THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Common Pleas No. 2020-CP-32-01941

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

FINAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

ARGUMENTS IN REPLY

1.

The will at issue in this appeal was not properly witnessed under the Probate Code.

Mrs. Pounds argues that because Section 62-2-502(3) of the Probate Code does not explicitly require a witness to a will to be an adult, minors can serve as witnesses to wills. BOR, 9. Mrs. Pounds however implicitly recognizes that witnesses to wills must be "competent," even though the language of the statute does not require competency either. Instead, the statute says "individuals." But surely an incompetent person cannot serve as a witness to a will. Acknowledging that there must *at least* be a competency requirement implicit in Section 62-2-502(3), Mrs. Pounds urges this Court to look to Rule 601 of the South Carolina Rules of Evidence to evaluate a child's competency to sign a will. But Rule 601 deals with witnesses appearing in court and testifying before a judge or jury. Witnesses to wills are governed by the Probate Code, not the Rules of Evidence. Section 62-2-502(3) implicitly requires an "individual" who witnesses a will to be an adult, just as it implicitly requires the individual to be competent.

Mrs. Pounds also relies on *Stevens v. Royalls*, 223 S.C. 510, 77 S.E.2d 198 (1953) in arguing that our Supreme Court previously considered a minor to be a witness to a will. But the issue in *Stevens* was not whether a minor could be a witness to a will. Instead, the issue was whether the alterations made to a will were a revocation or a codicil. *Stevens*, 223 S.C. at 514, 77 S.E.2d at 200. In finding that the alterations were a codicil, the Court determined that the modified provisions were invalid because they were not attested to by three witnesses. *Id*. Reliance on *Stevens* is misplaced because its holding has little if any application to the situation here.

The word "individual" in section 62-2-502(3) is ambiguous and thus this Court must construe the language to ascertain the intent of the legislature. *McInnis v. Estate of McInnis*, 348 S.C. 585, 592, 560 S.E.2d 632, 636 (Ct. App. 2002). In doing so, this Court must consider the purpose behind the Probate Code and read this individual statutory provision in conjunction with the entire Probate Code. *See Univ. of S. Cal. v. Moran*, 365 S.C. 270, 275, 617 S.E.2d 135, 138 (Ct. App. 2005). The Probate Code is, in significant part, designed to protect minors and incapacitated persons. S.C. Code § 62-1-102(b)(1). As such, this Court should hold that minors cannot serve as witnesses to wills in South Carolina.

Next, Mrs. Pounds urges this Court to accept what she claims were credibility determinations made by the trial court regarding whether Ellis' signature complied with section 62-2-502. BOR, 10-11. But there was no ambiguity in Ellis' testimony on the question of whether he witnessed Jane sign the will or whether she attested to her signature in front of him. On this point, the only testimony was by Ellis, and he flatly stated that he did not witness Jane sign, and that she did not attest to her signature or to the will in his presence. R. 83, ll. 2 – 8. As such, his signature on the will does not satisfy the requirements of section 62-2-502.

Mrs. Pounds also argues that Mr. Dawson raised for the first time on appeal his argument that the affidavit signed by the notary was a separate document from the will itself and therefore the notary's signature also did not comply with section 62-2-502. BOR, 18. Of course, Mrs. Pounds did not claim that the notary could serve as the second witness to the will until her response to Mr. Dawson's motion to reconsider. As such, the question of whether the notary in this case could serve as the second witness to the will was never properly raised to the trial court. *See Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) ("A party cannot for the first time raise an issue by way of a Rule 59(e) motion which could have been raised at trial").

Furthermore, the trial court never ruled on this argument. In its order denying Mr. Dawson's motion to reconsider, there is no indication that the judge predicated its denial of the motion on a finding that the notary could serve as the second witness. The argument was raised on appeal in anticipation of the possibility that Mrs. Pounds' new claim would be used as an alternate sustaining ground under Rule 220(c), of the South Carolina Appellate Court Rules.

2.

The will and the addition of Mrs. Pounds as a joint owner of Jane's bank accounts were the products of undue influence.

Mrs. Pounds acknowledges that there is a presumption of undue influence in this case because she was in a fiduciary relationship with Jane. Mrs. Pounds contends that she rebutted this presumption by showing that she was "a reliable granddaughter who took care of her grandmother in old age, visiting Jane frequently, and taking Jane for medical attention when asked." BOR, 17-18. Mrs. Pounds, however, does not acknowledge that communication between Jane and Mr. Dawson was cut off during her final months of life, and prior to the will at issue being executed.

After Jane's fall in April 2019, communication between Jane and Mr. Dawson was terminated. Prior to that, Mr. Dawson and Jane spoke every day. Nobody told Mr. Dawson about Jane's fall until after she got home from the hospital. And when he tried to get in touch with his mother to check on her, he only received text message responses that appeared to be written by someone else. R. 223, l. 7 – 224, l. 22. This restricted visitation is indicative of undue influence. *Byrd v. Byrd*, 279 S.C. 425, 429, 308 S.E.2d 788, 790 (1983). Mrs. Pounds also claims that the threat made to Mr. Dawson on Facebook was made from a fraudulent account. BOR, 18. Interestingly, the "fraudulent" account was in Mrs. Pounds name, included a picture of her

daughter, correctly identified the name of her biological father, and correctly identified the fact that he would soon be released from prison. R. 245, l. 23 – 246, l. 11; R. 254, ll. 2 – 9; R. 378.

Mrs. Pounds suggests that the reason Jane signed the general power of attorney and health care power of attorney naming Mrs. Pounds as her agent was because Jane was afraid that Mr. Dawson was going to put her in a nursing home. BOR, 15. But any suggestion to Jane that she was going to be put in a nursing home did not come from Mr. Dawson. Mr. Dawson moved back to South Carolina after his father died specifically so that he could take care of his mother. R. 206, l. 22 – 207, l. 6.

Jane also never expressed any concerns over the bonds to Mr. Dawson. Instead, it was only after Jane's fall in April 2019 and communication between Mr. Dawson and Jane was cut off that Mr. Dawson became concerned about the bonds. Mr. Dawson's fears were confirmed when he opened the safety deposit box at First Citizens and discovered that several of the bonds had been removed. R. 221, l. 18 – 222, l. 4.

Mrs. Pounds also maintains that the will at issue in this case did not dispose of Jane's assts in an unnatural way. Mrs. Pounds asserts that although technically a stepchild, she "was Jane's granddaughter from the day she was born." Mrs. Pounds further contends that she saw Jane every day, "whereas Mr. Dawson did not speak with Jane for the last year and a half of her life." BOR, 18-19. Respectfully, that is incorrect. Mr. Dawson spoke with Jane every day until Mrs. Pounds cut off their communication in April of 2019, approximately nine months before Jane died. And while leaving some of her assets to Mrs. Pounds wouldn't be surprising given their relationship, what makes the disposition of Jane's assets so unnatural is the exclusion of her biological family, including her grandchildren.

Mr. Dawson has no children. However, his brother John, had three biological children. These children were not the children of John and Mrs. Pounds' mother, Jennie. In fact, John and Jennie never had any biological children together. John's three biological children were with other women. Specifically, two of John's biological children—Jacob and Brock—were mothered by Tammy Brockman who testified at trial. R. 172, ll. 9 – 173, l. 4. Both Jacob and Brock were completely excluded from Jane's will. Ms. Brockman testified that Jane was very close with her grandchildren and she saw them every other weekend while they were growing up. R. 175, ll. 9 – 20. John's daughter, Janie, was the only grandchild included in Jane's will and she was given half of a life insurance policy which ultimately amounted to approximately $100,000. R. 89, l. 23 – 91, l. 7. Mrs. Pounds was given the other half of this life insurance policy.

Finally, Mrs. Pounds fails to address the fact that Jane had traditionally used attorneys for the handling of her legal affairs but used Mrs. Pounds' aunt, Donna McLees, who is not licensed to practice law in South Carolina, to update her will. R. 268, l. 20 – 269, l. 3; R. 379. Donna admitted to giving Jane the legal advice that she would need to sign powers of attorney to protect her assets from her only living son, Mr. Dawson. R. 272, l. 15 – 273, l. 13. And while the April will is not the will at issue in this case, that will appears to have substantially formed the basis for the will that is at issue in this case. It is unknown who drafted the final will, but it was established at trial that Jane did not have access to a printer so it appears that the will was not prepared by Jane. R. 104, ll. 2 – 19; R. 142, l. 3 – 143, l. 23; R. 282, l. 17 – 283, l. 5.

While the fiduciary relationship only gives rise to the presumption of undue influence, the additional evidence establishing restricted contact between Jane and Mr. Dawson along with the threats made and the unnatural disposition of assets amply shows that the will and addition of Mrs. Pounds as joint account owner were both the products of undue influence.

CONCLUSION

For the reasons argued in Mr. Dawson's opening brief, and this reply brief, 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 16th day of May 2025.