her response was, "Yes. I - no. She probably was. She wasn't - she was demental-- - dementia." (Common Pleas Record on Appeal Page 129, lines 1-2)

It is through the testimony of Officer Chatlosh and the statements made by Ms. Askins, as "uninterested witnesses," verified the Respondents claims that the Decedent had declined in her mental capacity. (Common Pleas Record on Appeal Page 11). However, neither of these witnesses, nor the Respondents, were with her all throughout the day, every day, nor were the Respondents present during the incident with Officer Chatlosh or present during the day the Will and Power of Attorney were signed. Therefore, due to the Judge placing so much emphasis on their testimony as to her capacity, the Court has erred in its decision because, although there were moments where the decedent was not always lucid, the standard is not for the Decedent to have always been lucid at all times to have the legally required capacity to sign a valid Will or Power of Attorney, as outlined in later arguments. Chatlosh witnessed a lucid moment and Askins even stated that it was possible she was lucid when she executed these documents.

The Respondents argue in the Brief of Respondents, page 11, that Ms. Askins testified strongly that the Decedent had no capacity to execute these documents nor even make the calls because she had been struggling for years with confusion and her finances. However, again she

also stated when asked if she was lucid at the time of the execution when asked, "Do the day that this will was prepared, do you know if she was lucid that day?" (Common Pleas Record on Appeal Page 129, Lines 22-24).

Counsel for the Respondents then called Willie Ryles to the stand, who was a Petitioner to the original probate case. Respondents Counsel questioned him to see if the Decedent would have had the capacity to execute a Power of Attorney, where he then said, "At the time of her-you stated? Well-well, she could if you tell her." (Common Pleas Record on Appeal Page 141, lines 1-4). He was then asked by Respondents Counsel if she had the capacity to sign a Will where he said, "No...If I ask it to sign it, yes, she will." (Common Pleas Record on Appeal Pate 142 lines 21-25, Page 143 lines 1-2).

Respondents argue in the Brief of Respondent that although she could sign the documents if told, "the capacity to move one's wrist does not equate to understanding," (Brief of Respondent Page 13). However, as stated by the Appellant in the Common Pleas Transcript the decedent made the arrangements herself and not by the Appellant, therefore one can make the assumption that she did in fact understand when she signed the documents. (Page 13, lines 22-25 & Page 14, lines 1-7)

Similar to this case is the matter of Estate of Hicks, where the Probate Court held that the Will was invalid due to lack of mental capacity of the Decedent and that the Decedent's Nephew, Wilbur Hicks, had undue influence. Estate of Hicks, 327 S.C. 564, 284 S.E.2d 462 (S.C. 1985). The facts of this case are very similar, in that the Probate Court placed heavy emphasis on the testimony of family members of the Decedent who were not consistently in the presence of the Decedent prior to her death, in regard to her mental capacity, disregarding the testimony of the person who was there during execution of her Will and who has spent the most time with the Decent prior to her death, her Nephew. *Id.* Estate of Hicks, states, "Wilbur visited Clara a

minimum of once per week at Honorage, while other nephews and nieces who are opposed to the 1977 will visited her occasionally." *Id.*

Although the Respondents in this appeal did visit with the Decedent more often than just occasionally and alternated staying to care for the Decedent, they were not present during the moments of "incapacity" nor were they aware if the Decedent was in fact competent at the time of the execution of the Last Will and Testament and Power of Attorney. Where in fact, the Appellant was there to drive her to her appointments and took significant time off from work to move to Florence County, in order to take care of her mother who was "lonely". (Common Pleas Record on Appeal Page 160).

The Respondents argue that it is through the evidence provided by the lay witnesses that the Probate Court's findings are supported (Brief of Respondent Page 9) with the case of Garbade v. Garbade, 260 S.C. 58, 194 S.E.2d 186 (1973), in that the court upheld the statements made by the lay witnesses due to the material facts to which the witnesses were testifying. However, the court upheld their statements in this case due to the fact that the Appellant's counsel at the time did not object to them at trial. (Reply Brief to Brief of Respondent Page 1). The Respondents further argue with the support of Crowley v. Spivey that these witnesses also testify as to the capacity of the mother and its relation to their use of lay witnesses to testify to the confusion of the decedent. Crowley v. Spivey, 285 S.C. 397, 329 S.E.2d 774 (1985). However, as stated in the Appellants Reply Brief, "The witnesses in this case were not testifying to the capacity of a decedent in a probate case, but rather to the mental state of a mother who murdered her two children and whether the father knew or should have known that this was possible if he left the children alone with their mother. *Id* at 413. This standard as to whether lay witnesses may testify to the "rationality or irrationality" of a particular person's mental illness has no legal barring on the testamentary capacity of the decedent in this case" (Reply Brief to Brief of Respondent Page 1).

Therefore, the lay witnesses should not have been able to give expert opinions as to the capacity of the Decedent to execute the Last Will and Testament and Power of Attorney. The Respondents were not able to show that the Decedent was in a constant state of confusion. In fact, Vera Askins states that she "Probably was" lucid at the time of the execution of these documents. Ms. Askins also only saw the Decedent for short periods of time in a sporadic manner and so she is unable to provide expert testimony when she was not constantly around the Decedent. The Respondent, Willie Lyles, even states that the Decedent could have been lucid and executed these disputed documents if she was told, but he did not comment on if she also would not have been able to make the call herself to get them drafted and then executed.

These lay witnesses mainly stressed how the Decedent had physical limitations, needed help with finances, or they stressed about one incident where she was not lucid. However, none of this showed that she lacked the mental capacity to not be able to do any of these or that she mainly in a state of confusion and not lucid majority of the time. Furthermore, as stated in the Appellants Reply Brief to the Brief of the Respondent, "To suggest that a person cannot have the testamentary capacity to execute their own will or power of attorney because of one singular incident, or even a handful of incidents, would be an improper application of the law." (Reply Brief to Brief of Respondent Page 5). Therefore, the Circuit Court erred in finding and agreeing with the Probate Court findings that these lay witnesses can testify as to the capacity of the confusion of the Decedent and that these witnesses' testimony shows that she then lacked the capacity to execute the documents in dispute.

II. Did the Circuit Court err in finding that the Decedent lacked the testamentary capacity to execute the Last Will and Testament and Power of Attorney, although the Decedent had actual knowledge of the nature and extent of her estate, the nature objects of her bounty, and to whom she wished to give her property to?

The Decedent, Edith Ryles had moments of not being lucid, she was however, still able to perform acts of business, and though she could not do some of the normal day-to-day activities, that did not mean she did not have the capacity to execute a Last Will and Testament or a Power of Attorney. The witnesses for the Respondents stressed about the few times that the Decadent was not lucid, they again didn't show that the Decedent could not when lucid, perform financial transactions, or execute documents, or even make an appointment to do so. In Moorer v. Bull, the Court states, "frequently a person might show some indications of a weakening of mental powers and at the same time be sufficiently in possession of his or her faculties, even so, to meet the requirements of testacy." Moorer v. Bull, 212 S.C., 146, 46 S.E.2d 681 (S.C.1948). The Respondents were able to show through their testimony that the Decedent had "indications of weakening mental powers" as stated in Moore v. Bull, but again, that did not mean that she did not have the capacity to execute, understand, and with the knowledge of her estate and what she was doing, sign a Last Will and Testament and Power of Attorney even despite the wishes or likes of what the Respondents would have wanted. "[E]ven an insane person may execute a will it is done during a sane interval..." Hariston v. McMillan, 387 S.C. 439, 692 S.E.2d 549 (S.C.App 2010). "A person may execute a valid will, even if he or she is not competent to transact ordinary, everyday affairs." Speegle v. Oswald, 774 S0.2d 595, 97 (Ala.Civ.App.2000).

"Therefore, in order to execute or revoke a valid power of attorney, the principal must

possess contractual capacity. South Carolina has defined contractual capacity as a person's ability to understand, at the time the contract is executed, the nature of the contract and its effect. In re Nightingale's Estate, 182 S.C. 527, 542, 189 S.E. 890, 896 (1937) ("[A] mere infirmity of the mind, if it does not amount to incapacity to understand, at the time of the execution of a contract, the nature of the act done and the effect thereof, ... does not render a person incapable of executing a valid and binding contract.")" In re Thames, 344 S.C. 564, 570, 544 S.E.2d 854 (S.C. App. 2001).

However, the capacity of the Decedent has already been established as to her having the proper capacity as she made the appointments herself for both the Last Will and Testament and the Power of Attorney and, although she needed the Appellant to transport her to the appointments, she attended the appointments to execute the documents in question on her own. This is supported in the Brief of the Appellant, "The Appellant testified that the Decedent, "[...] asked me to take her to see Vera. Now, what they discussed, I really do not know," in regards to the scheduling of the meeting for the Power of the Attorney with Hawkins Tax Service. (Transcript Page 83, lines 16-17). She was then questioned on whether or not she was the one who scheduled the appointment, "Absolutely no, I did not do that." (Transcript 84)."

Although the Respondents in this case had less to gain from the Estate than then Appellant, it was at the will of the Decedent to decide the future of her own Estate and, "Even though one may have unreasonable likes and dislikes and may act unjustly and even cruelly toward his family in the disposition of his estate, still his will, when legally expressed, must be supported." Calhoun v. Calhoun, 277 S.C. 527,290 S.E.2d 415 (S.C. 1982). It is further stated in Calhoun v. Calhoun, "It is undisputed that the testator was in a feeble physical

condition during the last several years of his life. Respondents allege that on the date of the will's execution, the testator had a weakened mental capacity as well. However, the testator continued to transact his usual business affairs for a period of approximately three years subsequent to the will's execution." Calhoun v. Calhoun, 277 S.C.527, 527, 290 S.E.2d 415, 417 (S.C. 1982).

The Respondents argued a huge emphasis on the Decedent lacking the mental capacity to execute these documents due to the fact that the Hawkins Tax Services was not an Attorney's office and they were then investigated by SLED. (Brief of Respondent Pages 4,6,16-19). They stressed that the fact that the employees of the Tax Service exercised their Fifth Amendment right during the Probate Trial hurts the Appellants case in whether the Decedent met the standard for mental capacity. However, as stressed in the Reply Brief, "Additionally, Appellant was not the one who chose to use Hawkins Tax Services to draft the last will and testament and power of attorney. The Decedent and her husband had used their services for many years and it was at the Descendant who made the appointment with Hawkins Tax Services to execute their documents on her own behalf." (Reply Brief of Brief of Respondent Pages 3-4).

Therefore, the Common Pleas court erred in finding that the Decedent lacked the testamentary capacity to execute the Last Will and Testament and Power of Attorney.

III. Did the Circuit Court err in ruling that undue influence existed between the decedent and Appellant?

In regards to undue influence of the Appellant on the Decedent, the Probate Court Ruled the Appellant did have undue influence because she took her to the Hawkins Tax Service for these documents, when these documents should have been done by a lawyer skilled in the law for these matters. (Common Pleas Record on Appeal Page 12). The Probate Court further states, "she took her mother to have the Power of Attorney and the Law Will and Testament prepared when she was visiting her mother and family from her home in New Jersey to relieve her brother and sister, the Petitioners, of their regular daily duties of caring for their mother, and that she never told either of her siblings that she was taking her mother to get these legal documents prepared." (Common Pleas Record on Appeal Page 12). The Florence County Court of Common Pleas ruled that, "Dorthea Ryles came from her home in New Jersey under the pretense of helping her siblings with their mother's care and transported her mother to a tax service for the preparation and execution of both documents. The appellant did this without notifying her siblings." (Common Pleas Order Page 2).

Although she did take her mother to have the documents done, it was her mother that scheduled the appointments and it just happened to be when she was in town. Also, although the Decedent didn't have these done with a lawyer, it was her who set the appointment with a service that she trusted and it is not the responsibility of the Appellant to have her go to a lawyer for these, as the Decedent was the one in control of the matters of her own Estate.

In In re Estate of Anderson, "'The maker's exercise of judgement and free choice must be prevented to avoid a will on the ground of undue influence.' *Cumbee,* 333 S.C. at 671,511 S.E.2d at 394. 'A mere showing of opportunity or motive does not create and issue of fact regarding undue influence.' *Id.*" In re Estate of Anderson, 674 S.E.2d 176-179, 381 S.C. 568 (S.C. App. 2009).

The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence. Howard v. Nasser, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct.App. 2005). If evidence of such a relationship is presented, the proponents of the will must offer rebuttal evidence. *Id.* "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." Id." Hairston v. McMillan, 387 S.C. 439, 692 S.E.2d 549 (S.C. App.2010). This supports that the burden falls on the Respondents to prove there is undue influence by the Appellant, when in fact they did not. *Id.* They stated that her physical health declined, she had moments of mental weakness, and they contested the documents because no matter the reason that the decedent willed her estate as so, they did not like the outcome of what they inherited.

"In addition, we recognize that by the very nature of the case, the evidence of undue influence will be mainly circumstantial. It is not usually exercised openly so that it can be directly proved. However, the circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person so that the will is that of the latter and not of the former." Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (S.C. 1982). It is not simply that the Appellant took her to the appointments, that shows undue influence. The Appellant had no influence over the matter, when in fact the Decedent scheduled the appointment to create the documents and executed the documents on her own. Although the Appellant benefited the most from the documents is not enough to show that she had influence over them.

Although, the Appellant did gain a lot from the execution of the will and power of attorney, it did not mean that the Appellant had undue influence over the Decedent to gain

this when it has been stated throughout this case that the Decedent had a relationship with the Tax Service spanning several years, made the appointment, and executed the documents. In Calhoun v. Calhoun, the facts of the case were that the Respondents attempted to prove that the Appellant had unduly influenced the Decedent to give her the greatest portion of the Estate. Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (S.C. 1982). Their basis for contesting was that the Decedent was physically feeble and was confused for a period of time before the Will was executed. These facts are similar to the one in question, in that the Appellant was the Personal Representative of the Estate and also the Heir set to inherit the most. The Appellant in this case was also the Power of Attorney for the Decedent and was able to have access to the accounts of the Decedent. These cases align in that the other Heirs disputed the Will due to the fact that they believe that the main Heir, in this case the Appellant, had undue influence over the Decedent because she had the most to gain from the Estate. They also align in that the Decedent had physical hardships and had periods of time where the Decedent was confused, such as the incident where the police were called to this Decedent's home because she was standing outside in her bathrobe and confused as to where she was.

Therefore, the Circuit Court erred in finding that there was undue influence between the Appellant and the Decedent and that the Last Will and Testament and the Power of Attorney are the result of undue influence by the Appellant on the Decedent, Edith Ryles.

IV. Did the Circuit Court err in its ruling in finding that the Appellant breached her fiduciary duty and in awarding the full amount of damages be reimbursed to the Estate?

The Respondents, claim that the Appellant breached her duties because of her transactions on the accounts owned by the Decedent. The Appellant did not disagree that she had access to the accounts and that she wrote checks from the account. Defendant' Counsel (Respondents in this matter) asked the Appellant, "You spend this money with reckless abandonment, complete disregard of your mother's welfare. Is that true?", to which she answered, "No." (Common Pleas Record on Appeal Page 171 lines 13-16). Although the Appellant did take ahold of these accounts, she spent a large portion of these paying the property taxes owed on the New Jersey property, fixing the property with repairs, and clearing the debt and matters regarding the property maintained by their brother Alonzo. (Common Pleas Record on Appeal Page 173-180). The Appellant also used the accounts for personal matters such has traffic fines, groceries, and other personal matters with permission from the Decedent to do so. However, despite the personal spending, the Appellant was preserving the property of the Estate of the Decedent with the back taxes being paid, the upkeep and repairs, and fixing the concerns over the property maintained by Alonzo.

The Appellant does not dispute her personal spending and, although this is a breach because the Power of Attorney cannot gift oneself through the document, the preservation of the Estate is a fiduciary duty, as again supported by "Restatement (Third) of Trusts§ 100 (2012) (stating one of the objectives in awarding damages for breach of fiduciary duty is to make the beneficiaries whole by restoring what they would have had if the breach had not occurred)." Turpin v. Lowther, 745 S.E.2d 397-403, 404 S.C. 581 (S.C. App. 2013). By restoring

the value of the Estate to what should have been awarded to the Heirs as laid out in the instructions by the Decedent, however they were stated, the amount of actual damages awarded by the Court.

The Appellant spent money towards the Decedents property in Florence and to remodel the property she lived at in New Jersey which was owned by the Decedent. She also spent $29,078.13 and $18,907.74 to avoid the tax sale on the home owned by the Appellant and Alonzo. (Common Pleas Record on Appeal Page 70). The Appellant was unable to account for the spending on these accounts and what they were all for in documentation, but through her testimony in during the Hearing, $800.00 was to the City of Newark for taxes of the property of the Decedent, which was done trying to save for the Estate. At the time of the Hearing, the properties had not yet been transferred out to the Decedent's name. The Appellant was questioned by her attorney, "And those properties are still in the name of Edith Ryles. Is that correct?" to which she answered, "Yes." (Common Pleas Record on Appeal Page 192 lines 24-25, Page 193 line 1). The Appellant then went on to list repairs, such as repair the pipes from a leaking basement, repair the floors, the paint, and, "The-which was a 5,000 dollar job that we had to do because the girl's boiler on the first floor was gone." (Common Pleas Record on Appeal Page 193 lines 23-25). As to the property on 86th Street, there was $22,000 accounted for that the Appellant had to pay towards the property, "It was more-it was more than that because he-it was like he had three different liens on-like really four to five different liens on the-the properties. So it was a lot more than that." (Common Pleas Record on Appeal Page 195 lines 8-12). The Appellant then went on to account for the $105,000 she spent from the money marketing account was for the taxes and the repairs of these properties. (Common Pleas Record on Appeal Page 198).

Turpin v. Lowther supports this in that, "See S.C. Code Ann. § 62-3-712 (2009) (stating

damages for a personal representative's breach of fiduciary duty are calculated pursuant to subsection 62-7-1002 (a) of the South Carolina Code (2009), which provides recovery for (1) the amount needed to restore the asset's value to what it would have been but for the breach, or (2) "the profit the [fiduciary] made by reason of the breach," whichever is greater); Restatement (Third) of Trusts § 100 (2012) (stating one of the objectives in awarding damages for breach of fiduciary duty is to make the beneficiaries whole by restoring what they would have had if the breach had not occurred)." Turpin v. Lowther, 745 S.E.2d 397-403, 404 S.C. 581 (S.C. App. 2013). Therefore although, there is multiple accounts the Appellant had access to and personally spent from, she was preserving the Estate of the Decedent and keeping the properties from being sold off, repairing damages, and preventing them from claimed by the bank. The Respondents agree as well with the Probate Courts ruling and that, "However, Appellant then alleges, without providing a single document or accounting, that she used some of the money for the estate. A party who has a power of attorney is a fiduciary and has a duty to "keep a record of all receipts, disbursement, and transactions..." S.C. Code § 62-8-114(b)(4)." (Brief of Respondent Page 22). The Florence County Court of Common Pleas ruled in favor of the Probate Court's ruling and stated in the ruling, "The Order of Judgement also held the appellant breached her fiduciary duty as power of attorney by gifting herself."

The Probate Court's ruling for the $212,866.12 in actual damages is far too high of an amount and does not account for the expenses paid by the Appellant to preserve the Estate. Therefore, the Probate court erred in this amount being awarded to the Estate and to its Heirs, when it does not show the accurate accounting for the withdrawals and expenditures from the accounts. Furthermore, showing that the Court of Common Pleas erred in agreeing with the Probate Courts findings and Order of Judgment. During the hearing on November 10th, 2022, Counsel for the Appellant argued that the Probate Court did not make any factual findings as to

what the amounts were for damages and that the order filed, was not a true reflection of the Judge's ruling in his Memorandum. In the Judges Memorandum dated September 27, 2021, the Judge states, "As to actual damages, I will grant the Petitioners'' request for actual damages and require that Respondent must reimburse the estate for all expenditures made from the accounts of Edith Ryles' Estate under the Power of Attorney and Last Will and Testament that cannot be shown to be of direct benefit to Decedent Edith Ryles and ultimately to the Decedent's Estate." (Record on Appeal Page 302).

With that being stated by the Honorable Jesse S. Cartrette, Jr., Counsel for the Appellant argued, "in his memorandum, said that as to, actual damages, he will grant the petitioner's request for actual damages and require that respondent must reimburse the Estate for all expenditures from the accounts of Edith Ryles Estate under the power of attorney and Last Will and Testament that cannot be shown to be of direct benefit to decedent, Edith Ryles, and ultimately to the decedent's estate. He does not make any factual findings as to what that those amounts are, and when the order was drafted, the order does not reflect Judge Cartrette's memorandum and instead says that rather than repaying that money to the Estate, it needed to be paid to the petitions and it was – and the order holds that the amount of damages is the entire amount and it's not divided up by what, you know, what was paid to the benefit of the Estate or to the benefit of the decedent versus what was used for the, the petitioner's own use." (Common Pleas Transcript Page 4, lines 5-21). Therefore again, the Probate Court's ruling for the $212,866.12 in actual damages is far too high of an amount and does not account for the expenses paid by the Appellant to preserve the Estate and although she did use the funds for some personal "gifts" this amount of damages does not reflect the breach of fiduciary duty because the breach found by the court was where the Appellant gifted herself.

The Appellant argued in Probate Court and Common Pleas and in this brief that most of

the funds used in her role as the Power of Attorney was used to solely preserve the Estate of the decedent not for her gain but to protect the objects of the Estate. Therefore, the Common Pleas erred ruling that the Appellant breached her fiduciary duty and in finding that the was an abundance of evidence supporting this finding in the Order of the Probate Court.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that this Court should reverse the Probate Court's Order, hold that the Power of Attorney of Edith Ryles and the Last Will and Testament of Edith Ryles are valid, and reduce the amount of damages owed to the heirs of the estate.

Respectfully submitted,

s/James R. Snell Jr.

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February 27, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit
Court Judge for Common Pleas

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SC Court of Appeals

Appellate Case No.: 2023-001842

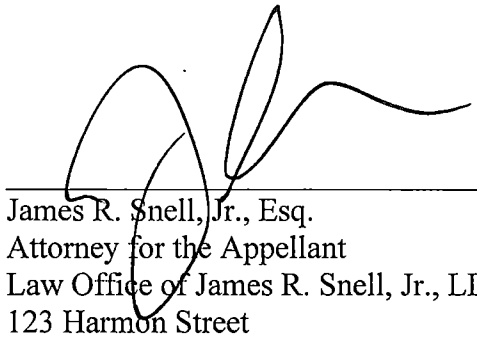
Dorthea Ryles ..... Appellant,

v.

Leon Ryles, Willie N. Ryles, and Theresa Williams, Respondents ..... Respondents.
IN RE: The Estate of Edith W. Ryles, Estate File: 2018-Es-21-00899

RULE 208 CERTIFICATION

The undersigned hereby acknowledges that the Initial Brief of the Appellant complies with Rule 208 SCACR.



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February 27, 2023
Lexington, South Carolina

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PROOF OF SERVICE

I hereby certify that I have served a copy of the ***Initial Brief of Appellant and the Appellant's Designation of Matter to be Included in the Record on Appeal*** in this case on the following, by depositing a copy of it in the United States mail, postage prepaid, on February 27, 2024, addressed to the following:

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LAW OFFICE OF
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February 27, 2024

RECEIVED
FEB 27 2024
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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Re: Dorthea Ryles, Appellant vs. Leon Ryles, Willie N. Ryles, & Theresa Williams, Respondents. IN RE: The Estate of Edith W. Ryles,
Estate File: 2018-Es-21-00899
Appellate Case No.: 2023-001842

Dear Ms. Kitchings,

Enclosed for filing please find enclosed an original and one copy of the Initial Brief of the Appellant and an original and one copy of the Designation of Mattery to be Included in the Record on Appeal. Also enclosed is an original and copy of the Proof of Service. Should you have any questions concerning this information, please contact our office.

Sincerely,

James R. Snell, Jr.

cc: Brown W. Johnson, Esq.
Dorthea Ryles

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