RECEIVED
Aug 01 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

The Honorable Carolyn E. Woodruff, Judge of Probate
The Honorable Daniel D. Hall, Circuit Judge

Case No. 2022-CP-46- 03201

BERNICE CALDWELL,

Appellant,

v.

PATRICIA MITCHELL, in her own right and as Personal Representative, DENNIS MITCHELL, SHARON M. CULP, THOMAS LAMONT DAVIS, SUMTER O'NEAL CALDWELL and LATRINDA ROBINSON, Of whom PATRICIA MITCHELL, in her own right and as Personal Representative, is the

Respondent.

INITIAL BRIEF OF RESPONDENT

Appellate Case No.: 2024-00259

Charles B. Burnette IV
414 E. Main St.
Rock Hill, SC 29730
Attorney for Respondent

John Martin Foster
Post Office Box 106
Rock Hill, South Carolina 29731
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities 3

Statement of Issues on Appeal 4

Statement of the Case 4

Standard of Review 4

Argument 5

Conclusion 7

TABLE OF AUTHORITIES:

US SUPREME COURT

Lippard v. Humphrey, 209 U.S. 264, 52 L.Ed 788, 28 S.Ct 561 (1908) ……..5

SOUTH CAROLINA SUPREME COURT

Tomkins v. Tomkins, 1 Bailey 96, 17 S.C.L. 92 (1828) ……..6

Seago v. Horry Cnty., 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008)…….. 4

CASES: ENGLAND

Billinghurst v. Vickers, formerly Leonard 16 ENG. REP. (1810) ……..6

STATEMENT OF ISSUES ON APPEAL

I. Does Sumter Mitchell's illiteracy constitute mental incapacity.

STATEMENT OF THE CASE

Sumter O'Neal Caldwell was illiterate, but was always of sound mind. [RECORD ON APPEAL, p.16, l.19 – 25; RoA p.92; p.67, l.6 – 7., RoA p.103] Because he could not read or write, he would often rely on his sister, Patricia Marshall, to assist him with the preparation of forms and legal documents. [RoA p.92]

On or around March 2019, Mr. Caldwell visited Ms. Marshall with a blank Will template and asked her to fill it out per his instructions. [RoA p.92] After Ms. Marshall filled out the Will, it was signed by Mr. Caldwell, and was signed by two witnesses after Mr. Caldwell confirmed that this was his last Will and testimony [RoA p.86].

There is no testimony nor evidence that Mr. Caldwell was not of sound mind at the time he executed his Will. There is no testimony nor evidence that Mr. Caldwell did not understand the contents of his Will.

STANDARD OF REVIEW

This standard of review extends to correction of errors of law, but will not disturb the Trial Court's factual findings as long as they have reasonable support in the record.[1]

[1] *Seago v. Horry Cnty.*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008).

ARGUMENT

Appellant's brief and appeal is based on the incorrect assumption that illiteracy is the same as mental incapacity. This is not the case and the Courts have specifically elaborated on this distinction. Appellant even states in the opening of its argument that there is "a presumption that an illiterate testator or one incapable to read or understand the language in which the Will was written had knowledge of [the Will's] contents…"[2] And while Appellant argues that this presumption is rebuttable, it fails to offer any evidence of any mental deficiency beyond the testator's mere illiteracy. Instead, Appellant goes on to argue that the burden of proof that the testator understood the contents of his Will should be shifted to the Proponent based on the testator's **illiteracy** alone. It would appear as if the Appellant is incorrectly drawing this conclusion based on the cited case law that shifts the burden to the Proponent when there is evidence of **incapacity.**

The Appellant's argument is inconsistent with the Appellant's initial statement (quoted above), establishing the presumption in favor of the Proponent that an illiterate testator understands the contents of its Will. Appellant supports this statement by citing *Lippard v. Humphrey*, which states that:

> "Inability to read does not create a presumption that a testator does not know the contents of a paper declared by him to be his last will and duly executed as such. There is a presumption that the testator does know the contents of a will properly executed, which, while not conclusive, must prevail in the absence of proof of fraud, undue influence or want of testamentary capacity, even where testator's inability to read is proved."[3]

Immediately after citing this case, Appellant then claims, in its own words, "that a presumption may arise that the testator was not aware of the will's contents, where the will was not read to him,

[2] Appellant's Final Brief, p. 7.
[3] 209 U.S. 264, 52 L.Ed 788, 28 S.Ct 561 (1908).

where the draftsman assured the testator his estate was disposed of as he directed, and where the scrivener was named as executor and guardian of residuary legatees."[4] In support of this statement, Appellant cites *Tompkins v. Tompkins*, quoting the case's language stating that:

> "a principle well established, that **where capacity is in any degree doubtful** at the time of the execution, there must be proof of instructions, or reading over and that the presumption is strong against an act, done by the agency of the party to be benefited: and although the Court will not presume fraud, it will require strong proof of intention…."[5]

There is a glaring discrepancy between Appellant's summary of *Tompkins*, in its own words, and the actual language in the case: a presumption that the testator was not aware of a Will's contents only arises if there is evidence that **capacity is in any degree doubtful**. Appellant also refers to *Billinghurst v. Vickers,* which (although it's an English case cited in *Tompkins*) established that a reading over was required "considering that the **capacity of the deceased was extremely doubtful** at the time of execution. [6] Again, Appellant ignores the language in his cited cases that there must be evidence of incapacity. And the record in the present case supports the Court's conclusion that there was no evidence presented that the testator was incapacitated, but only that he was illiterate. The Court made the factual determination that: "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."[7] And, of course, an Appeal shall not disturb the Trial Court's factual findings as long as they have reasonable support in the record.[8]

---

[4] Appellant's Final Brief, p. 7.
[5] Appellant's Final Brief, p. 7, *citing Tomkins v. Tomkins*, 1 Bailey 96, 17 S.C.L. 92 (1828).
[6] 1 Phillimore, 187, *cited in Tompkins*.
[7] *Order Denying Motion to Amend or Reconsider,* p. 2, *Caldwell v. Marshall,* 2021-ES-46-00206
[8] *Seago v. Horry Cnty.,* 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008).

CONCLUSION

The Appellant's conclusion that there is a presumption the testator did not understand his Will is based on its assumption that the testator was not of sound mind. The Appellant's assumption that the testator was not of sound mind is drawn solely from the fact that the testator was illiterate.[9] But the law is abundantly clear that an inability to read does not create a presumption that a testator does not know the contents of a Will. The Appellant has the burden to prove their case, and it did not present a single piece of evidence that the testator was incapacitated or did not understand the contents of his Will. In fact, Ms. Caldwell's testimony confirmed that the testator was of sound mind and did have the capacity to make a Will. Further, there was no dispute raised that the Will was not properly witnessed, signed, or executed. This case began as a simple eviction that the Appellant has dragged out into a two-year process while continuing to occupy the property. There has never been any legal basis to these claims and she has never had any entitlement to the property. This Court should confirm the Probate Court's findings and allow the Respondent to finally proceed with a long overdue eviction.

s/Charles B. Burnette IV
Charles B. Burnette IV
Bar No.: 103747
BurnetteLaw, LLC
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Respondent
Patricia Marshall

August 1, 2024

Rock Hill, South Carolina

[9] See Appellant's Final Brief, p. 8, "in light of his illiteracy, he was not of sound and disposing mind."

CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Appellant complies with Rule 211(b), S.C.A.C.R.

s/Charles B. Burnette IV
Charles B. Burnette IV
Bar No.: 103747
BurnetteLaw, LLC
414 E. Main Street
Rock Hill, SC 29730
Ph.: (803) 328-1800
Fax: (803) 328-9494
bburnette@burnettelaw.net
Attorney for Respondent
Patricia Marshall

August 1, 2024

Rock Hill, South Carolina