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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Walton J. McLeod, Circuit Court Judge

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Common Pleas No. 2020-CP-32-01941

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Joseph R. Dawson, Jr., Appellant,

v.

Heather Pounds, Individually, as Agent Under Power of Attorney, and as Personal Representative of the Estate of Jane Rollins Dawson, Respondent.

Appellate Case No. 2024-001801

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF THE CASE

This is an appeal from an order upholding the validity of a will.

The Plaintiff, Joseph R. Dawson, Jr. (Mr. Dawson), was the only surviving child of the Decedent, Jane Dawson (Jane). The Defendant, Heather Pounds, was Jane's step-granddaughter.

Jane died on March 16, 2020. On March 17, Mrs. Pounds filed a purported will along with a petition for her appointment as personal representative of Jane's estate with the Lexington County Probate Court. Pet. for App. Mr. Dawson filed a summons and petition challenging the validity of the will. The probate court ordered the case be removed to circuit court. Removal Order and Certification. Mrs. Pounds filed an answer and counterclaim. Answer.

The case proceeded to a bench trial before the Honorable Walton J. McLeod on April 10 – 11, 2024. Mr. Dawson was represented by Greg Parker and Mrs. Pounds was represented by Lourie Salley. Tr. 1. The court upheld the validity of the will and denied Mr. Dawson's motion to reconsider. Final Order and Order denying pet. for rehearing.

## STANDARD OF REVIEW

"The standard of review applicable to cases originating in the probate court is controlled by whether the underlying cause of action is at law or in equity." *In re Estate of Paradeses*, 426 S.C. 388, 391, 826 S.E.2d 871, 873 (Ct. App. 2019). "An action to contest a will is an action at law." *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005).

"If the proceeding in the probate court is in the nature of an action at law, the [appellate] court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *In re Howard*, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993); *In re Estate of Weeks*, 329 S.C. 251, 261, 495 S.E.2d 454, 460 (Ct. App. 1997). "If a proceeding in the probate court is in the nature of an action at law, review by this court extends merely to the correction of legal errors." *Paradeses*, 426 S.C. at 391, 826 S.E.2d at 873. However, questions of statutory construction that require an interpretation of the Probate Code are questions of law that this Court reviews de novo. *In re Estate of Brown*, 427 S.C. 138, 141, 828 S.E.2d 789, 790 (Ct. App. 2019).

## STATEMENT OF FACTS

Mr. Dawson was the son of Jane and Joe Dawson, Sr. He had one brother, John. Their family lived in Lexington County. Joe Dawson, Sr., passed away in 2006 and John passed away in 2007. Tr. 133, ll. 10 – 20. John left behind three biological children, and one step-child—Heather Pounds. Tr. 19, l. 21 – 21, l. 6. John started dating Mrs. Pound's mother while she was pregnant with her, and they married when Mrs. Pounds was approximately five years old. Tr. 68, ll. 18 – 24. Although Mrs. Pounds was technically a stepchild, she was viewed by everyone as part of the Dawson family. Tr. 134, l. 15 – 135, l. 11.

Mr. Dawson had a close relationship with both of his parents. Tr. 136, ll. 1 – 6. His career took him to North Carolina and Tennessee for periods of time, but he moved back to South Carolina after his father died in 2006. Tr. 136, ll. 15 – 24. When Joe, Sr., died, Jane hired Lester Bates to handle the probate process. Tr. 139, l. 19 – 140, l. 14. Mr. Dawson believed that both of his parents had wills prepared by Attorney Bates. Tr. 140, ll. 15 – 21.

When Joe Sr. passed away, Mr. Dawson recalled that his mother "couldn't really take care of herself" so he moved back to South Carolina and started helping her with her finances. Tr. 140, l. 22 – 141, l. 6. He helped his mother move her retirement money into safer investments to protect its value from the volatility of the market. Tr. 141, ll. 6 – 17. Mr. Dawson and his wife Jennifer had Sunday dinner with Jane every Sunday after they moved back to South Carolina. Tr. 119, ll. 9 – 23. In addition to Sunday dinners, Mr. Dawson and Jennifer would go over to Jane's house frequently to help clean the house and do yard work. Tr. 124, ll. 8 – 16.

Mr. Dawson's uncle Paul died in 2011 and left his entire estate to Jane. Paul designated Jane to be his primary personal representative and Mr. Dawson was designated as the alternate. Tr. 164, ll. 15 – 23. Because administering the will was going to require multiple trips to Delaware

which Jane was unable to do, Mr. Dawson served as the PR for Paul's estate. Tr. 142, l. 2 – 143, l. 13. Paul's estate included a significant number of U.S. Treasury Bonds. Mr. Dawson explained that his uncle began purchasing bonds for him and John when they were born for their education, but they didn't end up needing them for that purpose. Tr. 144, l. 18 – 145, l. 19.

Many of the bonds were already mature and could not be transferred, so Mr. Dawson and Jane cashed those bonds in. The remaining bonds were transferred to be jointly owned by Mr. Dawson and Jane. This process took them weeks to complete. Tr. 120, l. 2 – 122, l. 7. These bonds were placed into a safety deposit box with First Citizens Bank in Lexington. Tr. 151, ll. 5 – 10. Mr. Dawson had a bond report issued once a year which would identify the bonds that had fully matured, and he and Jane would cash those bonds. Tr. 151, l. 16 – 152, l. 16; Pl.'s Ex. 10.

In April of 2019, Jane had a bad fall in her driveway which resulted in a brief hospitalization. Tr. 33, l. 5 – 34, l. 15; tr. 178, l. 15 – 179, l. 4. Just a few days later, Jane signed a general power of attorney and a health care power of attorney naming Mrs. Pounds as her agent. Tr. 35, l. 1 – 36, l. 9; Pl.'s Ex.s 5 & 6. Mrs. Pound's aunt, Donna McLees, helped prepare the powers of attorney and notarized them. Tr. 36, l. 19 – 37, l. 19. Paragraph eleven of the general power of attorney explicitly prohibited Mrs. Pounds from gifting any of Jane's assets to herself. Tr. 37, l. 24 – 39, l. 2; Pl.'s Ex. 5.

Donna McLees testified that Jane told her she wanted to update her will to prevent Mr. Dawson from inheriting the bonds and that Donna offered to help Jane prepare a will and notarize it for her. Tr. 201, l. 1 – 202, l. 6. Donna claimed that she helped Jane prepare a will in April of 2019. Tr. 203, l. 20 – 204, l. 3. The April will was never filed with the probate court or the circuit court but was disclosed in discovery approximately two-and-a-half years after this litigation began. It was introduced as a Defense Exhibit at trial. Tr. 258, ll. 16 – 24; Def.'s Ex. 1.

In preparing the April will, Donna got two of her co-workers at the South Carolina Department of Social Services to sign as witnesses and then Donna notarized it. Tr. 202, l. 20 – 203, l. 10. Donna explained that she wanted to help Jane draft her will so that Jane could avoid having to pay for a lawyer. Tr. 207, ll. 9 – 14. Donna further admitted that she advised Jane that she would need to also sign general and medical powers of attorney. Tr. 207, l. 15 – 208, l. 6. Donna said that she advised Jane that the powers of attorney were necessary to protect Jane's assets from Mr. Dawson. Tr. 208, ll. 7 – 13. Donna obtained a sample will online, drafted it, and had Jane come to her office at DSS to sign along with two other DSS employees while at work. Tr. 208, l. 14 – 209, l. 11. Donna admitted to having prepared wills for more than five different people by using an online template because "[i]t's cheaper." Tr. 209, ll. 12 – 23. Donna testified that she was not involved in the preparation of the July will. Tr. 206, ll. 3 – 6.

Mr. Dawson wasn't notified of Jane's fall or hospitalization until after she got home which caused him to become concerned. He went to a lawyer and found out about the powers of attorney naming Mrs. Pounds as Jane's agent. Tr. 154, ll. 14 – 155, l. 10. Mr. Dawson was informed by his lawyer that the powers of attorney could give Mrs. Pounds the ability to take the bonds from the safety deposit box, so he took the savings bonds out to protect them. Tr. 155, ll. 11 – 18. Upon opening the safety deposit box, he discovered that several of the bonds had already been removed. Mr. Dawson also discovered that the joint bank accounts he had with Jane had been completely drained and closed out. Tr. 155, l. 18 – 156, l. 4.

Mr. Dawson contacted his mother to ask her about her giving power of attorney to Mrs. Pounds. In response, he received a text message from Jane's phone number which claimed she had hired a lawyer and would have her lawyer contact him about the situation. However, Mr. Dawson was never contacted by any lawyer about it. Tr. 156, l. 15 – 157, l. 6. Mr. Dawson suspected that

the text was not sent by Jane because the way it was worded was not typical of her. Tr. 157, l. 7 – 158, l. 22. Jane also stopped returning Mr. Dawson's calls. Tr. 158, ll. 8 – 11. Mr. Dawson was threatened by Mrs. Pounds on Facebook when she posted that Gary Hutto, her biological father, was getting out of prison soon and would "take care of him." Mr. Dawson reported the post to Lexington County Sheriff's Department. Tr. 179, l. 23 – 180, l. 11; tr. 188, ll. 2 – 9; Pl.'s Ex. 11.

Jane was eighty-one years old when she died and had cardiomyopathy and a defibrillator. Jane died because "her heart just stopped." Tr. 91, ll. 4 – 13. Mr. Dawson didn't learn that his mother had died until two days later after one of his cousins saw a post on Facebook about it. Tr. 159, ll. 12 – 21. Mr. Dawson started trying to find where his mother's body was and began calling different funeral homes. He spoke with someone at Barr-Price Funeral Home in Lexington who said they had been trying to reach him for two days. Tr. 160, ll. 13 – 20. After speaking to the funeral home, Mr. Dawson went and saw his attorney who had prepared his will and that is when he discovered that a purported will had been filed by Mrs. Pounds with the probate court. Mr. Dawson was shocked to see that all of Jane's grandchildren and great-grandchildren had been eliminated from the will. Tr. 161, l. 17 – 162, l. 8.

At the time Jane died, she owned a house, two vehicles, a life insurance policy, two bank accounts jointly owned with Mrs. Pounds, and the bonds that were owned jointly with Mr. Dawson. Tr. 21, l. 23 – 23, l. 24. The house was owned solely by Jane. Tr. 24, ll. 6 – 13. The will filed by Mrs. Pounds in probate court left nearly Jane's entire estate to her. The only thing left to Mr. Dawson was "the old tools and anything that is his at the house." Tr. 46, ll. 2 – 24; Pl.'s Ex. 1.

The house was deeded to Mrs. Pounds approximately two weeks after Jane's death. Tr. 24, ll. 14 – 24; Deed of distribution. This deed was later voided by the circuit court as part of this lawsuit and transferred back into the estate. Tr. 25, ll. 12 – 17; Form 4 Order.

Mrs. Pounds was added as a joint owner of Jane's bank accounts with First Citizens in May and June of 2019. Tr. 27, ll. 7 – 15; Pl.'s Ex.s 2 & 3. The assets in these two bank accounts were also ordered to be frozen by the circuit court as part of this lawsuit. Tr. 29, l. 25 – 30, l. 3; Form 4 Order. Mrs. Pounds transferred more than $200,000 out of these joint accounts and into her personal bank account. Tr. 54, l. 14 – 55, l. 19; tr. 56, l. 5 - 57, l. 15. Mrs. Pounds testified at trial that all but $15,000 of that money was now gone. Tr. 57, ll. 16 – 61, l. 16.

## ARGUMENT

1.

The circuit court erred in finding that the will was validly executed.

**Relevant Facts**

One of the signatories on the will was Hampton Ellis. Pl.'s Ex. 1. Ellis testified that he had been Jane's next-door neighbor for sixteen or seventeen years. Tr. 12, ll. 9 – 21. Ellis acknowledged that his signature was on the will. Tr. 15, ll. 4 – 12. He said that on the day that he signed the will, someone came out of Jane's house and asked him to come over to sign something. Tr. 17, l. 17 – 18, l. 2. He recalled that Jane was present and two other people that he did not know. Tr. 15, ll. 14 – 22. Ellis had "no clue" what he was signing, and he did not witness Jane sign. He further testified that Jane did not acknowledge her signature to him in any way. Tr. 16, ll. 2 – 8. The only page Ellis saw was the signature page, and he was only fifteen years old at the time. Tr. 16, ll. 17 – 25.

At the close of the evidence, Counsel for Mr. Dawson argued that Hampton Ellis was not competent to witness the will because he was a minor. Tr. 255, l. 4 – 256, l. 5. Counsel further explained that Ellis testified that he did not review the document and that no one had explained to him what it was. Ellis did not even know that he was signing a will. Counsel further argued that Ellis admitted that he had not witnessed Jane sign the will and that she did not attest to her signature in his presence. Tr. 256, l. 6 – 258, l. 1. Counsel for Mrs. Pounds responded that Ellis' testimony was that he didn't remember whether he saw Jane sign or attest to her signature. Tr. 258, ll. 6 – 15.

In its final order upholding the validity of the will, the circuit court did not address the argument that Hampton Ellis was not competent as a witness to the will. Final Order. Counsel filed a motion to reconsider specifically pointing out that the circuit court had not ruled on that

argument. Mot. to reconsider, 1-2. The circuit court again did not rule on that issue in its order denying the motion to reconsider. Order denying mot. to reconsider.

In its final order, the circuit court acknowledged that Ellis testified that he did not witness Jane sign the will. However, the court incorrectly found that Ellis "could not recall whether [Jane] expressly indicated she had signed the paperwork." Final Order, 4-5. Based on this, the circuit court found that Ellis' "inability to expressly recall the details of the signing of the [will] . . . is alone not enough to invalidate the will." *Id*., 5. The court further noted that the will having been notarized established a presumption that the signatures were authentic. *Id*.

Counsel for Mr. Dawson argued in his motion to reconsider that the circuit court was incorrect in its recollection of Ellis' testimony. Specifically, Counsel pointed out that Ellis had testified that Jane did not acknowledge her signature in his presence. Mot. to reconsider, 1. Counsel further indicated that he had ordered the transcript of Ellis' testimony to verify whose recollection was correct. *Id*., n.1. The circuit court subsequently issued an order holding the motion in abeyance until the transcript was produced. Form 4 Order holding mot. in abeyance.

Mrs. Pounds, through new Counsel Shelby Leonardi, filed a response to Mr. Dawson's motion to reconsider along with a motion to expedite the ruling. Counsel cited to an unpublished decision by this Court in arguing that even if Ellis' signature did not comply with the witness requirements for wills, the will was still valid because the notary could serve as the second witness. Def.'s response, 5-6. On that basis, Counsel argued that the trial transcript was unnecessary to the resolution of the post-trial motions because the will was valid even without Ellis' signature. Def.'s mot. to expedite.

The circuit court denied the motion to reconsider. Order denying mot. to reconsider.

### A. Hampton Ellis was not competent to sign the will because he was a minor and did not know what he was signing.

As an initial matter, despite the circuit court not specifically ruling on this argument, upholding the validity of the will was at least an implicit rejection of this argument. Furthermore, once an issue has been raised to a trial judge at trial, and in a Rule 59(e) motion, and the trial judge has refused to rule both times, the appealing party need not file a second Rule 59(e) motion to preserve the issue. *See Coward Hund Constr. Co. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999) ("Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised").

South Carolina explicitly prohibits minors from making wills. Section 62-2-501 of the South Carolina Code provides that "An individual who is of sound mind and who is not a minor as defined in Section 62-1-201(27) may make a will." Section 62-1-201(27) defines "minor" as "a person who is under eighteen years of age, excluding a person under the age of eighteen who is married or emancipated as decreed by the family court." Without question then, Hampton Ellis did not have the capacity to make a will.

Whether a witness to a will can be a minor appears to be a novel question in South Carolina. Section 62-2-502(3) of the Probate Code provides that a will must be "signed by at least two individuals." Although South Carolina does not explicitly prohibit minors from witnessing wills, it is but a small logical extension of the prohibition on minors making wills to say that minors cannot witness wills.

"If a statute is ambiguous, the court must construe its terms in accordance with the rules of statutory construction." *McInnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002). "The cardinal rule of statutory interpretation is to determine the intent of the

legislature." *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 275, 617 S.E.2d 135, 138 (Ct. App. 2005). "The legislature's intent should be ascertained primarily from the plain language of the statute." *Id*. at 276, 617 S.E.2d at 138. A statute's language "must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Id*.

"When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning." *Id*. at 277, 617 S.E.2d at 139. However, courts must "reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Id*. at 278, 617 S.E.2d at 139. And finally, our appellate courts "should not consider a particular clause in a statute as being construed in isolation, but should read it in conjunction with the purpose of the whole statute and the policy of the law." *Id*.

The statute here uses the word "individuals" but in context this could have more than one meaning. Two of the primary purposes of the Probate Code are to "simplify and clarify the law concerning the affairs of decedents, . . . minors, and incapacitated persons," and "to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors." S.C. Code § 62-1-102(b)(1) & (3). The word "individual" is not defined by the Code, but "person" is defined to mean "an individual." S.C. Code § 62-1-201(32).

While the word person or individual might literally be construed to mean any human being, in light of the broader purpose of the Probate Code, such a reading would lead to absurd results. For instance, "incapacitated individual" is defined as a "an individual who, for reasons other than minority, has been adjudicated as incapacitated." S.C. Code § 62-5-101(12). If this Court were to adopt a literal reading of the word "individual" as used in Section 62-2-502, both minors and incapacitated persons would be permitted to serve as witnesses to wills. But allowing minors or

incapacitated persons to serve as witnesses to wills jeopardizes the administration of wills because it exposes the will to easily avoidable legal challenges. It is not much to require witnesses to wills be competent and of the age of majority. The preceding section of the Code, Section 62-2-501, prohibits both minors and incapacitated persons from making wills. This provides a strong indication that the General Assembly did not intend to allow them to serve as witnesses to wills.

In addition to the fact that Hampton Ellis was a minor at the time he signed Jane's will, he also testified that he had "no clue" what he was signing. Tr. 16, ll. 2 – 8. Although Hampton Ellis was likely competent to testify in court under the standard articulated by Rule 601 of the South Carolina Rules of Evidence, he cannot have been competent as a witness to sign a will when he did not even know that is what he was signing. The circuit court erred in upholding the validity of the will because Hampton Ellis could not serve as a witness.

This Court should reverse the circuit court and remand for Jane's estate to be administered under the rules of intestacy. *See In re Estate of Blankenship v. Grady*, 336 S.C. 103, 518 S.E.2d 615 (Ct. App. 1999) (providing that when a will is void the estate will pass under the rules of intestacy).

**B. Hampton Ellis' signature on the will did not comply with the requirements of Section 62-2-502 because he did not witness Jane sign the will, Jane did not acknowledge her signature on the will, and Ellis did not know that he was signing a will.**

The South Carolina Probate Code requires that wills be "signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will." S.C. Code § 62-2-502(3). Furthermore, "[i]n contested cases . . . [p]roponents of a will have the burden of establishing prima facie proof of due execution in all cases." S.C. Code § 62-3-407. And while a will that is self-proved pursuant to Section 62-2-503 may satisfy the

proponent's burden to establish proper execution, that presumption may be rebutted. S.C. Code § 62-3-406(1).

Ellis' testimony supports only one conclusion: he was not a witness to the will. Ellis said he had "no clue" what he was signing. He testified that he did not witness Jane sign. He further testified that Jane did not acknowledge her signature to him in any way. Tr. 16, ll. 2 – 8. The only page Ellis saw was the signature page, and he was only fifteen years old at the time he signed the will. Tr. 16, ll. 17 – 25.

Ellis does not meet any of the criteria of Section 62-2-502 and as such his signature cannot be used to support the requirement of a second witness. The circuit court was incorrect in its factual findings regarding Ellis' testimony. Ellis did not testify that he did not remember whether Jane acknowledged her signature. He testified that she did not acknowledge her signature. He also testified that he had "no idea" what he was signing. As such he cannot be said to have been a witness to "the will."

Ellis' testimony rebutted the presumption of proper execution under Sections 62-2-503 and 62-3-406. Thus, the burden was on Mrs. Pounds as the proponent of the will to produce testimony from the other witness or the notary to prove that the will was validly executed. Mrs. Pounds failed to produce any testimony that the will was properly witnessed by two witnesses as required under Section 62-2-502. The circuit court's ruling is not supported by any evidence and this Court should reverse and remand for this case to proceed under the rules of intestacy. *See In re Estate of Blankenship*, 336 S.C. 103, 518 S.E.2d 615.

**C. The notary did not sign the will and therefore cannot serve as the second witness to the will.**

Counsel for Mrs. Pounds argued in response to Mr. Dawson's motion to reconsider that the notary could serve as the second witness such that the will was valid even without Ellis' signature.

Admittedly, the Probate Code does allow a person who signs as a witness to a will to also serve as a notary. *See* S.C. Code § 62-2-503(c). But having a will notarized serves a different purpose from witnessing the will. Wills aren't required to be notarized, but if they are notarized in compliance with the language articulated in Section 62-2-503, the will becomes "self-proving." The significance of making a will self-proving is that it eliminates the requirement of presenting testimony by a signing witness in a contested case. However, the self-proving nature of a notarized will is subject to rebuttal. S.C. Code § 62-3-406(1). In such a case, "the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify." S.C. Code § 62-3-406(3).

Mr. Dawson rebutted the self-proving nature of the will by presenting testimony by Ellis which established that he was not a witness to the will as contemplated by Section 62-2-502(3). Therefore, as the proponent of the will, Mrs. Pounds was required to present at least one attesting witness to establish valid execution of the will under Sections 62-3-406(3) and 407. Mrs. Pounds did not produce the testimony of the notary or the other alleged witness to the will and as such failed to carry her burden of establishing valid execution of the will.

Additionally, even though the Probate Code allows a single person to be both a witness and a notary to a will, that person must still comply with the requirements of Section 62-2-502 by signing *the will*. Here, the notary did not sign the will. The notary's affidavit is on a separate sheet of paper from the will itself. There are only two witness signatures on the will. One of them was Hampton Ellis. The notary's signature appears only on the affidavit. See Pl.'s Ex. 1. As such, the notary did not sign the will and cannot serve as a witness to the will. The will was not validly executed and this Court should reverse and remand for Jane's estate to be administered under the rules of intestacy. *See In re Estate of Blankenship*, 336 S.C. 103, 518 S.E.2d 615.

2.

The circuit court erred in finding that the will and the addition of Mrs. Pounds as a joint owner of Jane's bank accounts were not the product of undue influence.

**Relevant Facts**

At the close of the evidence, Counsel for Mr. Dawson argued that Mrs. Pounds had a fiduciary relationship to Jane because she was serving as Jane's power of attorney at the time of Jane's death. As such, Counsel argued that there was a presumption that the will was the product of undue influence. Tr. 262, ll. 7 – 18. Mrs. Pounds also jointly owned bank accounts with Jane. Both the powers of attorney and the addition of Mrs. Pounds as a joint account owner predated the will at issue in this case. Tr. 262, l. 19 – 263, l. 5.

Counsel for Mr. Dawson pointed out that Jane's will disposed of her assets in an unnatural way, which is a factor in considering undue influence and that the change in Jane's will came less than a year before her death. Tr. 266, l. 15 – 25. There was also restricted communication and visitation between Mr. Dawson and Jane during the months leading up to her death. Tr. 267, ll. 1 – 7. Counsel further argued that Jane was being fed inaccurate information about the bonds which appeared to have motivated the change in her will. Tr. 267, l. 8 – 269, l. 2.

Jane had historically used attorneys to handle her legal matters including in both her late husband's probate process and her brother Paul's estate process. However, Mrs. Pounds' aunt, Donna McLees, essentially engaged in the unauthorized practice of law by helping Jane prepare a will and powers of attorney and advising her on the legal implications of those documents. Tr. 275, l. 23 – 278, l. 2. Finally, Counsel adopted the same arguments regarding undue influence of the will to support his argument that the addition of Mrs. Pounds as a joint owner of Jane's bank

accounts was also the product of undue influence. Adding Mrs. Pounds as a joint owner enabled Mrs. Pounds to deplete those accounts outside of the probate process. Tr. 279, ll. 9 – 19.

Counsel for Mrs. Pounds responded that there was no direct evidence of undue influence and that Mrs. Pounds had not asked to be appointed as power of attorney for Jane. Tr. 282, ll. 5 – 10. Counsel also maintained that Mrs. Pounds did not seek to enrich herself through use of the powers of attorney. Tr. 285, ll. 2 – 14.

In its final order, the circuit court found that neither the will nor the addition of Mrs. Pounds to Jane's bank accounts was a product of undue influence. Specifically as to the will, the circuit court found that no evidence was presented indicating that Jane was mentally or physically infirm at the time the will was signed. Final Order, 6-7. The court also noted that Mrs. Pounds appeared to have not been present at the execution of Jane's will and that the will was a product of Jane's own volition. *Id*. As such, the court found that Mrs. Pounds had overcome the presumption of undue influence due to the fiduciary relationship. *Id*. Specifically as to the bank accounts, the court found that Mrs. Pounds' testimony that Jane initiated the conversations about adding Mrs. Pounds as a joint owner and her awareness of the financial transactions Mrs. Pounds was making prior to her death indicated that the addition of Mrs. Pounds was not a result of undue influence. *Id*., 8.

The court denied Mr. Dawson's motion to reconsider.

**Discussion**

Contestants of a will have the burden of establishing undue influence. S.C. Code § 62-3-407. "In determining whether the contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants." *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982). "A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the

preparation, formulation, or execution of the donative transfer, whether the transfer was by gift, trust, will, will substitute, or a donative transfer of any other type." *Howard v. Nasser*, 364 S.C. 279, 288, 613 S.E.2d 64, 68 (Ct. App. 2005) (quoting Restatement 3d Property: Wills and Other Donative Transfers § 8.3 cmt. f (2003)). *See also In re Estate of Cumbee*, 333 S.C. 664, 672-73, 511 S.E.2d 390, 394 (Ct. App. 1999) (finding beneficiary in fiduciary relationship to decedent created presumption of undue influence where beneficiary was decedent's designated power of attorney and managed her finances).

For a will to be invalidated for undue influence, "[t]he influence must be of such a degree that it dominated the testator's will, took away his free agency, and prevented his exercise of judgment and free choice." *Todd v. Woodard*, 297 S.C. 264, 266, 376 S.E.2d 276, 278 (1989). "In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." *Hembree v. Estate of Hembree*, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993).

For example, in *Byrd v. Byrd*, the Supreme Court found that there was sufficient evidence of undue influence in the execution of a will to submit it to a jury where there was evidence that one of the decedent's sons had restricted the visitation and communication between the decedent and his other children. 279 S.C. 425, 429, 308 S.E.2d 788, 790 (1983). There was also evidence in *Byrd* that the son who was the primary beneficiary of the will was in a fiduciary relationship with the decedent because the son was authorized to sign checks on the decedent's behalf and took care of the decedent's business after he became ill. *Id*. at 430, 308 S.E.2d at 791. The *Byrd* Court also found it significant that the decedent died just six months after execution of the will which was

alleged to be the product of undue influence because there was not ample time to revoke the will after the undue influence upon him. *Id*.

Likewise in *Moorer v. Bull*, the Supreme Court found enough evidence to submit a claim of undue influence to the jury. 212 S.C. 146, 149, 46 S.E.2d 681, 682 (1948). In *Moorer*, the decedent was eighty years old at the time the will was executed and was "feeble, both in mind and in body." *Id*. at 148, 46 S.E.2d at 682. There was also evidence that the primary beneficiary of the will was "very closely associated with [the decedent] and transacted her business for her for many years." *Id*. at 149, 46 S.E.2d at 682. The *Moorer* Court also indicated that the unnatural disposition of a decedent's estate is relevant in determining whether the will was the product of undue influence. *Id*.

In this case, there was ample evidence presented that the will and the addition of Mrs. Pounds as a joint owner of Jane's bank accounts were products of undue influence. Jane had a history of using attorneys to handle her legal matters but was apparently convinced by Mrs. Pounds' aunt Donna to skip the attorney and sign significant legal documents at a cheaper price. Tr. 207, ll. 9 – 14. Prior to her hospitalization in April 2019, Jane had Mr. Dawson assisting with her finances and had him as joint account owner of her bank accounts. Mrs. Pounds did not have joint accounts and was not involved in the management of Jane's finances prior to Jane's fall. Mrs. Pounds took Jane to the bank to be added as a joint owner of her bank accounts and to file the powers of attorney. Tr. 27, ll. 7 – 15; Pl.'s Ex.s 2 & 3.

Additionally, after Jane's fall in April 2019 and the execution of the powers of attorney, contact between Jane and Mr. Dawson virtually ceased. The text messages Mr. Dawson received from Jane's phone number appeared to have been sent by someone else based on the way they were worded, and Mr. Dawson was threatened by Mrs. Pounds on Facebook. Tr. 157, l. 7 – 158, l.

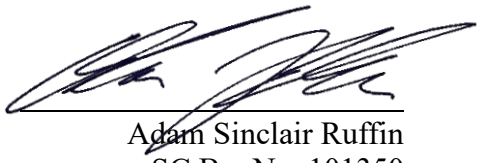
22; tr. 179, l. 23 – 180, l. 11; tr. 188, ll. 2 – 9; Pl.'s Ex. 11. This was highly unusual since before the April fall, Mr. Dawson and his wife Jennifer had Sunday dinner with Jane every week and regularly spent time with Jane helping her around her house. Tr. 119, ll. 9 – 23; tr. 124, ll. 8 – 16.

The situation here is not unlike those found in *Byrd*, 279 S.C. 425, 308 S.E.2d 788 and *Moorer*, 212 S.C. 146, 46 S.E.2d 681. Mrs. Pounds was in a fiduciary relationship with Jane by being appointed Jane's agent in the powers of attorney. This coupled with the restriction on visitation and the highly unnatural disposition of Jane's assets are strong indicators of undue influence. Not only was Mr. Dawson cut out of Jane's will, but all of Jane's grandchildren and great-grandchildren were cut out of the will as well with only one exception—one of Jane's granddaughters was given half of the life insurance policy. However, Mrs. Pounds was given authority as to how that money would be spent. Pl.'s Ex. 1, par. 15.

The circuit court erred in finding that the will and the addition of Mrs. Pounds as a joint owner of Jane's bank accounts was the product of undue influence. This Court should reverse and remand for this case to proceed under the rules of intestacy. *See In re Estate of Blankenship*, 336 S.C. 103, 518 S.E.2d 615.

## CONCLUSION

By reason of the foregoing arguments, this Court should reverse the circuit court's order upholding the validity of the will and remand this case with instructions for the Estate of Jane Dawson to be administered according to the rules of intestacy.



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This 5th day of February 2025.