THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM YORK COUNTY
In the Circuit Court

The Honorable Carolyn E. Wood-ruff, Judge of Probate
The Honorable Daniel D. Hall, Circuit Judge

Appellate Case No. 2024-000259

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.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Is the recorded Will of the decedent Sumter Mitchell inadmissible for Probate given the following facts? (references below are to the Appellant's Petition in the Probate Court):

a) The Decedent was not of sound and disposing mind. (RECORD ON APPEAL, p.22, Para. 7.)
b) The Decedent was under the undue influence of the Respondent Marshall.. (RECORD ON APPEAL, p.22, Para. 8.)
c) The filed instrument is not the Decedents Last Will and Testament due to mistake. (RECORD ON APPEAL, p.22, Para.9.)
d) The filed instrument is not executed in the prescribed manner and form . (RECORD ON APPEAL, p.22, Para.10.)

STATEMENT OF THE CASE

Sumter O'Neal Caldwell was illiterate, being able only to sign his name. [RECORD ON APPEAL, p .88, page 16, l.19-25.] By the time of his death, his money was handled by his sister, Patricia Marshall under a Power of Attorney signed by him and dated March 19, 2019. [RECORD ON APPEAL, p.8.] No lawyer was involved in its execution. [RECORD ON APPEAL, p.91. Page 26, l. 13-14.]

The said Power of Attorney was witnessed by Dennis Mitchell and one other person. Dennis Mitchell is mentally challenged and receives a monthly disability check. [RECORD ON APPEAL, p.91, Page 26, l.20-25; p.91, Page 27, l.1-21.]

On the same date, Patricia Marshall filed out a will form for Sumter Caldwell which he signed. [RECORD ON APPEAL, p.89, Page 17, l.8-10; P.89, Page 19, l.19 – p.90, Page 21, l.7.] The provenance of this form is unknown; Ms. Marshall acknowledges that Sumter Caldwell' s illiteracy rendered him incapable of using the internet to obtain it. [RECORD ON APPEAL, p.89, Page 17, l .1-7.]

No person other than Patricia Marshall saw Sumter Mitchell sign the will form. [RECORD ON APPEAL, p.90, Page 22, l.14-45, Page 23, l.1-2; p.91, Page 28, l. 22-14.]

The form states on its face that it is a draft only. [RECORD ON APPEAL, p.88, Page 16, l.10-12.] Its terms, as filled out, leave all of Sumter Mitchell's property to Patricia Marshall. No lawyer was involved in its execution. [RECORD ON APPEAL, p.91, Page 27, l.22 – Page 28, l.1.]

Despite Patricia Marshall's testimony as to Sumter Mitchell's desire to provide for his disabled son, Dennis Mitchell, the will form contains no provision for Dennis Mitchell's care. [Record on Appeal, p.27 - 34.] Patricia Marshall testified that she explained the purported will to Sumter Mitchell. [RECORD ON APPEAL, p.92, Page 29, l. 3-6.] Ms. Marshall produced no other person to evidence Sumter Mitchell's understanding of what he signed. [RECORD ON APPEAL, *ibid.* and generally.] The only evidence of Sumter Mitchell's understanding of the will form is Patricia Marshall's testimony and Sumter Mitchell's signature.

No other Respondent disputed the Petitioner's case.

The Appellant's Motion under Rule 59, S.C.R.C.P. was denied. Appeal followed to the Circuit Court for York County. That appeal was denied by a Form 4 Order. The Appellant's Motion to the Circuit Court under Rule 59, S.CRCP. was also denied.

STANDARD OF REVIEW

It is well established that review of a Probate Court decision as to validity of a will is a matter lying in law. *Harris v. Berry,* 231 S.C. 201, 98 S.E.2d 251, 253 (S.C. 1957). As to questions of law, the Appellate Court's standard of review is *de novo*. *Citizens for Quality Rural Living, Inc. v. Greenville Cn(y. Plan. Comm'n,* 426 S.C. 97, 102, 825 S.E.2d 721, 724 (Ct. App. 2019). 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. *Id.; Seago v. Horry Cnty.,* 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008). "An abuse of discretion occurs [when] the trial court is controlled by an error of law or [when] the Court’s order is based on factual conclusions without evidentiary support." *Citizens for Quality Rural Living, Inc. v. Greenville Cnty. Plan. Comm'n, supra; City of Columbia v. Pic-A-Flick Video, Inc.,* 340 S.C. 278, 282, 531 S.E.2d 518, 521 (2000).

ARGUMENT

The proponent of a will, in a probate contest, has the burden of establishing the essential requisite of the testator's knowledge of the contents of the will which he signed. *Snodgrass v. Smith,* 42 Cob. 60, 94 P. 312 (1908); *RE Bundy's Estate,* 153 Or. 234, 56 P.2d 313 (1936); 106 A.L.R. 714; 80 Am.Jur.2d *Wills* 955 (1994).

A presumption that an illiterate testator or one incapable to read or understand the language in which the will was written had knowledge of its contents is rebuttable. *Lippard v. Humphrey,* 209 U.s. 264, 52 L.Ed 788, 28 S.Ct 561 (1908); *Downey v. Lawley,* 377 Ill. 298, 36 N.E.2d 344 (1941); *Marcinko v. D'Antuono,* 104 R.I. 172, 243 A.2d 104, 37 A.L.R.3d 874 (1968); 80 Am.Jur.2d *Wills* 961 (1994).

Tomkins v. Tomkins, 1 Bailey 96, 17 S.C.L. 92 (1828) is one of the earliest cases dealing with these issues in American jurisprudence. In that case, our Supreme Court held that a presumption may arise that the testator was not aware of the will's contents, where the will was not read to him, 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. *See* 80 Am.Jur.2d *Wills* 1017 (1994). The Court in *Tomkins* held:

> The case of *Billinghurst v. Vickers, 1* Phillimore, 187, furnishes some of the rules, by which we are to be governed in the inquiry, as to the assent of the testator. In that case, Sir John Nicholl lays it down, as 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.
> *[Id.,* 17 S.C.L at 96; emphasis added.]

These are precisely the facts presented in this appeal; the deceased was illiterate and there is no evidence of his understanding of the will form other than the testimony of Patricia Marshall, the scrivener and putative heir.

There is a presumption, arising from legal execution, that the testator knew the contents of the executed will. Cases have concluded that where the will was written by a beneficiary this fact not only overcomes that presumption, but creates a presumption against the instrument. *Garrett v. Heflin,* 98 Ala. 615, 13 So. 326 (1893); 80 Am.Jur.2d *Wills* 963 (1994).

Even cases that hold a benefit to the scrivener is merely a circumstance unfavorable to the existence of knowledge of content, in combination with the circumstances unfavorable to the presumption, may create a presumption against the testator's knowledge of the contents of the instrument. *Beau v. Mann,* 5 Ga. 456 (1848); *Purdy v. Hall,* 134 Ill. 298, 25 N.E. 645 (1890); *Kelly v. Settegast*, 68 Tex. 13, 2 S.W. 870 (1887); 80 Am.Jur.2d *Wills* 963 (1994).

The proof necessary to show that an illiterate testator had knowledge of the will's contents must be "satisfactory" *[RE Gluckmanns' Will*, 87 N.J. Eq. 638, 101 A. 295 (1917)]; "full and satisfactory" *[Wisener & Brown v. Maupin*, 61 Tenn. 342 (1872)]; "clear and satisfactory" *[Compher v. Browning*, 219 Ill. 429, 76 N.E. 678 (1906)] or "strong" *[RE Reilly's Will*, 139 Misc. 732, 249 N.Y.S. 152 (1931)]; 80 Am.Jur.2d *Wills* 1020 (1994). *Also, see* 37 A.L.R.3D 901 §5(c).

CONCLUSION

In the absence of sufficient proof of the intention of the deceased, and in light of his illiteracy, there is insufficient evidence that the Deceased understood the document he signed under the influence of Ms. Marshall. As such he did not knowingly consent to that document. The burden of proof of his intent lay upon the Respondent Marshall as the proponent of the will form submitted. Given her status and the surrounding facts, that burden was not met by her sole testimony. There is no "strong proof of intention" of the deceased, as required in the language of *Tomkins, supra.* The will form submitted cannot be accepted as the will of the deceased and cannot be probated.

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January 3, 2025

Rock Hill, South Carolina

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CERTIFICATE OF COUNSEL

The undersigned certifies that the final Brief of Appellant complies with Rule 2 11(b), S.C.A.C.R.

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Of whom PATRICIA MITCHELL,
in her own right and as Personal Representative, is the

Respondent.

CERTIFICATE OF SERVICE

I certify that I have served the Final Brief of Appellant, dated January 3, 2025, on the following counsel or persons of record:

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by service to the opposing lawyer's primary e-mail address listed in the Attorney Information System (AIS), as authorized by Section (b)(2) of the Order of the Supreme Court dealing with Electronic Filing and Service issued May 6, 2022, or

by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out above, pursuant to Rule 262, S.C.A.C.R.

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