RECEIVED
Mar 21 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge
Case No. 2020-CP-32-01941

Appellate Case No. 2024-001801

Joseph R. Dawson, Jr., Plaintiff/Appellant

v.

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

INITIAL BRIEF OF RESPONDENT

Shelby K. Leonardi
South Carolina Bar # 70570
Polales Horton & Leonardi LLP
1502 Blanding Street
Columbia, SC 29201
t: 803-988-9708
c: 803-467-5410
sleonardi@phl-firm.com

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Secondary Sources

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). Finally, "in a law case tried without a jury, questions regarding the credibility and the weight of evidence are exclusively for the trial judge." *In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009) (quoting *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997)).

STATEMENT OF FACTS

Jane Dawson died on March 16, 2020. Tr. 20, ll. 1 – 3. Her husband predeceased her. Tr. 20, ll. 7–9. Jane had two children: John, who predeceased her, and Joseph, the Appellant ("Mr. Dawson"). Tr. 20, ll. 13 – 19. Jane's son John was survived by three biological children and one step-daughter – Heather Pounds, the Respondent ("Mrs. Pounds"). Tr. 19, ll. 21 – 25; Tr. 20, l. 18 – 21, l. 6.

Mrs. Pounds's mother, Jennie Powell, began dating Jane's daughter John while Jennie was pregnant with Mrs. Pounds. Tr. 66, ll. 11 – 17; Tr. 68, ll. 18 – 19. Although Jennie and John did not marry until Mrs. Pounds was five years old, she always knew Jane as her grandmother and lived with her as soon as two weeks after Mrs. Pounds's birth. Tr. 66, ll. 16 – 18; Tr. 67, ll. 6 – 9, Tr. 68, ll. 20 – 22. Jennie and John subsequently had three children together, including Katelyn Jane Dawson ("Janie"), who testified at trial. Tr. 214, ll. 4 – 18.

Janie described Mrs. Pounds and Jane as having a "great relationship" and loving each other very much. Tr. 215, ll. 16 – 22. She stated that Mrs. Pounds would come over every day to sit and talk with Jane on the porch. Tr. 215, ll. 18 – 19. Mrs. Pounds lived with Jane several times during her childhood, teenage years, and in adulthood. Tr. 66, l. 24 – 67, l. 3. Most recently, Mrs. Pounds lived with Jane for two years after Jane told Mrs. Pounds to leave her first marriage. Tr. 67, ll. 1 – 3. Mrs. Pounds was with Jane every day. Tr. 67, ll. 3 – 4. Mrs. Pounds testified that Jane was her grandmother and her best friend. Tr. 19, ll. 11 – 20.

At some point, Jane inherited bonds. Tr. 68, l. 25 – 69, l. 4. With some of the bond money, she bought Mr. Dawson a house, a business, and trucks. Tr. 69, l. 8– 70, l. 7. However, she also had bonds remaining in a safe deposit box that she held with Mr. Dawson. Tr. 70, ll. 10 – 17. Mrs. Pounds testified that Mr. Dawson added himself as co-owner of the bonds. Tr. 71, ll. 7 – 25. According to Mrs. Pounds, the relationship between Jane and Mr. Dawson deteriorated over the

bonds. Tr. 72, ll. 3 – 20. Jane filed a police report on Mr. Dawson related to him taking the bonds. Tr. 79, l. 24 – 80, l. 6. The last time Jane spoke to Mr. Dawson was a year and a half before Jane's death. Tr. 72, ll. 10 – 12. Janie also testified that the relationship between Jane and Mr. Dawson was strained in the last couple of years before Jane's passing and that there was some disagreement between them about bonds. Tr. 215, l. 23 – 216, l. 6.

In spring 2019, Jane fell in her driveway. Tr. 237, ll. 14 – 17; Tr. 244, ll. 18 – 25. A neighbor called Mrs. Pounds, who immediately took Jane to urgent care. Tr. 237, ll. 14 – 16. Mrs. Pounds tried to contact Mr. Dawson, but he did not respond. Tr. 237, ll. 10 – 13. A few days after the fall, Jane's bruise looked terrible, and Mrs. Pounds sent Mr. Dawson a picture of the bruise. Tr. 237, ll. 22 – 25. Mr. Dawson texted back a few days later and stated that he did not have time to deal with Jane. Tr. 238, ll. 4 – 6.

Two weeks later, on or about April 11, 2019, Jane could not breathe and thought she was having a heart attack. Tr. 33, ll. 18–25; Tr. 238, ll. 7 – 10. Jane called Mrs. Pounds, who called an ambulance. Tr. 33, ll. 10 – 13. Jane was transported to the hospital, where she learned she was having a panic attack. Tr. 34, l. 12 – 14. Jane was at the hospital for two hours and then went home. Tr. 34, ll. 12 – 14. After this incident, Mrs. Pounds called Mr. Dawson, but he never responded. Tr. 238, ll. 7 – 13. At trial, Mr. Dawson seemed to conflate the fall in the driveway with the panic attack. Tr. 177, l. 25 – 178, l. 7.

On April 18, 2019, Jane executed a will (the "First Will") naming Mrs. Pounds as personal representative. Def.'s Ex. 1. The First Will was prepared online by Jane and her long-time best friend, Donna McLees, who was also the aunt of Mrs. Pounds. Tr. 75, l. 12 – 76, l. 17. Ms. McLees showed Jane a will template and they talked about Jane's bequeathments. Tr. 208, ll. 14 – 22. The First Will left all vehicles, real property, furniture, and other personal effects to Mrs. Pounds with

handwritten instructions to Mrs. Pounds "to make available to any family member wanting any residue in my home." Def.'s Ex. 1 at 2–4. The First Will also includes handwriting stating, "[Mr. Dawson] has been assigned the bonds and beneficiary of a separate policy." *Id.* at 4.

On April 18, 2019, Jane also executed a general power of attorney and a health care power of attorney naming Mrs. Pounds as her agent. Pl.'s Exs. 5 & 6. Jane took those documents to the courthouse herself on May 1, 2019, and filed them. Tr. 36, ll. 10 – 18. According to Mrs. Pounds, Jane was afraid to go into a nursing home, and she wanted Mrs. Pounds to take care of her. Tr. 39, ll. 13 – 16. Ms. McLees also testified that Jane was concerned about Mr. Dawson putting her in a nursing home, which is why Ms. McLees helped Jane execute the durable and medical powers of attorney. Tr. 207, l. 19 – 208, l. 10. Jane executed the powers of attorney so that Mrs. Pounds could take care of Jane and pay her bills if something happened to Jane. Tr. 39., ll. 17 – 24.

Janie testified that Mrs. Pounds did not pressure Jane to change her will, name Mrs. Pounds as power of attorney, or leave an inheritance to Mrs. Pounds. Tr. 216, ll. 8 – 19. Janie stated that at some point prior to executing the power of attorney, Jane had asked Janie if she would be the power of attorney. Tr. 216, ll. 11 – 14. Janie declined because she did not understand legal things, but agreed it was a good idea when Jane said that she might possibly make Mrs. Pounds the power of attorney. Tr. 216, ll. 14 – 16.

On July 14, 2019, Jane executed a new will (the "Operative Will"). Pl.'s Ex. 1. Mrs. Pounds was not present at Jane's home when Jane signed the Operative Will, though Mrs. Pounds did arrange for the notary to be present. Tr. 46, l. 25 – 47, l. 7. Consistent with the First Will, the Operative Will named Mrs. Pounds as personal representative and devised all real property, vehicles, and residue to Mrs. Pounds. Pl.'s Ex. 1 at 2–3. The Operative Will also devised the bonds in Jane's safety deposit box to Mrs. Pounds and further notes that if Mr. Dawson "still has the

bonds that he took from my safety deposit box knowing that my yearly income depended on them, he gets nothing else of my estate." *Id.* at 3. The Operative Will was witnessed by Victoria Brazell and Hampton Ellis, and was notarized by Kimberly Nutta. *Id.* at 4–5.

Mrs. Pounds understood Jane to be in great health other than her cardiomyopathy. Tr. 32, ll. 16 – 22. Mrs. Pounds described Jane as being able to run circles around Mrs. Pounds and her siblings. Tr. 32, ll. 21 – 22. Mrs. Pounds did not pay bills for Jane, manage her affairs, or conduct any business with banks or financial institutions on her behalf; Jane managed her own money. Tr. 77, ll. 5 – 18. Although Jane and Mrs. Pounds held a safety deposit box together, Mrs. Pounds never accessed it without Jane. Tr. 77, 19 – 24. Up until she died, Jane drove herself everywhere, prepared her own meals, and took care of her own finances. Tr. 89, ll. 2 – 10.

Jane died in her sleep on March 16, 2020, when her heart stopped. Tr. 91, ll. 4 – 19. The day after Jane died, Mrs. Pounds filed the Operative Will. Tr. 21, ll. 7 – 9. Pursuant to the Operative Will, Mrs. Pounds was appointed as the personal representative of Jane's estate on March 26, 2020. Tr. 21, ll. 17 – 22.

ARGUMENT

1.

The circuit court did not err in finding that the will was validly executed.

Relevant Facts

Hampton Ellis ("Mr. Ellis") was a witness to the Operative Will. Pl.'s Ex. 1. He was also Jane's next-door neighbor. Tr. 12, ll. 18 – 19. He testified that he remembered going to Jane's home to sign documents. Tr. 13, l. 24 – 14, l. 1. When presented with the Operative Will during trial, he confirmed that he recognized the document and identified it as the will of Jane Dawson. Tr. 14, ll. 14 – 19. He also confirmed that his signature was on the document and that he recalled signing it. Tr. 15, ll. 8 – 12. Mr. Ellis testified that he could not remember the events exactly but remembered being called over to Jane's house and being asked to sign the document. Tr. 15, ll. 13 – 16. He recalled Jane and two other people he did not know being present at Jane's house. Tr. 15, ll. 17 – 20. He stated that the people present at Jane's house gave him "a brief rundown of what [the document] was" and asked if he would sign it. Tr. 15, l. 23 – 16, l. 1.

Although Mr. Ellis had just testified that he was given a "brief rundown" of the document, he next testified that he had "no clue" what he was signing, that he did not see Jane sign the document, that Jane did not acknowledge her signature to him, and that he did not remember if Jane spoke to him. Tr. 16, ll. 2 – 10. However, he estimated that he was at Jane's house for "[p]robably 10 to 15 minutes." Tr. 16, ll. 11 – 12. When asked whether the will he was shown was a complete copy that had not changed since he signed it in July 2019, he responded "yes." Tr. 16, ll. 13 – 16. When Mr. Dawson's counsel asked how Mr. Ellis knew that it was a complete copy given that he had not signed any pages except the last, Mr. Ellis responded that the signature page was "the only page [he] really saw." Tr. 16, ll. 17 – 20. Mr. Dawson's counsel then followed up

with, “So you wouldn’t have seen pages 1 through 4?” to which Mr. Ellis responded that he did not read those pages on that day. Tr. 16, ll. 22 – 23. The Operative Will, however, shows that Mr. Ellis signed both pages 4 and 5 of the document. Pl.’s Ex. 1 at 4–5.

On cross-examination, Mr. Ellis testified that he recalled someone coming out and asking him to come over to Jane’s house, but he did not recall who made the request. Tr. 17, l. 10 – 18, l. 2. Despite his earlier testimony regarding Jane being present, he testified that he did not remember if Jane was present. Tr. 17, ll. 13 – 16. When asked whether Mrs. Pounds was present, he testified “I don’t remember exactly. I want to say she was, but I don’t remember. I don’t remember what happened that day very well at all because I didn’t know what was going on, to be honest.” Tr. 18, ll. 5-9.

On June 10, 2024, in its final order following the bench trial held in April 2024, the circuit court upheld the validity of the Operative Will. Final Order, 4–5. In so holding, the circuit court noted that “Mr. Ellis testified he was given a brief synopsis of the paperwork and then asked to sign.” *Id.* at 4. The circuit court acknowledged that Mr. Ellis testified he did not witness Jane sign the paperwork and noted that Mr. Ellis “could not recall whether [Jane] expressly indicated she had signed the paperwork.” *Id.* at 5. In holding that the Operative Will was valid, the circuit court relied on (1) the inability of Mr. Ellis being able to remember the details of the execution of the Operative Will as insufficient to invalidate the Operative Will and (2) proper notarization of the Operative Will establishing the presumption of its validity. *Id.* The circuit court indicated that Mr. Ellis “did not testify that [Jane] failed to acknowledge her signature of the will, but instead stated he could not recall.” *Id.*

In his motion for reconsideration filed June 20, 2024, Mr. Dawson argued that the circuit court incorrectly recollected Mr. Ellis’s testimony regarding acknowledgement of the Operative

Will. Mot. to Reconsider, 1. Mr. Dawson argued that Mr. Ellis testified that he did not witness Jane sign the Operative Will and that her signature was not acknowledged to him. *Id.* Counsel for Mr. Dawson indicated that he had ordered the transcript of Mr. Ellis's testimony and would further amend or modify the motion to reconsider as necessary upon receipt of the transcript. *Id.*, n.1.

On July 23, 2024, Mrs. Pounds filed her response to the motion for reconsideration along with a motion for expedited ruling. Mrs. Pounds argued that Mr. Ellis was competent to serve as a witness despite being a minor, that the Operative Will was executed in compliance with statutory requirements, and that, even if Mr. Ellis were not a competent witness, the notary who signed the Operative Will could serve as the second witness. Def.'s Response, 5–6. In her motion for expedited ruling, Mrs. Pounds argued that in light of the validity of the Operative Will even without Mr. Ellis' signature, the circuit court could rule on the motion for reconsideration without waiting for the transcript. Def.'s Mot. to Expedite.

Mr. Dawson did not respond to the motion for expedited ruling or file a reply in support of his motion for reconsideration. There is no indication other than a footnote in the motion for reconsideration that his counsel ever requested the trial transcript. Nevertheless, the circuit waited to issue its order denying the motion for reconsideration until September 23, 2024, noting the lack of any response by Mr. Dawson to the July 23rd filings. Order Denying Mot. to Reconsider, 1.

Discussion

Under South Carolina law, a valid will "shall be: (1) in writing; (2) signed by the testator . . . ; and (3) 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 Ann. § 62-2-502. Mr. Dawson does not dispute that the Operative Will was in writing and signed by Jane. Rather, Mr. Dawson's argument regarding execution rests solely on the third statutory requirement that a will

must be signed by at least two individuals who have either witnessed the signing or before whom the testator has acknowledged the signature or the will itself. For the reasons set forth below, the circuit court's holding that the Operative Will was valid is supported by the evidence.

A. Mr. Ellis was competent to be a witness to the Operative Will.

Mr. Dawson argues that Mr. Ellis was not competent to witness the Operative Will because (1) he was a minor and (2) he did not know what he was signing.

First, although Mr. Ellis was fifteen years old at the time he signed the Operative Will, his age did not render him incompetent to serve as a witness. While there is no South Carolina law directly addressing the question of whether a minor can serve as witness to a will under the Probate Code, Section 62-2-502(3) does not require witnesses to be a particular age. Rather, the language used in the statute – "signed by at least two *individuals*" – is broad enough to permit witnesses to be minors. *See* S.C. Code Ann. § 62-2-502(3) (emphasis added). Mr. Dawson's reliance on the Probate Code's prohibition on minors making wills does not reasonably lead to the conclusion that Mr. Ellis did not have the capacity to serve as a witness to Operative Will. Rather, the legislature included language prohibiting minors from making wills but did not include that same language regarding witnesses. The plain language of the statute, therefore, leads to the conclusion that the capacity required to execute a will is different from the capacity required to witness a will. In light of the statutory language, Rule 601 of the South Carolina Rules of Evidence should be used to determine Mr. Ellis's competency. Under that Rule, "children are presumed to be competent unless it is shown otherwise." Rule 601, S.C.R.E. cmt. The record in this case contains no evidence that Mr. Ellis lacked competency to serve as a witness.

Pre-Probate Code case law further supports the contention that a minor may serve as a witness to a will. In *Stevens v. Royals*, the Supreme Court of South Carolina rejected handwritten

changes to a will because they were made before the last witness, who was a minor around 13 or 14, signed the will. *Stevens v. Royalls*, 223 S.C. 510, 513-14, 77 S.E.2d 198, 200 (1953) The South Carolina Supreme Court held that because there was only one witness to these changes, they were invalid due to codicil formalities not being followed. *Id.* at 14–17. The Court considered the minor to be a witness and focused on the fact that there was only one witness when the codicil formalities required three. *Id.*

Persuasive authority likewise supports the idea that minors are permitted to serve as attesting witnesses to wills. The Restatement (Third) of Property provides:

> A minor is not usually disqualified from serving as an attesting witness to a will, although a few states specifically provide by statute a minimum age, such as 18, for attesting witnesses. More commonly, however, no age is specified in the statute. If no age is specified in the statute, a minor is a valid witness, unless the minor was not old enough to observe, remember, and relate the facts occurring at the execution ceremony.

See Restatement (Third) of Property § 8.2 cmt. h. Based on the foregoing, Mr. Ellis's age did not render him incompetent to serve as a witness.

Mr. Dawson's second argument – that Mr. Ellis was not competent because he did not know what he was signing – is likewise unavailing. Mr. Ellis's trial testimony is contradictory. When shown the Operative Will at trial, Mr. Ellis testified that he recognized the document. Tr. 14, ll. 16 – 19. He further testified that upon arriving at Jane's house, the people present there gave him "a brief rundown of what [the document] was" and asked if he would sign it. Tr. 15, l. 23 – 16, l. 1. This testimony directly contradicts his testimony that he had "no clue" what he was signing. Tr. 16, ll. 1 – 8. Where, as here, a case is tried without a jury, "questions regarding the credibility and the weight of evidence are exclusively for the trial judge." *See In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009) (quoting *Golini v. Bolton*, 326 S.C. 333, 342, 482 S.E.2d 784, 789 (Ct. App. 1997)). The circuit court judge, who was in the best position to assess

Mr. Ellis's credibility, determined that Mr. Ellis was sufficiently apprised of the contents of the document to serve as a competent witness. This holding should not be disturbed on appeal.

B. Mr. Ellis's inconsistent testimony and the circuit court's credibility determination were sufficient to support a finding that Mr. Ellis' signature complied with the requirements of S.C. Code Section 62-2-502.

Mr. Dawson next argues that Mr. Ellis was not an acceptable witness under Section 62-2-502 because he did not witness "either the signing or the testator's acknowledgment of the signature or of the will." *See* S.C. Code Ann. § 62-2-502(3). The Operative Will in this case was self-proved, however, and Mr. Dawson has failed to rebut the presumption of due execution.

"A self-proved will incorporates an affidavit signed by the testator, the witnesses, and a notary into the will, declaring due execution of the will, testator's testamentary capacity, and that there was no undue influence upon the testator." *Smith v. Lawton*, 435 S.C. 179, 188, 865 S.E.2d 782, 786 (Ct. App. 2021) (citing S.C. Code Ann. § 62-2-503). "A self-proved will does not require the production of evidence as to the due execution of the will." *Id.* (citing S.C. Code Ann. §§ 62-3-405 to -406).

Here, the Operative Will was self-proving because the last page of the Will contains the statutory language required for self-proof. *See* Pl.'s Ex. 1 at 5; *see also* S.C. Code Ann. § 62-2-503. While rebuttal of self-proof is contemplated by Section 62-3-406(1), Mr. Dawson has not rebutted the self-proving nature of the Operative Will. His argument to rebut the presumption relies on the same facts as the argument that Mr. Ellis was not competent because he did not know what he was signing and likewise ignores the contradictions present in Mr. Ellis's testimony. While it is true that Mr. Ellis testified that he did not see Jane sign the document, that she did not acknowledge her signature, and that he had "no clue" what he was signing, this testimony was on direct examination by Mr. Dawson's counsel and contradicted other testimony regarding the same

issues. For example, Mr. Ellis testified that he was given a "brief rundown of what [the document] was" and *did not remember* Jane saying anything to him or speaking to him. Tr. 15, l. 24 – 16, l. 10. He also testified that he was at the house for "probably 10 to 15 minutes," Tr. 16, ll. 11–12, which would have been a long time to have had "no idea" what he was signing. Further, he contradicted himself by first saying he recalled Jane and two other people he did not know being present at Jane's house and later saying that he did not remember if Jane was present. Tr. 15, ll. 17 – 20; Tr. 17, ll. 13 – 16.

Additionally, Mr. Ellis's testimony that "the only page [he] really saw of the document was the signature page" and he "wouldn't have seen pages 1 through 4," Tr. 16, ll. 19 – 23, is contradicted by the fact that he signed pages four and five of the Operative Will, *see* Pl.'s Ex. 1 at 4–5. Page four of the Operative Will, signed by Mr. Ellis, uses the term "will" seven times. *Id.* at 4. Page five of the Operative Will, signed by Mr. Ellis, uses the term "will" four times. *Id.* at 5. Taken together, these facts and Mr. Ellis's contradictory testimony support the circuit court's credibility determination and conclusion that Mr. Ellis's "inability to expressly recall the details of the signing of the July 2019 Will, when it occurred approximately five years ago, is alone not enough to invalidate the will." Final order, 5.

Furthermore, South Carolina law provides that a will is valid so long as the witness observes "the testator's acknowledgment of the signature *or of the will*." *See* S.C. Code Ann. § 62-2-502(3) (emphasis added). Thus, Mr. Dawson's focus on whether Jane acknowledged her signature to Mr. Ellis is misplaced. So long as Mr. Ellis understood from Jane that the document he signed on July 14, 2019, was her will and she acknowledged the will as her own, the will was executed in accordance with the statutory requirements. Mr. Dawson has not presented sufficient

and reliable evidence that Mr. Ellis did not understand what he was signing to rebut the presumption of due execution or to demonstrate a legal error by the circuit court.

C. Even if Mr. Ellis' signature is found to be invalid, the signature of the notary is sufficient for her to serve as the second witness to the Operative Will.

Even if Mr. Ellis were deemed to be either an incompetent witness or a witness who did not comply with the requirements of Section 62-2-502, the Operative Will is still valid under South Carolina law because it was signed by another witness and the notary. As Mr. Dawson recognizes, the Probate Code allows a person who signs as a witness to a will to also serve as a notary. *See* Appellant's Initial Br. at 15.[1] In the present case, Plaintiff has not alleged any deficiency in the signatures of either the notary or the other witness on the Operative Will. Thus, the Operative Will meets South Carolina's execution requirements even without the signature of Mr. Ellis.

Additionally, even in the absence of Mr. Ellis' signature, the Operative Will is self-proving. Pursuant to Section 62-2-503, a will is self-proved "upon the acknowledgement by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where execution occurs." In other words, a will is self-proved through an instrument signed by the decedent, *one witness*, and a notary. The plain language of the statute makes clear that only one witness is required for a will to be self-proved. Thus, the remaining witness and notary on the "Affidavit" page of the Operative Will are sufficient to render it self-proving. As discussed above, Mr. Dawson has not rebutted the self-proving nature of the Operative Will. Because the Will was self-proving and the presumption of due execution has not been

[1] There is no case law directly addressing this issue other than the unpublished opinion of *In Re Estate of Reagan*, No. 2015–UP–354, 2015 WL 4275465 (S.C. Ct. App. July 15, 2015) (holding that a notary may be considered the second witness required by Section 62-2-502(3) even when the notary did not intend to be an attesting witness).

rebutted, Mrs. Pounds was not required to produce the testimony of the notary or the other witness to establish the Operative Will's validity.

Mr. Dawson's attempt to characterize the last page of the Operative Will as a separate document is unavailing. The last page of the Operative Will, as introduced by Mr. Dawson's counsel at trial, is signed by Jane, two witnesses, and a notary. *See* Pl.'s Ex. 1 at 5. A plain reading of the text makes clear that the document is a part of the Will. For example, the document provides, "I sign and execute *this instrument* as my Last Will." *Id.* (emphasis added). The document further provides, "[T]he Testatrix signs and executes *this instrument* as the Testatrix's Last Will . . . and each of us . . . hereby signs *this* Last Will as witness to the Testatrix's signing." *Id.* (emphasis added).

While the witnesses signed both the fourth and fifth pages of the Will, those duplicative signatures do not mean that the page entitled "Affidavit" was a separate document from the Will. The Will does not include page numbers and was prepared by a non-lawyer. Furthermore, it was not until this appeal that Mr. Dawson made the claim that the Operative Will, which his counsel introduced as a single document at trial, was only the first four pages of the document. Rather, questioning at trial directly contradicts this contention. When questioning Mrs. Pounds, Mr. Dawson's counsel referred to "the last page of Exhibit 1, the will, . . . where it says, 'LegalContracts.com' at the bottom." Tr. 45, ll. 11 – 12. The only page that says LegalContracts.com at the bottom is the page with the "Affidavit" title. Thus, the Operative Will includes the signatures of two witnesses – the second witness and the notary – aside from Mr. Ellis and continues to be self-proving even in the absence of Mr. Ellis' signature.

For all of the foregoing reasons, the Operative Will was validly executed as was properly held by the circuit court.

2.

The circuit court did not err 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

Mrs. Pounds' sister, Janie, testified that Mrs. Pounds and Jane had a "great relationship" and saw each other on a daily basis. Tr. 215, ll. 16 – 22. Mrs. Pounds also testified that she saw Jane every day and that Jane was her best friend. Tr. 19, ll. 11 – 20; Tr. 67, ll. 3 – 4. On the contrary, Mr. Dawson's relationship with Jane was strained in the last couple of years before her death, primarily related to their disagreements over the bonds. Tr. 215, l. 23 – 216, l. 6. The last time Jane spoke to Mr. Dawson was a year and a half before Jane's death. Tr. 72, ll. 10 – 12.

On April 18, 2019, Jane executed a durable power of attorney and a health care power of attorney naming Mrs. Pounds as her agent. Pl.'s Exs. 5 & 6. Jane was afraid Mr. Dawson would put her into a nursing home, and she wanted Mrs. Pounds to take care of her. Tr. 39, ll. 13 – 16; Tr. 207, l. 19 – 208, l. 10.

Jane also executed two wills approximately three months apart. In both the First Will dated April 18, 2019, and the Operative Will dated July 14, 2019, Jane named Mrs. Pounds as personal representative. Def.'s Ex. 1; Pl.'s Ex. 1. Both wills left all real property, vehicles, and residue to Mrs. Pounds. Def.'s Ex. 1 at 2–4; Pl.'s Ex. 1 at 2–3. There is no evidence that Mrs. Pounds was present for the execution of either will. *See* Tr. 46, l. 25 – 47, l. 7; Tr. 204, l. 25 – 205, l. 5.

On May 1, 2019, Jane converted one of her bank accounts into a joint account with Mrs. Pounds. Tr. 28, l. 19 – 29, l. 1. Jane made this decision on her own after she tried to present the bank with her durable power of attorney naming Mrs. Pounds as her agent and was told it was not effective because it had not been filed. Tr. 40, ll. 7 – 19. That afternoon, Jane filed the durable

power of attorney and health care power of attorney at the courthouse herself. Tr. 36, ll. 10 – 18. On June 20, 2019, Jane and Mrs. Pounds opened a joint saving account. Tr. 29, ll. 2 – 7.

Prior to her death, Jane was in very good health other than her cardiomyopathy. Tr. 32, ll. 16 – 22. Up until she died, Jane drove herself everywhere, prepared her own meals, and took care of her own finances. Tr. 89, ll. 2 – 10. Despite the durable power of attorney, Mrs. Pounds did not pay bills for Jane, manage her affairs, or conduct any business with banks or financial institutions on her behalf. Tr. 77, ll. 5 – 18. Although Jane and Mrs. Pounds held a safety deposit box together, Mrs. Pounds never accessed it without Jane. Tr. 77, 19 – 24. Janie testified that Mrs. Pounds did not pressure Jane to change her will, get a power of attorney, or leave an inheritance to Mrs. Pounds. Tr. 216, ll. 8 – 19.

In its final order, the circuit court held there was no evidence of undue influence as to the execution of the Operative Will or the retitling of Jane's accounts. With regard to the Operative Will, the circuit court held that "the record [was] devoid of convincing evidence to establish [Mrs. Pounds] unduly influenced [Jane]" and "[n]o competent evidence was produced to establish [Jane] was infirm, either mentally or physically, at the time of execution." Final Order, 6–7. The court noted that "[a] change in disposition of assets is not enough to establish undue influence," found that Jane's will was "the product of her own intents," and held that Mrs. Pounds had overcome the presumption of undue influence due to the fiduciary relationship. *Id.* at 7. With regard to the retitling of accounts, the circuit court found that "[o]ther than expressing his distrust and displeasure with [Mrs. Pounds] being involved in [Jane's] financial accounts, [Mr. Dawson] was unable to point to any additional evidence to establish [Mrs. Pounds] coerced or constrained [Jane] in the making of these decisions." *Id.* at 8.

The circuit court denied Mr. Dawson's motion to reconsider its holding on undue influence.

Discussion

Mr. Dawson bases his undue influence argument on the fiduciary relationship between Mrs. Pounds and Jane. Mrs. Pounds does not dispute the fiduciary relationship in existence at the time Jane executed the Operative Will. Where a fiduciary relationship, such as power of attorney, exists between beneficiary and decedent, a presumption of undue influence arises. *See In re Estate of Cumbee*, 333 S.C. 664, 673-73, 511 S.E.2d 390, 394 (Ct. App. 1999). While a fiduciary relationship shifts the burden of establishing rebuttable evidence to the defendant in a will contest, "the contestants of the will still retain the ultimate burden of proof to invalidate the will." *Howard v. Nasser*, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2005).

The bar for establishing undue influence is high: "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). "[F]or [a] 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. at 671, 511 S.E.2d at 394.

"The influence necessary to void a will must amount to force and coercion." *Wilson v. Dallas*, 403 S.C. 411, 437, 743 S.E.2d 746, 760 (2013). "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. "If the testator had the testamentary capacity to dispose of [her] property and was free and unrestrained in [her] volition at the time of making the will, the influence that may have inspired it or some provision of it will not be undue influence." *Swiger by & through*

DeHaven v. Smith, 426 S.C. 408, 417, 827 S.E.2d 200, 204 (Ct. App. 2019) (quoting *Howard*, 364 S.C. at 289, 613 S.E.2d at 69).

Mrs. Pounds has rebutted the presumption of undue influence arising out of her fiduciary relationship with Jane through the complete absence of evidence showing Mrs. Pounds violated her fiduciary duty to Jane or exerted any influence over Jane's decision making. Mrs. Pounds was a reliable granddaughter who took good care of her grandmother in old age, visiting Jane frequently, and taking Jane for medical attention when asked. Jane retained the ability to care for herself and make her own financial decisions up until her death. *See* Tr. 89, ll. 2 – 10.

Mr. Dawson has presented no evidence to show that Jane was coerced or forced into executing the Operative Will or retitling the bank accounts. The "ample evidence" cited by Mr. Dawson to show undue influence does nothing of the sort. Jane having a friend, who was also Mrs. Pounds's aunt, help draft a basic will does not demonstrate coercion or force by Mrs. Pounds. Any change in Mr. Dawson's relationship with his mother was due to their fallout over the bonds rather than to any actions taken by Mrs. Pounds. *See* Tr. 215, l. 23 – 216, l. 6. Mr. Dawson's contention that "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" is contradicted by the evidence. Jane's decision to add Mrs. Pounds to her bank account was made on the spur of the moment at the bank, and Mrs. Pounds was not even present when Jane filed the powers of attorney at the courthouse. *See* Tr. 40, ll. 7 – 19; Tr. 36, ll. 10 – 18. Mr. Dawson's testimony that he was "threatened by Mrs. Pounds on Facebook" was contradicted by the evidence showing that the alleged threat came from a fraudulent Facebook account. *See* Tr. 229, l. 20 – 232, l. 22; Def.'s Ex. 5.

Similarly, Mr. Dawson's contention that Jane "disposed of her assets in an unnatural way" is not borne out by the evidence. Though not related by blood, Mrs. Pounds was Jane's

granddaughter from the day she was born, even living with Jane as an infant and later in life. Even Mr. Dawson agreed that from the time Mrs. Pounds was born, she was a part of the Dawson family. *See* Tr. 135, ll. 6 – 11. Mrs. Pounds saw Jane every day, whereas Mr. Dawson did not speak with Jane for the last year and a half of her life. *See* Tr. 72, ll. 10 – 12; Tr. 215, ll. 16 – 22. Jane trusted Mrs. Pounds to take care of her, whereas she was afraid that Mr. Dawson would put her in a nursing home. *See* Tr. 39, ll. 13 – 16; Tr. 207, l. 19 – 208, l. 10. Based on these facts, the disposition of Jane's assets in the Operative Will is in no way unnatural and does not provide evidence of undue influence. The disposition of assets is also consistent with the disposition in the First Will, and no evidence exists to show any undue influence in the execution of the First Will.

Additionally, the cases cited by Mr. Dawson in his brief are easily distinguishable from the facts of the present case. In *Byrd v. Byrd*, prior to the making of the will, the decedent had difficulty recognizing people he had known for a long time (including his own children), became lost while driving in familiar areas, and was heavily medicated. 279 S.C. 425, 428, 308 S.E.2d 788, 790 (1983). Additionally, the defendant son continuously threatened decedent with putting him in a nursing home, even though his fear and dislike of nursing homes was well known to his children. *Id.* at 428, 308 S.E.2d at 790. Based on these facts and others, the South Carolina Supreme Court held that the issue of undue influence was properly submitted to the jury. *Id.* at 431, 308 S.E.2d at 791-92. In *Moorer v. Bull*, the Supreme Court of South Carolina found that there was evidence to support the jury's verdict that there was undue influence exercised in the procurement of the will. 212 S.C. 146, 149, 46 S.E.2d 681, 682 (1948). The evidence showed that the son transacted the decedent's business for her for many years, the decedent "was in fear of him," and the son "on at least one occasion, made the statement, in substance, that he would procure for himself her estate through one means or another." *Id.*

Other than the existence of a fiduciary relationship, none of the facts present in *Byrd* or *Moorer* are present in this case. Mr. Dawson has presented no evidence that Jane's mind or body was frail at the time of the will execution and the retitling of accounts. Rather, the evidence shows that she was fully capable of managing her own affairs, taking care of her daily needs, and driving herself wherever she needed to go. In the absence of any evidence of coercion or duress that would have resulted in Jane executing the Operative Will or retitling her accounts, the circuit court's decision that these actions were not the product of undue influence must be affirmed.

CONCLUSION

For the foregoing reasons, the circuit court's order upholding the validity of the Operative Will and finding no evidence of undue influence should be affirmed.

Respectfully submitted this 21st day of March, 2025.

POLALES HORTON & LEONARDI LLP

/s/ Shelby K. Leonardi
Shelby K. Leonardi
South Carolina Bar # 70570
Polales Horton & Leonardi LLP
1502 Blanding Street
Columbia, SC 29201
t: 803-988-9708
c: 803-467-5410
sleonardi@phl-firm.com

Counsel for Defendant/Respondent