

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO.: 2024-CP-23-01663

IN THE MATTER OF THE ESTATE OF
WILLIAM RHETT TABER, JR.

(PROBATE C.A NO.: 2019-ES2301851)

WILLIAM RHETT TABER, III,

RESPONDENT,

vs.

THOMAS NEEL TABER as Personal
Representative of the Estate of William Rhett
Taber, Jr., THOMAS NEEL TABER,
individually, ANNE C. TABER, ROBERT
FISHBURNE TABER, PAUL KERSHAW
TABER, ANDREW PATTON TABER,
MICHAEL TYNDALL,

APPELLANTS.

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SC Court of Appeals

**ORDER AFFIRMING
PROBATE COURT**

This matter came before me on January 15, 2025, in connection with an appeal from the Amended Order of the Greenville County Probate Court filed March 12, 2024 in C.A. No. 2019-ES2301851. In this Amended Order, the Probate Court reformed the subject Last Will and Testament of William Rhett Taber, Jr. pursuant to S.C. Code Ann. §62-2-601(B). 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 affirm the Amended Order of the Greenville County Probate Court filed March 12, 2024 in C.A. No. 2019-ES2301851 in its entirety.

STATEMENT OF THE CASE

William Rhett Taber, Jr. (hereinafter “Decedent” or “Pop”) died July 16, 2019, at the age of 91. He was survived by six (6) adult children – William Rhett Taber, III, Thomas Neel Taber,

Anne C. Taber, Robert Fishburne Taber, Paul Kershaw Taber, and Andrew Patton Taber. Decedent was predeceased by one daughter, Caroline Taber Tyndall, who left one surviving adult son, Michael Tyndall.

One of Decedent's surviving adult children, Thomas Neel Taber (hereinafter "Tom" or "Tom Taber") filed an Informal Application of Probate of Will and Appointment with the Greenville County Probate Court on August 8, 2019. With this Application, Tom Taber submitted the Last Will and Testament of William R. Taber, Jr. dated July 23, 2015 (hereinafter "2015 Will").

Tom Taber was appointed Personal Representative of the Estate of William Rhett Taber, Jr. on August 26, 2019.

On April 14, 2020, William Rhett Taber, III (hereinafter "Rhett" or "Rhett Taber") filed a Statement of Creditor's Claim with the Probate Court claiming that he was owed \$563,390.00 from the Estate of William Rhett Taber, Jr.

On June 5, 2020, Rhett Taber filed his Petition to Contest Validity of Last Will and Testament of Decedent on the grounds of mistake of fact and undue influence.

On June 17, 2020, Rhett Taber filed a Petition for Allowance of Creditor Claim.

On July 13, 2020, Tom Taber, both individually and as Personal Representative of the Estate, filed an Answer to Petition to Contest the Validity of the Last Will and Testament of Decedent.

On July 27, 2020, Tom Taber, as Personal Representative of the Estate, filed an Answer to Petition for Allowance of Creditor Claim.

The parties appeared before the Honorable Chadwicke Groover, Probate Judge for the County of Greenville, State of South Carolina, for a trial on February 12 – 14, 2024.

By Order filed March 7, 2024 in Case No. 2019-ES2301851, the Probate Court held that Rhett Taber established by clear and convincing evidence that his share of the inheritance was improperly reduced based upon a mistake of fact in the inducement. Based upon this mistake in fact, the Probate Court ordered that the 2015 Will be reformed to be consistent with Decedent's intent as established during the trial in this case. The Probate Court also found that Rhett Taber failed to meet his burden to prove the invalidity of the 2015 Will based on undue influence and to establish his creditor's claim against the Estate.

By Amended Order filed March 12, 2024, the Probate Court corrected a typographical error regarding the trial dates.

Appellants Tom Taber (both individually and as Personal Representative of the Estate), Anne Taber, and Robert Fishburne Taber filed their Notice of Intent to Appeal to the Circuit Court on March 15, 2024. Appellants filed their Amended Notice of Intent to Appeal to the Circuit Court on March 28, 2024.

FACTUAL BACKGROUND

Decedent and his wife, Anne Fishburne Taber, had seven children during their long marriage which ended upon Anne's death on January 30, 2003. During their marriage, Decedent and Anne acquired numerous parcels of real estate through either purchase or inheritance.

Rhett Taber was the oldest of the seven children and he enjoyed some financial success as an adult. Rhett testified that as soon as he became an officer in the Air Force, he started depositing a "large share of [his] paycheck into [his] parents' checking account." Most of the parties who testified on this subject agreed that Rhett transferred or loaned his parents a substantial amount of money over the years. Rhett testified that he transferred "hundreds of thousands of dollars" to his parents. Decedent's personal banker confirmed that Rhett transferred "hundreds of thousands of dollars" into Decedent's account to cover or prevent overdrafts. Paul Kershaw Taber ("Paul

Taber”) testified that there was “no doubt” that Rhett helped his parents financially throughout their lifetimes. Robert Fishburne Taber (“Bob Taber”) also testified that there was “no question” that Rhett loaned their parents “a lot of money” and “nobody is disputing that.”

Some of the loans from Rhett to Decedent were memorialized by promissory notes prepared in 2011 and 2012.

Decedent met with attorney Jack Howard in 2015 to “put his affairs in order.” Attorney Howard and Decedent met several times to discuss Decedent’s estate plan. As part of this process, Howard also met with Tom Taber. Although he testified that he had met some of the other siblings, Howard confirmed that Tom Taber was the sibling who was primarily assisting Decedent with his estate plan in the 2015 timeframe.

As part of the estate planning process, Tom Taber prepared a spreadsheet in January 2015 purporting to list Decedent’s assets and debts as well as a proposed distribution of Decedent’s estate to each child. (hereinafter “Spreadsheet”). The Spreadsheet listed alternative values for each of Decedent’s properties, including a column entitled “Pop’s Value” which Tom testified was derived from figures provided to him by Decedent. In five separate places, this Spreadsheet referenced a debt from Decedent to Rhett Taber in the amount of \$340,000.00 (hereinafter “Debt”). The \$340,000.00 value placed on this Debt was a negotiated amount agreed to by Decedent and Rhett. Howard confirmed this negotiated amount as well.

The Spreadsheet referenced two parcels totaling 54.41 acres on Belvue School Road (41.71 acres and 12.7 acres). The value assigned to this real estate as “Pop’s Value” on the Spreadsheet prepared by Tom Taber was approximately \$14,000.00 per acre.

Howard further confirmed that Decedent and Rhett reached an agreement whereby the \$340,000.00 Debt owed from Decedent to Rhett would be satisfied upon Decedent conveying to Rhett 28.48 acres of land on Belvue School Road.

Although some of the details of the Debt satisfaction were disputed, all witnesses who testified on this issue admitted that the conveyance of the 28.48 acres on Belvue School Road from Decedent to Rhett was for the sole purpose of satisfying the \$340,000.00 Debt.

Pursuant to his agreement with Rhett, Decedent signed a deed transferring his ownership in the 28.48 acres on Belvue School Road to Rhett on July 15, 2015. The deed stated as the consideration for this conveyance “satisfaction of indebtedness from Grantor [Decedent] to Grantees [Rhett Taber and his wife]”.

Tom Taber testified that it was his opinion that Decedent overpaid Rhett by \$280,000.00 when Decedent transferred the 28.48 acres on Belvue School Road in exchange for satisfaction of the \$340,000.00 Debt. Tom testified that “Pop thought the same” when he signed the 2015 Will.

According to Tom Taber, the value of the 28.48 acres on Belvue School Road was \$427,200.00 (at \$15,000.00 per acre). It was also Tom Taber’s testimony at trial that Rhett received more than just the 28.48 acres on Belvue School Road Property in satisfaction of the \$340,000.00 loan. Tom testified that Rhett also received a lot in Flat Rock, North Carolina worth \$70,000.00, a home on the 28.48 acres on Belvue School Road worth \$25,000.00-\$35,000.00, two tractors worth \$23,000.00 total, and “a bunch of stuff” worth \$10,000.00.

In Tom’s opinion, the value of everything Rhett received was approximately \$620,000 -- \$280,000.00 more than the \$340,000.00 Debt that was satisfied. Tom testified that “Pop thought the same” when he signed the 2015 Will.

On the Spreadsheet created by Tom Taber, Tom reduced Rhett's inheritance by \$279,242.00 based upon his determination of the alleged "overpayment." Tom Taber included a notation " — OP" on the Spreadsheet which Tom admitted stood for "overpayment."

Accordingly, Rhett's "Individual Inheritance" less the "overpayment" was only \$26,650.00 compared to the \$305,892.00 allocated to the other heirs on the Spreadsheet. This alleged "overpayment" was the reason Rhett's inheritance was reduced by approximately \$280,000.00.

Based in part on the Spreadsheet prepared by Tom Taber, Howard prepared the 2015 Will. This 2015 Will allocated Decedent's assets in a manner consistent with the Spreadsheet. As Personal Representative of Decedent's estate, Tom Taber acknowledged this fact as well. Decedent signed the 2015 Will on July 23, 2015.

After Decedent signed the 2015 Will, Tom Taber testified that he had the 28.48 acres on Belvue School Road appraised, but this appraisal was not introduced into evidence at trial. According to Tom, the subject real estate on Belvue School Road appraised for "roughly \$11,500.00 per acre" which equates to approximately \$327,500.00 in total. This valuation was significantly less than the value assigned to this asset in the "Pop's Value" column on the Spreadsheet prepared by Tom Taber and relied upon by Decedent and Howard to prepare the 2015 Will.

Several years after the execution of the 2015 Will, Decedent met with attorney Jackie Patterson to revise his estate plan. Patterson testified that Decedent told her there were "errors in that prior Will." Patterson further testified that Decedent explained how he did not think that the 2015 Will prepared by Attorney Howard was fair. Patterson testified that Decedent explained "all the things that Rhett Taber had done for him" and he just wanted to make his will "fair."

Based upon her conversations with Decedent, Patterson created a representation letter dated June 26, 2019 (hereinafter “2019 Patterson Correspondence”), which confirmed how Decedent wanted his estate divided to correct the 2015 Will. Patterson testified that Decedent was clear that he wanted to revoke the 2015 Will and replace it with one consistent with the 2019 Patterson Correspondence. The most significant difference between the 2015 Will and the 2019 Patterson Correspondence was the treatment of the remaining 25.93 acres located on Belvue School Road (hereinafter “Farm Property”).¹

In the 2015 Will, the Farm Property was divided equally between all of the children. In the 2019 Patterson Correspondence, the Farm Property was allocated solely to Rhett Taber.

Decedent died on July 16, 2019 having not signed the 2019 Patterson Correspondence or any revised estate planning documents.

At trial, Allen McCravey was qualified as an expert in the field of real estate appraisals. He appraised the 28.48 acres on Belvue School Road Property as of July 2015, which was the same month Decedent signed the 2015 Will. His opinion was that the fair market value of this property as of July 2015 was only \$300,000.00 (or approximately \$10,500.00 per acre). McCravey did not perform an appraisal of any alleged structure on the property. McCravey was not asked to perform any appraisals of any personal property.

Appellants did not offer an expert on the value of the property as of July 2015.

Tom Taber admitted that if the 28.48 acres on Belvue School Road was worth less than \$340,000.00, Rhett was not overpaid when the \$340,000.00 Debt was satisfied. He also acknowledged that if the property Rhett received in 2015 was worth substantially less than \$620,000.00, it was a mistake to reduce Rhett’s inheritance and that mistake “should be fixed.”

¹ The 2019 Patterson Correspondence refers to the Belvue School Road property as the property on “Shelton Road, Travelers Rest, South Carolina.”

Bob Taber agreed that if there was a mistake in the 2015 Will, he knew that Decedent would want that mistake “rectified.”

Anne Taber agreed that if the Spreadsheet relied upon by Attorney Howard to prepare the 2015 Will contained inaccurate information, then it was “certainly... possible” that there was a mistake in Decedent’s estate plan. She also believed that Decedent wanted Rhett to have all of the Farm Property because Rhett already owned the other 28.48 acres on Belvue School Road.

Pat Taber also agreed that “if there was a mistake [on the Spreadsheet], it – it should be fixed.” He also agreed that Decedent wanted Rhett to receive the entire Farm Property.

Certified estate planning specialist Dan Collins testified as an expert in the field of probate and estate law. He testified about 2013 amendment to South Carolina law which granted the Probate Court the authority to reform the terms of a will when the will is affected by a mistake of fact. Collins confirmed that the present situation is just the type of mistake which triggers the Probate Court’s authority to reform a will.

STANDARD OF REVIEW

Actions to reform a will are equitable in nature. Accordingly, the standard of review on appeal is *de novo*. Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348, 352 (Ct. App. 2011). This *de novo* review does not require the appellate court to disregard the findings of the Probate Court or to ignore the fact that the Probate Court was in a better position to assess the credibility of the witnesses. Id. Moreover, the appellant is not relieved of the burden of convincing the appellate court that the Probate Court committed error in its findings. Id.

DISCUSSION

The Probate Court held that the clear and convincing evidence in the record established that the 2015 Will was affected by a mistake of fact. Accordingly, it reformed the terms of the

2015 Will to conform to Decedent's intention as authorized by S.C. Code Ann. §62-2-601(B). As the clear and convincing evidence in the record supports the Probate Court's findings and conclusions, I affirm the Amended Order filed March 12, 2024 in its entirety.

S.C. Code Ann. §62-2-601(B) provides as follows:

Notwithstanding subsection (A), the court may reform the terms of the will, even if unambiguous, to conform to the terms of the testator's intention if it is proved by clear and convincing evidence that the testator's intent and the terms of the will were affected by a mistake of fact or law, whether an expression or inducement.

The evidence in this case shows that a mistake in fact existed and that it affected Decedent's true intentions. Rhett Taber proved, by clear and convincing evidence, that his share of the inheritance was improperly reduced based upon a mistake of fact in the inducement. The Probate Court expressly held that "reformation is the proper remedy here in that it conforms an inaccurate document to be consistent with the testator's intent, and it is preferable because the testator's intent is being honored rather than changed." I agree.

The following facts were established by clear and convincing evidence presented at trial. Rhett Taber lent his father Decedent hundreds of thousands of dollars. Decedent and Rhett agreed to set the amount of the Debt at \$340,000.00. Decedent and Rhett agreed to satisfy this \$340,000.00 Debt by Decedent conveying the 28.48 acres on Belvue School Road to Rhett. Tom Taber prepared the Spreadsheet that Decedent and Attorney Howard relied on to prepare the 2015 Will. The Spreadsheet significantly overvalued the acreage on Belvue School Road. The Spreadsheet also mistakenly indicated that Rhett received \$620,000.00 worth of property in satisfaction of the \$340,000.00 Debt owed by Decedent to Rhett. Based on this mistake, the Spreadsheet, and the 2015 Will by derivation, reduced Rhett's inheritance by \$280,000.00. Realizing this mistake, Decedent started the process of rectifying the mistake using the services of

Attorney Patterson. Patterson confirmed Decedent's intentions in the 2019 Patterson Correspondence. The 2019 Patterson Correspondence confirmed Decedent's intention to restore Rhett's inheritance. For various reasons, Decedent was unable to sign numerous estate planning documents to correct the mistake in fact prior to his death in July 2019.

Based upon these facts, the Probate Court properly found that Rhett's inheritance was improperly reduced in the 2015 Will based upon a mistake in fact in the inducement. The clear and convincing evidence established that Rhett was not overpaid \$280,000.00 in connection with the satisfaction of the \$340,000.00 Debt. There was no basis in fact for Rhett's inheritance to be reduced by \$280,000.00 as suggested by Tom Taber on the Spreadsheet he prepared which was relied upon by Howard and Decedent to prepare the 2015 Will.

Decedent mistakenly believed that he had overpaid Rhett Taber by \$280,000.00 when Decedent conveyed 24.48 acres on Belvue School Road to Rhett in exchange for the satisfaction of the \$340,000.00 Debt. The Spreadsheet prepared by Tom Taber and the testimony of the fact witnesses confirmed and perpetuated this mistake.

Appellants argue that the Probate Court does not have authority to correct this mistake of fact because several years passed between execution of the 2015 Will and Decedent's death, during which time Decedent met with several lawyers, was well aware of Rhett's dissatisfaction with the 2015 Will, and knew about an appraisal indicating a value for the property transferred to Rhett which was significantly lower than the "Pop's Value" of the property as indicated on the Spreadsheet. Appellants place great emphasis on the fact that Decedent did not alter his estate plan during the years between the execution of the 2015 Will and Decedent's death. The relevant inquiry is not when, or even if, Decedent tried to alter his estate plan after he executed the 2015

Will. The relevant inquiry is whether the 2015 Will was affected by a mistake of fact when it was executed.

As confirmed by Tom Taber's testimony and the Spreadsheet created by Tom Taber, Decedent was under the mistaken belief that he overpaid Rhett Taber by \$280,000.00 to satisfy the \$340,000.00 Debt. Tom created the Spreadsheet to create the appearance of an "overpayment" to Rhett. Based upon this mistake, Decedent reduced Rhett's inheritance by approximately \$280,000.00. This mistake triggered the Probate Court's authority to reform the 2015 Will.

The clear and convincing evidence submitted at trial established that Decedent's intent was not to disinherit Rhett Taber. All witnesses who testified on this issue confirmed that Decedent wanted to treat all of his beneficiaries fairly. While it may have been fair to disinherit Rhett if Rhett received \$620,000.00 worth of property to satisfy the \$340,000.00 Debt, it was not fair given the gross mistake in valuation of the property conveyed to Rhett in 2015 to satisfy the Debt.

Once finding the mistake of fact, the Probate Court was required to determine Decedent's intent and to reform the terms of the 2015 Will to conform to that intent.

To remedy the mistake, the Probate Court reformed the 2015 Will to be consistent with the estate plan set forth in the 2019 Patterson Correspondence. I find that the remedy ordered by the Probate Court is supported by the clear and convincing evidence admitted at trial.

The clear and convincing evidence established that Decedent would not have disinherited Rhett Taber. The clear and convincing evidence established that Decedent wanted Rhett to have the Farm Property. All witnesses who testified on this point agreed that Decedent wanted Rhett to receive the Farm Property. The parties and the Probate Court also had the benefit of Attorney Patterson's testimony and the 2019 Patterson Correspondence.

Decedent told Patterson that he wanted to correct the “errors” in the 2015 Will. In recognition of “all of the things that Rhett Taber had done for him,” Decedent “wanted to make his will fair.” The witnesses who testified on this issue agreed that the Decedent wanted Rhett to have the Farm Property. The 2019 Patterson Correspondence allocates the Farm Property to Rhett consistent with Decedent’s known intent.

Based on the foregoing, the Probate Court properly held that “reformation is the proper remedy here in that it conforms an inaccurate document to be consistent with the testator’s intent, and it is preferable because the testator’s intent is being honored rather than changed.” (Amended Order p. 6).

Finally, in its Brief of Respondent, Rhett Taber argued that the Appellants failed to preserve several of their arguments for appellate review. I am not basing this decision to affirm the Amended Order of the Probate Court on the assertion that Appellants failed to preserve their arguments.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, based upon the clear and convincing evidence admitted at trial, Decedent’s intent and the 2015 Will were affected by a mistake of fact. Accordingly, the Probate Court properly reformed the terms of the 2015 Will to conform to Decedent’s intent as memorialized in the 2019 Patterson Correspondence.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Amended Order of the Greenville County Probate Court filed March 12, 2024 in Case No. 2019-ES2301851 is affirmed in its entirety.

IT IS SO ORDERED.

JUDGE’S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Thomas Neel Taber Prs , plaintiff, et al VS William Rhett Taber III

Case Number: 2024CP2301663

Type: Order/Confirm

So Ordered

s/ Honorable Perry H. Gravely, #2755