RECEIVED
Mar 20 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREEENVILLE COUNTY
Honorable Perry H. Gravely

Case No. 2022-CP-23-003796
Probate C.A. No. 2017ES2301578

Joan Macatee and Jennifer Browning, as Guardian for Joan Macatee, ... Respondents,

v.

Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated, Mary Ann McNutt, Michael J. Macatee, Katlyn Auzier, and Michaela McNutt, ... Appellants.

of whom Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated, are the..... Appellants.

AMENDED NOTICE OF APPEAL

Appellants Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated appeal the Order Reversing Probate Court Order and Remading to Probate Court dated March 11, 2025. Appellant received written notice of the ruling on March 11, 2025. A copy of the order is attached to this notice.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, PA

s/Sarah P. Spruill
Sarah P. Spruill (SC Bar #68337)
One North Main, 2nd Floor
Greenville, SC 29601
(864) 240-3200
sspruill@hsblawfirm.com

Attorneys for Appellants Innes T. Mather, as Personal Representative of the Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated

March 20, 2025

Counsel of Record:

David A. Wilson
Wilson & Englebardt, LLC
200 Whitsett St.
Suite 100-B
Greenville, SC 29601
864-232-2329
dwilson@greenvillesclaw.com
Attorneys for Respondents

E. Zachary Horton
HORTON & HORTON LAW FIRM, LLC
810 Pendleton Street
Greenville, SC 29601
864-881-3413
zhorton@hortonlawsc.com
Attorney for Mary Ann McNutt, Katlyn Auxier and Michaela McNutt

L. Wayne Patterson
PO Box 5028
Greenville, SC 29606
864-270-7973
lwpat248@gmail.com
Attorneys for Estate of Michael J. Macatee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	C.A. No. 2022-CP-23-003796
	)	(Probate C.A. No.2017ES2301578)
	)	
Joan Macatee and Jennifer Browning, as Guardian for Joan Macatee,	)	
	)	
Appellants,	)	
	)	
vs.	)	**ORDER REVERSING PROBATE COURT ORDER AND REMANDING TO PROBATE COURT**
	)	
Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated, Mary Ann McNutt, Michael J. Macatee, Katlyn Auxier, and Michaela McNutt,	)	
	)	
Respondents.	)	
	)	

This matter came before me on January 22, 2025, in connection with an appeal from an Order of the Greenville County Probate Court filed July 14, 2022 in C.A. No. 2017ES2301578. In this Order, the Probate Court granted summary judgment to Respondents on all causes of action alleged by Appellants in this case. As discussed more fully below, and after thoroughly considering the record, the briefs filed by each party, the arguments of counsel, and the relevant case law, I find that summary judgment was not appropriate in this case.

STATEMENT OF THE CASE

Michael R. Macatee (hereinafter referred to as the "Decedent") executed a Trust Agreement of Michael R. Macatee on November 2, 2016. (hereinafter referred to as the "2016 Trust). In January of 2017, Decedent executed the Michael R. Macatee Trust Agreement amending and restating the 2016 Trust. ("2017 Restatement").

On March 23, 2017, Decedent executed the Amendment to Michael R. Macatee Trust Agreement Dated January 2017. ("First Amendment"). On May 10, 2017, Decedent executed the Second Amendment to Michael R. Macatee Trust Agreement Restated January 2017. ("Second Amendment"). The First Amendment and the Second Amendment may be referred to collectively as the "2017 Amendments".

Decedent passed away on June 18, 2017. Decedent was survived by his wife Joan Macatee ("Wife"), Mary Ann McNutt ("Daughter"), and Michael J. Macatee ("Son").

Following Decedent's death, Respondent presented a Will dated May 10, 2017 which is purported to be the last valid will Decedent executed prior to the his death. ("2017 Will"). The 2017 Will and the 2017 Amendments may be referred to collectively as the "Disputed Documents."

The 2017 Will provides that, subsequent to the specific distributions provided therein, the remainder of the Decedent's estate was to be bequeathed to Respondent as Trustee under the 2017 Restatement.

Wife filed an Amended Petition on May 18, 2018, with the Greenville County Probate Court alleging that Decedent lacked the testamentary capacity necessary to execute the 2017 Will, lacked the necessary capacity to execute the 2017 Amendments, and that all of the Disputed Documents were the product of undue influence exerted by Daughter and Son. Wife also alleged that the 2017 Amendments were not signed by both Trustees a required by law. Accordingly, Wife sought an Order invalidating the Disputed Documents and reviving the 2016 Trust and the 2017 Restatement.

The parties engaged in some discovery prior to Respondents filing a Motion for Summary Judgment on January 10, 2022.

On May 3, 2022, Respondents filed the Memorandum in Support of Motion for Summary Judgment and Wife filed her Memorandum of Law in Opposition to Respondents' Motion for Summary Judgment.

The parties argued their positions before the Probate Court on May 4, 2022.

By Order filed July 14, 2022, the Probate Court granted judgment in favor of Respondents as to all claims raised in the Amended Petition.

Wife appealed to the Circuit Court.

STANDARD OF REVIEW

When an appeal is made to the circuit court from an order of the probate court, the circuit court must determine "the appeal according to the rules of law." S.C. Code § 62–1–308(d). The Appellate court have interpreted this as follows:

> An important rule regulating any appeal is, of course, the rule concerning the standard of review the circuit court, sitting as an appellate court, must apply in a given case. In the absence of a statute prescribing a different standard of review, the circuit court in reviewing a final order of the probate court must apply the same standard of review that either this court or the Supreme Court would apply in the case.

Eagles v. S.C. Nat. Bank, 301 S.C. 402, 407–08, 392 S.E.2d 187, 190–91 (Ct. App. 1990). On appeal from a grant of summary judgment, this Court's standard of review is the same as that of the court below. David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).

The purpose of summary judgment is to expedite disposition of cases not requiring the services of a fact finder. Bankers Trust of S. C. v. Benson, 267 S.C. 152, 155, 226 S.E.2d 703, 704 (1976). A motion for summary judgment shall be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there

is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Schmidt v. Courtney, 357 S.C. 310, 317, 592 S.E.2d 326, 330 (Ct. App. 2003). It is clear that "[s]ummary judgment is proper only when it is clear that "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Koester v. Carolina Rental Ctr., Inc., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994).

In determining whether any triable issues of fact exist, all inferences from the facts in the record must be viewed in the light most favorable to the party opposing the summary judgment motion. Hamilton v. Miller, 301 S.C. 45, 47, 389 S.E.2d 652, 653 (1990). A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony. Scott v. McAlister, 436 S.C. 324, 331, 871 S.E.2d 620, 624 (Ct. App. 2022). Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Koester, 313 S.C. at 493, 443 S.E.2d at 394.

Summary judgment is a "drastic remedy" which should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Schmidt v. Courtney, 357 S.C. 310, 318, 592 S.E.2d 326, 331 (Ct. App. 2003).

DISCUSSION

I. Genuine issues of material fact exist as to Decedent's capacity to execute the Disputed Documents.

To support its decision to grant summary judgment to Respondents in this case, the Probate Court relied almost exclusively on the deposition testimony of Arthur "Mac" McLean, III to the

exclusion of the other direct and circumstantial evidence. In so doing, the Probate Court improperly applied its standard of review in ruling on a motion for summary judgment in a will contest based upon lack of capacity.

S.C. Code Ann. § 62-2-501 provides that for an individual to make a will, said individual must be of sound mind. It is well understood that "sound mind" means that the testator, in this case the Decedent, understood: (a) the estate plan act of making a will or trust; (b) the general extent of his property; (c) his relationship with his family; and (d) to whom he was giving property through the will or trust.

In its Order, the Probate Court found that the "***only evidence*** pertaining to the March 23, 2017 and May 10, 2017 (the dates of execution), apart from the documents themselves, is the Mac McLean Deposition." (Order p. 5)(emphasis added). This finding ignores contrary direct and circumstantial evidence surrounding the execution of the Disputed Documents.

The Probate Court selected portions of McLean's testimony to justify its finding that Wife failed to establish a genuine issue of material fact regarding capacity. The Probate Court found that McLean testified in "no uncertain terms" when the evidence suggests to the contrary. This is improper weighing of the evidence. McLean's testimony was not as definitive as suggested by the Probate Court in its Order. The Probate Court's decision to reference only the portions of the record which supported a finding of competency and capacity reveals its failure to adhere to the summary judgment standard of review. In the context of a summary judgment motion, the Court is required to view all ***inferences*** from the record in the light most favorable to Wife. In this case, the Probate Court viewed all inferences from the evidence in the light most favorable to Respondents.

Viewing the evidence and the inferences from the evidence in the light most favorable to

Wife as required in the summary judgment context, the evidence suggests that Decedent was confused, disoriented, experiencing hallucinations, extremely medicated, and not of sound mind leading up to *and including* the time of the execution of the Disputed Documents. The evidence further suggests that Daughter knew of Decedent's deteriorating mental condition and hallucinations and still facilitated and scheduled the execution of the Disputed Documents without disclosing Decedent's condition to the drafting attorney. The evidence also suggests that Daughter communicated all of the information included in the Disputed Documents to the drafting attorney without even discussing the issue with Decedent. Genuine issues of material fact exist as to Decedent's capacity and the services of a fact finder are necessary.

II. Genuine issues of material fact exist as to Daughter's exertion of undue influence over Decedent in connection with preparation of the Disputed Documents, especially given Daughter's role as fiduciary and the legal presumption of undue influence.

In granting Respondents summary judgment on the undue influence claim, the Probate Court found that Wife failed to present "unmistakable and convincing evidence that [the Macatee Children] utilized their relationship with Testator to substitute their will for his." Once again, the Probate Court failed to apply the proper standard of review and failed to consider the direct and circumstantial evidence suggesting that the contents of the Disputed Documents may have been the wishes of Daughter without any input from Decedent.

Contestants of a will have the burden of establishing undue influence. S.C. Code Ann. § 62-3-407. At trial, "undue influence must be shown by unmistakable and convincing evidence, *which is usually circumstantial*." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003)(emphasis added). However, Wife does not have to produce unmistakable and convincing evidence of undue influence to survive summary judgment. The Court is still bound to view all

evidence, and inferences from the evidence, in the light most favorable to Wife.

"In order for the will to be void due to undue influence, '[a] contestant must show that the influence was brought directly to bear upon the testamentary act.' " Id. at 219, 578 S.E.2d at 335 (quoting Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976)).

"A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." In re Estate of Cumbee, 333 S.C. 664, 671, 511 S.E.2d 390, 394 (Ct. App. 1999). To send the issue of undue influence to the factfinder, the contestant must show more than general influence—"there [must be] additional evidence that such influence was actually utilized." Howard v. Nasser, 364 S.C. 279, 289, 613 S.E.2d 64, 69 (Ct. App. 2005) (quoting Mock, 266 S.C. at 277, 222 S.E.2d at 774).

"The evidence must show that the free will of the testator was taken over by someone acting on testator's behalf." Russell, 353 S.C. at 217, 578 S.E.2d at 333. "In order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." In re Estate of Cumbee, 333 S.C. at 671, 511 S.E.2d at 394.

"Generally, in cases where a will has been set aside for undue influence, there has been evidence either of threats, force, and/or restricted visitation, or of an existing fiduciary relationship." Russell, 353 S.C. at 217, 578 S.E.2d at 333. "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." In re Estate of Cumbee, 333 S.C. at 672, 511 S.E.2d at 394 (quoting Brown v. Pearson, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)). "The existence of a fiduciary relationship between a testator and beneficiary raises a presumption of undue influence." Hairston v. McMillan, 387 S.C. 439, 447, 692

S.E.2d 549, 553 (Ct. App. 2010).

A presumption of undue influence further 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 transfer by trust, will, or donative transfer of any other type. The effect of the presumption is to shift to the proponent the burden of going forward with the evidence, not the burden of persuasion. *Restatement (Third) of Property: Wills and Other Donative Transfers* § 8.3 cmt. f (2003) (emphasis added).

In this case, Daughter was an agent under Decedent's Durable Power of Attorney and arguably his primary caregiver. Based on the evidence, Appellant argues that the evidence suggests that Daughter had substantial control over Decedent's finances. As such, when viewed in the light most favorable to Wife, the record suggests that a fiduciary relationship existed between Daughter and Decedent. See Howard v. Nasser, 364 S.C. 279, 613 S.E.2d 64, 69 (Ct. App. 2005). Given the arguably suspicious circumstances surrounding the preparation, formulation, and execution of the Disputed Documents, the confidential fiduciary relationship between Decedent and Daughter would have created the legal presumption of undue influence by Daughter, when viewed in the lens of the standard for Summary Judgment.

When viewed in the light most favorable to Wife, the substantial evidence and the inferences from that evidence suggest that Daughter communicated all of the information included in the Disputed Documents to the drafting attorney without even discussing the issue with Decedent. The record suggests that Decedent had no meaningful involvement in the changes made to his estate plan in 2017 because Daughter's influence completely eliminated Decedent's free agency and prevented him from exercising his own judgment and free choice.

The case at bar is similar to the case of Howard v. Nasser, 364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005). In Nasser, the Court of Appeals thoroughly discussed the standard of review in will contests involving allegations of undue influence by a fiduciary. The Nasser court ultimately held that the trial court erred in granting summary to the moving party in light of the following evidence of undue influence:

> (1) decedent was physically infirm as a result of a terminal illness during the month when the decedent executing the new will;
>
> (2) the disposition of decedent's estate was significantly different from his two prior wills;
>
> (3) the fiduciary was present at the meetings with the attorneys to discuss the contents of the new will;
>
> (4) decedent' s relationship with his nephews became strained and the frequency of family visits was limited after decedent's remarriage;
>
> (5) a member of the extended family noticed a change in decedent's disposition and believed someone was monitoring decedent's telephone conversations; and
>
> (6) an attorney who discussed estate planning with decedent and fiduciary refused to draft decedent's new will because he believed decedent was troubled by the changes.

The Nasser court held that the following conflicting evidence was not enough to grant summary judgment:

> (1) decedent traveled to Pennsylvania shortly before his death to attend a family event;
>
> (2) treating physicians did not discern any mental infirmity;
>
> (3) the attorney who prepared the final will believed decedent had the requisite mental and physical capacity to dispose of his estate and that decedent and his nephew had a "falling out";

(4) a stockbroker, who handled decedent's investments during the relevant time period, testified that decedent did not want nephew to have any of his money; and

(5) the fiduciary denied she used decedent's power of attorney, restricted his family visits, or monitored his telephone conversations.

Offering no opinion regarding the nonmoving party's success on the merits, the Court of Appeals in Nasser held that the appellants offered sufficient evidence to survive summary judgment. The Nasser court acknowledged that the party contesting the will based upon undue influence does not have to meet its ultimate burden of proof at the summary judgment stage. Id. 613 S.E.2d at 70. See also Byrd v. Byrd, 279 S.C. 425, 431, 308 S.E.2d 788, 791-92 (1983) (finding in will contest case that issue of undue influence was properly submitted to the jury where: testator was physically and mentally infirm prior to and contemporaneous with the execution of the will; son, who was the principal beneficiary of the will and in a confidential/fiduciary relationship with testator, threatened to place testator in a nursing home and attempted to restrict visits between testator and his other children; and the will was executed less than six months prior to testator's death); Moorer v. Bull, 212 S.C. 146,149, 46 S.E.2d 681, 681-82 (1948)(holding issue of undue influence in contested will case was properly submitted to the jury where there was evidence that testator's son was in a confidential/fiduciary relationship with his mother, mother was in fear of him, and he indicated an intention to procure for himself her estate).

In the present case, the Probate Court relied on the testimony of McLean that he never suspected that Daughter was trying to control Decedent and that he spoke to Decedent outside the presence of Daughter. The Probate Court failed to properly consider the circumstantial evidence of Daughter's undue influence over Decedent. See In re Last Will and Testament of Smoak, 286 S.C.419, 424, 334 S.E.2d 806, 809 (1985) ("A will contest based on alleged undue influence is most

often adjudicated on the basis of circumstantial evidence").

The record contains genuine issues of material fact as to Daughter's undue influence over Decedent in connection with the creation of the Disputed Documents. The Probate Court failed to apply the proper standard of review, especially considering the presumption of undue influence which may have arisen given Daughter's relationship with Decedent. I find that the Probate Court essentially viewed the evidence in the light most favorable to Respondents, assigned excessive weight to the credibility of McLean's testimony, and imposed an excessive burden on Wife to prove her case at the summary judgment stage by "unmistakable and convincing evidence."

In summary, when viewed in the light most favorable to Wife, the evidence presented at the summary judgment hearing in Probate Court clearly raised genuine issues of material fact as to the mental capacity of Decedent at the time of the execution of the Disputed Documents and whether Decedent was subject to undue influence. Some of this evidence requires a determination of credibility.

Since Appellants failed to assert any argument in the Appellants' Brief regarding issues relating to Section III of the July 14, 2022 Order, this issue is deemed abandoned.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Order of the Greenville County Probate Court filed July 14, 2022 in C.A. No. 2017ES2301578 is reversed insofar as it granted summary judgment to Respondents.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Section III of the Order of the Greenville County Probate Court filed July 14, 2022 in C.A. No. 2017ES2301578 is affirmed.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this matter is hereby remanded to the Greenville County Probate Court for further proceedings consistent with this Order.

IT IS SO ORDERED.

[JUDGE'S SIGNATURE PAGE TO FOLLOW]

Greenville Common Pleas

Case Caption: Joan Macatee , plaintiff, et al VS Michael R Macatee Estate , defendant, et al

Case Number: 2022CP2303796

Type: Order/Other

So Ordered

s/ Honorable Perry H. Gravely, #2755

RECEIVED
Mar 20 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREEENVILLE COUNTY
Honorable Perry H. Gravely

Case No. 2022-CP-23-003796
Probate C.A. No. 2017ES2301578

Joan Macatee and Jennifer Browning, as Guardian for Joan Macatee, ... Respondents,

v.

Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated, Mary Ann McNutt, Michael J. Macatee, Katlyn Auzier, and Michaela McNutt, ... Appellants.

of whom Innes T. Mather, as Personal Representative of The Estate of Michael R. Macatee, and Innes T. Mather, as Trustee of the Michael R. Macatee Revocable Living Trust dated November 2, 2016, as amended and restated, are the ..... Appellants.

PROOF OF SERVICE

I certify that I have served the *Amended Notice of Appeal,* on all attorneys of record by electronic mail on March 20, 2025 addressed to:

David A. Wilson
Wilson & Englebardt, LLC
200 Whitsett St.
Suite 100-B
Greenville, SC 29601
dwilson@greenvillesclaw.com
Attorneys for Respondents

E. Zachary Horton
HORTON & HORTON LAW FIRM, LLC
810 Pendleton Street
Greenville, SC 29601
zhorton@hortonlawsc.com
Attorney for Mary Ann McNutt, Katlyn Auxier and Michaela McNutt

L. Wayne Patterson
PO Box 5028
Greenville, SC 29606
lwpat248@gmail.com
Attorneys for Estate of Michael J. Macatee

Stacey Carberry, Legal Assistant

HAYNSWORTH SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
ONE NORTH MAIN STREET, 2ND FLOOR
P.O. BOX 2048 (29602)
GREENVILLE, SOUTH CAROLINA 29601
MAIN 864.240.3200
FAX 864.240.3300
www.hsblawfirm.com

SARAH P. SPRUILL
DIRECT 864.240.3220
sspruill@hsblawfirm.com

March 20, 2025

VIA EMAIL AND U.S. MAIL
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: *Joan C. Macatee, et al. v. Innes T. Mather, as Personal Representative of the Estate of Michael R. Macatee, et al.*
Case No. 2022-CP-23-003796
Probate C.A. No. 2017ES2301578

Dear Ms. Kitchings:

Enclosed please find the following for filing in regards to the above referenced matter:

(1) Amended Notice of Appeal with attachments; and
(2) Proof of Service.

In our initial filing we inadvertently left off counsel of record and are now sending the amended notice to correct that deficiency.

Our firm's check in the amount of $250.00 for the filing fee is being sent with the mailed copy.

The Amended Notice of Appeal has been filed electronically with the lower court.

Once filed, please return a clocked copy to me by email.

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.

Sarah P. Spruill

SPS/sac
Enclosures

cc: L. Wayne Patterson (via email only lwpat248@gmail.com)
E. Zachary Horton (via email only zhorton@hortonlawsc.com)
David A. Wilson (via email only dwilson@greenvillesclaw.com)