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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Case No: 2024-CP-23-01663

Appellate Case No. 2025-001252

In the Matter of the Estate of William Rhett Taber, Jr.

William Rhett Taber, III, Respondent,

v.

Thomas Neel Taber as Personal Representative of the Estate of William Rhett Taber, Jr., Thomas Nee Taber, individually, Anne C. Taber, Robert Fishburne Taber, Paul Kershaw Taber, Andrew Patton Taber, Michael Tyndall, Appellants.

APPELLANTS' INITIAL BRIEF

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ISSUES ON APPEAL

1. Did the Respondent prove by clear and convincing evidence that a mistake of fact resulted in a specific error in the decedent's duly executed will?
2. May a Probate Court reform a will, based on an alleged mistake of fact, where the proof offered to establish the alleged mistake of fact is a property appraisal obtained in the course of the probate litigation by a disgruntled beneficiary?
3. May a Probate Court reform a will, based on an alleged mistake of fact, where the testator was notified of the alleged mistake after executing his will, had multiple opportunities to revise or replace the will, met with an estate planning attorney, but ultimately chose not to make any changes?
4. Assuming Petitioner/Respondent proved by clear and convincing evidence that a mistake of fact resulted in a specific error in the decedent's duly executed will, did the Probate Court err in substituting an unsigned pre-engagement term sheet, prepared by a lawyer who was never retained by the decedent, in place of the decedent's duly executed will?

STATEMENT OF THE CASE

This appeal arises from a Probate Court decision ordering the reformation of a will based on an alleged mistake of fact, pursuant to S.C. Code § 62-2-601(B). Decedent William Rhett Taber Jr., died on July 16, 2019. He was predeceased by his wife Anne Fishburne Taber and one of his seven children, Caroline Taber Tyndall (Caroline). He was succeeded by his remaining six children, William Rhett Taber III (Respondent), Thomas Neel Taber (Tom), Ann Clayburn Taber (Ann), Robert Fishburn Taber (Bob), Paul Kershaw Taber (Paul), and Patton Andrew Taber (Pat).

Decedent's Last Will and Testament was duly executed on July 23, 2015 (ROA 497-502). The 2015 Will bequeathed Decedent's estate, which consisted mostly of real estate holdings, to his six living children and the heirs of his pre-deceased daughter Caroline. (Id.) Tom was named the Personal Representative of Decedent's estate. (Id.) All of the recipients under the 2015 Will acknowledged its legitimacy except Respondent.

Tom filed an Informal Application for Probate of Will and Appointment with the Probate Court on August 8, 2019. Tom was appointed by the Probate Court as the Personal Representative of the estate on August 26, 2019. Respondent filed a Petition on June 5, 2020, contesting the validity of the 2015 Will and seeking its reformation pursuant to S.C. Code § 62-2-601(B). (ROA 4-12.) Respondent argued that Decedent made a mistake of fact resulting in the reduction of Respondent's share of the estate. (Respondent also contested the 2015 Will based on undue influence and brought a creditor's claim against the estate. The Probate Court ruled against Respondent as to both claims and he has not appealed either determination.)

The Probate Court heard testimony in a three-day hearing conducted on February 12, 13 and 14, 2024. Following the completion of testimony, the Probate Court issued an Order dated

March 7, 2024. (ROA 611-18.) Upon discovery of a typographical error, the Probate Court filed an Amended Order on March 12, 2024. (ROA 619-26.)

The Probate Court concluded that the 2015 Will should be reformed because Respondent's inheritance was "improperly reduced based upon a mistake of fact in the inducement." (ROA 624.) The Probate Court determined that the proper remedy was to replace the distribution of assets in the 2015 Will with the proposed distribution set forth in a memorandum prepared three weeks before Decedent's death by Attorney Jackie Patterson (Patterson Memo). (ROA 625-26.)

Appellants timely appealed the Probate Court's ruling to the Circuit Court, and the matter was briefed and argued before the Honorable Perry Gravely. In an Order dated March 16, 2025, Judge Gravely affirmed the Probate Court. (3/16/25 Order.) Appellants filed a timely motion to reconsider, alter or amend under SCRCP 59(e), which motion was denied in a Form 4 Order on May 27, 2025. (5/27/25 Order.) Appellants timely filed a Notice of Appeal to this Court on June 23, 2025. (Notice of Appeal.)

STATEMENT OF FACTS

A. Events Leading to the Execution of the 2015 Will

In or about January 2015, Decedent met with his estate planning attorney Jack Howard to plan for the distribution of his assets to his children. (ROA 68-69.) Decedent owned nine pieces of real estate at that time. (ROA 494.) Over several years, he had borrowed money from Respondent, who was determined to ensure that Decedent's distribution plan included repayment of principal and interest in connection with those loans. (ROA 192-93.) After several discussions between them, Decedent and Respondent agreed that the amount of debt to be satisfied would be $340,000. (ROA 620.) Accordingly, Decedent, with the assistance of Attorney Howard, set out

to create a division of property that would settle his $340,000 debt to Respondent and provide an inheritance for his children.

Decedent kept hand-written notes of the value of his real estate holdings. In or about January 2015, he asked Tom to type up his notes. (ROA 137, 166.) Tom created a three-page document reflecting the information in Decedent's notes. (ROA 137.) None of the trial witnesses testified that Tom substituted his own opinions for Decedents or otherwise changed any information in the course of transferring Decedent's handwritten notes into the Spreadsheet.

The Spreadsheet's first page showed the real property Decedent then owned, with valuations for each: a column showing "Pop's Value" as reflected in Decedent's hand-written notes, a column entitled "Posted Fair Market Value" (which Tom added as a "sanity check" against Decedent's value), and a column showing the Zillow value for some of the properties. (ROA 494.) That page also contained notes showing the source of some of Pop's Value figures as well as notation of the $340,000 debt that Decedent owed Respondent and valuations of certain properties owned by other family members. (Id.)

The second page of the Spreadsheet showed various land swap scenarios between Decedent and Respondent. (ROA 495.) It is undisputed that none of these hypothetical transactions was ever consummated.

The third page showed a proposed distribution of Decedent's properties that partially tracked the distribution that ended up in the 2015 will. (ROA 496.) It also contained a table reflecting a proposed inheritance to each child of $305,892 except Respondent, whose proposed share is reflected as $26,650. (Id.) That table does not match the proposed distribution of properties at the top of the third page or the property values on the first page. (ROA 494, 496.) It

also does not match the actual distribution in the 2015 will. (ROA 497-99.) It appears to have been an entirely hypothetical exercise.

Tom gave the Spreadsheet to Attorney Howard in January, following which there were several months of meetings, discussions, and adjustments to Decedent's distribution plan. (ROA 68-69, 71, 493.) Respondent participated in some of the meetings, including one meeting that featured heated arguments among the siblings. (ROA 71.)

Attorney Howard was the only participant in this process with no stake in this litigation. He testified that Decedent used the Spreadsheet as "a good way to get started" but then spent months deliberating over how to distribute his real estate holdings. (ROA 70-71.) Decedent and Attorney Howard met repeatedly during the first half of 2015, sometimes with and sometimes without Decedent's children. (ROA 71.) Attorney Howard testified that Decedent knew that the final draft of his will did not treat each sibling equally from a purely monetary perspective and that Decedent intended it that way. (ROA 76-77, 91.) Decedent specifically considered the financial circumstances of his children, including that Respondent was considerably more financially secure than some of his siblings. (ROA 75-76.)

B. Decedent's 2015 Transfer of Property to Respondent to Repay Debt

Eventually, after months of meetings and discussions, Decedent settled his debt to Respondent and executed his will in July 2015. To settle the debt, he split up a piece of property in Travelers Rest, South Carolina, and gave some 28.48 acres of it to Respondent. Notably, this split deviated from the proposed split set forth on the Spreadsheet. The Spreadsheet proposed a split into parcels of 41.71 and 12.7 acres. (ROA 494.) However, what Decedent actually chose to do was give the 28.48-acre tract to Respondent in 2015 and leave the remaining 25.93-acre tract in equal shares to all his children in the 2015 Will. (ROA 352-53.) In addition to the land, the

28.48-acre tract had an unfinished building and a variety of farm equipment that was also transferred to Respondent. (ROA 173-74.) Decedent also gave Respondent a property designated as Flat Rock Lot No. 8 as part of his repayment of debt. (ROA 138, 139, 371.)

Decedent's valuation of these properties was as follows. He valued the entire 54.41-acre Travelers Rest property at $761,800, or $14,001.10 per acre. (ROA 494.) Accordingly, his value assigned to the 28.48-acre lot he gave Respondent in 2015 was $398,751.41. He valued Flat Rock Lot 8 at $57,000. Thus, according to Decedent's values, he paid a total of $455,751.41 in exchange for the release of $340,000 in debt, an overpayment of $115,751.41. Perhaps not surprisingly, Decedent expressed the opinion he overpaid Respondent. (ROA 59-60, 74-75, 91-92, 143.)

C. Decedent's 2015 Will

The 2015 Will disposed of Decedent's remaining property. The disposition of the eight pieces of real property to Decedent's children was as follows:

Property Description	**Recipient (2015 Will)**
Grandma's Naples/Fletcher	Pat (ROA 497-99, ¶ VII.)
109 Lavinia, Greenville	Ann, Caroline, Tom (Id., ¶ II.)
Flat Rock Lot 1	Caroline (Id., ¶ III.)
Flat Rock Lot 7	Rhett (Id., ¶ IV.)
1924 Allen's Lane	Bob (Id., ¶ V.)
1944 Allen's Lane	Bob (Id., ¶ V.)
907 S. Lumina (Beach House) (half interest)[1]	Paul, Tom, Ann (Id., ¶ VI.)
Belvue School Road, Travelers Rest (25.93 acres)	Tom, Rhett, Ann, Pat, Paul, Bob (Id., ¶ IX.)

[1] Decedent owned one-half of the Beach House at 907 S. Lumina in Wrightsville Beach. (ROA 202.) Thus, although Decedent transferred his interest in three equal shares to Paul, Tom and Ann, each such share amounted to one-sixth, rather than one-third, of the total value.

Decedent's opinion as to the values of each property are reflected in the Spreadsheet Tom prepared based on Decedent's notes. The chart below reflects such values as follows:

Property Description	**Decedent's Assigned Value**
Grandma's Naples/Fletcher	$327,000 (ROA 494.)
109 Lavinia, Greenville	$233,000 (Id.)
Flat Rock Lot 1	$70,000 (Id.)
Flat Rock Lot 7	$45,000 (Id.))
1924 Allen's Lane	$100,000 (Id.)
1944 Allen's Lane	$212,000 (Id.)
907 S. Lumina (Beach House) (half interest)	$875,000 (Id.)
Belvue School Road, Travelers Rest (25.93 acres)	$363,000 (Id. ($14,000/acre))
Total	**$2,225,000**

Based on the bequest to each child, and the values set forth above, each child's share of the total value of the property in the estate, per the values Decedent listed in his notes, is as follows:

Beneficiary	**Bequest(s) - 2015 Will**	**Value**
Tom	1/6 of Beach House; 1/3 of 109 Lavinia; 1/6 of Farmhouse	$429,833.34
Rhett	Flat Rock Lot 7; 1/6 of Farmhouse	$105,500.00
Ann	1/6 of Beach House; 1/3 of 109 Lavinia; 1/6 of Farmhouse	$429,833.34
Pat	Naples/Fletcher; 1/6 of Farmhouse	$387,500.00
Paul	1/6 of Beach House; 1/6 of Farmhouse	$352,166.67
Bob	1924 & 1944 Allen's Lane; 1/6 of Farmhouse	$372,500.00
Caroline	Flat Rock Lot 1; 1/3 of 109 Lavinia	$147,666.67
Total		**$2,225,000**

(ROA 494, 497-99 (¶¶ II-IX).)

D. Events Following Execution of the 2015 Will

Following Decedent's execution of the 2015 Will, Respondent forcefully and repeatedly complained that he was not being treated fairly. For years, he urged Decedent to change the 2015 Will. (ROA 199-201, 373.) For his part, Tom arranged for an appraisal of the Travelers Rest property. That appraisal was completed within six months of the execution of the 2015 Will, and Tom provided it to Decedent and to Respondent. (ROA 149-150.) It showed reflected a valuation of approximately $11,400 per acre, or $324,672, for the 28.48-acre tract. (Id.)

In all, within six months of executing the 2015 Will, Decedent had actual knowledge of at least three different valuations of the 28.48-acre tract he had conveyed to Respondent: the "Posted Fair Market Value" on the Spreadsheet ($10,803 per acre or $307,669.44 in total); the "Pop's Value" on the Spreadsheet ($14,001.11 per acre or $398,751.41 in total); and Tom's valuation in late 2015 ($11,400 per acre or $324,672 in total). (ROA 494, 149-50.)

Notwithstanding Respondent's pressure campaign and the data showing that his personal valuation of the Traveler's Rest property was higher than at least one appraisal and other objective data, Decedent did not change his will at any time between executing it in July 2015 and his death nearly four years later on July 16, 2019.

The high point of Respondent's pressure campaign came in June 2019, just weeks before Decedent's death. Decedent met with Attorney Jackie Patterson to discuss revising his will. (ROA 112.) This meeting was preceded by repeated efforts by Respondent to convince Decedent to change his will and increase Respondent's inheritance. (ROA 199-201, 373.) Unlike when the 2015 Will was prepared, the other children were not involved in the discussions and Decedent did not make careful revisions over a period of months. Instead, Decedent met only once with

Patterson. (ROA 122.) He never signed the paperwork to retain her or executed a new will. The only documentation of their meeting is a memo prepared by Patterson.

Patterson testified that after her meeting with decedent, she prepared a written summary of the disposition of assets discussed in the meeting. (ROA 113, 505-06.) She claims her office staff attempted to contact Decedent on several occasions and that she had the impression, based on what her office staff told her, that Decedent's daughter (Ann) was somehow impeding those efforts. (ROA 117-18, 121.) She did not testify that either she or her staff actually spoke with Decedent to ascertain whether he wished to proceed with the drafting of a new will.

Ann was the only witness who testified from personal knowledge as to the communications with Patterson's office. Ann explained that she was with Decedent when he picked up the Patterson Memo at Patterson's office. (ROA 230.) When Decedent shared the contents of the document with her, Ann noted her disagreement with the changes because she felt the new distribution was too generous to her (it increased the value of property distributed to her by over $30,000). (ROA 230-31.) Patterson's office later attempted to contact Decedent by calling his cell phone, the home phone and Ann's cell phone. (ROA 221.) Ann testified that Decedent was well aware of Patterson's office staff's attempts to contact him. (ROA 222.) On one occasion she received a call when she was with Decedent, just days before his death. (ROA 233.) The staff member offered to have Patterson come to the house for a new will to be signed. (Id.) She relayed that offer to Decedent and he "emphatically" declined. (Id.) Decedent died on July 16, 2019, without changing a single item in his 2015 Will.

The Patterson Memo Decedent chose not to sign had virtually nothing in common with the 2015 Will. The chart below reflects the differences between the two documents:

Property Description	**Recipient - 2015 Will**	**Recipient - Patterson**
Grandma's Naples/Fletcher	Pat	Tom, Rhett, Ann, Pat, Paul, Bob
109 Lavinia, Greenville	Ann, Caroline, Tom	Ann
Flat Rock Lot 1	Caroline	Tom
Flat Rock Lot 7	Rhett	Pat
1924 Allen's Lane	Bob	Paul
1944 Allen's Lane	Bob	Bob
907 S. Lumina	Paul, Tom, Ann	Paul, Pat, Tom, Ann, Bob
Belvue School Road, Travelers Rest (25.93 acres)	Tom, Rhett, Ann, Pat, Paul, Bob	Rhett

(ROA 497-99 (2015 Will); 505-06 (Patterson Memo).)

As the chart above reflects, the Patterson memo purported to change the disposition of seven of the eight properties in the estate. Moreover, it would drastically change the financial value of the inheritance received by each beneficiary:

Beneficiary	**2015 Will Value**	**Patterson Value**	**Difference**
Tom	$429,833.34	$299,500.00	($130,333.34)
Rhett	$105,500.00	$417,500.00	$ 312,000.00
Ann	$429,833.34	$462,500.00	$32,666.66
Pat	$387,500.00	$274,500.00	($113,000.00)
Paul	$352,166.67	$329,500.00	($22,666.67)
Bob	$372,500.00	$441,500.00	$69,000.00
Caroline	$147,666.67	$0	($147,666.67)
Total	**$2,225,000**	**$2,225,000**	**$0**

(ROA 494, 497-99, 505-06.) As the chart above reflects, the Patterson Memo would nearly quadruple the value of Respondent's inheritance, such that he would move from having the smallest monetary value to the second-largest. Meanwhile, each of the other siblings would see

changes ranging from roughly $30,000 to over $100,000. In other words, each beneficiary would either lose or gain tens of thousands of dollars if the Patterson Memo replaces the 2015 Will.

Well after Decedent's death and after this litigation commenced, Respondent obtained an appraisal of the 28.48-acre Travelers Rest property from a certified appraiser, Alan McCravy. (ROA 562-89.) McCravy's appraisal came in at $10,500 per acre, for a total of $299,040. (ROA 565.) However, McCravy expressly declined to appraise the structure on the property and did not consider the value of equipment that was transferred with it. (ROA 403-04.) Tom testified that the value of a structure on the property was at least $25,000, two tractors conveyed with the property were worth a combined $23,000, and other personal property was worth an additional $10,000. (ROA 174-75.) Neither Respondent nor any other witness contested these valuations. Thus, for the McCravy appraisal to be used as an apples-to-apples comparison with the other valuations, those figures would need to be added, yielding a total appraised value of $357,040. This is actually higher than the appraisal Tom provided to both Decedent and Respondent in late 2015. (ROA 149-50.)

STANDARD OF REVIEW

In an appeal from the Probate Court, the applicable standard depends on whether the underlying matter is legal or equitable. *Moore v. Moore (In re Est. of Moore)*, 435 S.C. 706, 709 (Ct. App. 2022). Actions to reform a legal instrument, as this case is, are equitable in nature. *56 Leinbach Inv'rs, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 471 (Ct. App. 2014); *Crewe v. Blackmon*, 289 S.C. 229, 233 (Ct. App. 1986). The standard of review in equitable matters is *de novo*. *In re Howard*, 315 S.C. 356, 362 (1993); *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 248 (Ct. App. 2011).

The standard applicable to the Probate Court was clear and convincing evidence. S.C. Code § 62-2-601(B). Accordingly, this Court may affirm the judgment of the courts below only if it finds, after *de novo* review, that Respondent proved his entitlement to relief under the reformation statute by clear and convincing evidence.

ARGUMENT

A. The evidence in the Record falls well short of establishing a mistake of fact by clear and convincing evidence.

Will reformation requires clear and convincing evidence of "the testator's intent." S.C. Code § 62-2-601(B). South Carolina courts applying the clear and convincing evidence standard to an attempt to alter the rights and interests of deceased parties have required the evidence in support to "be received and scrutinized with the greatest care." *Looper v. Whitaker*, 231 S.C. 219, 227, 98 S.E.2d 266, 270 (1957); *Young v. Levy*, 206 S.C. 1, 19, 32 S.E.2d 889, 896 (1945).

Section 62-2-601(B) is patterned on a nearly identical statutory provision applicable to non-testamentary instruments, SC Code Section 62-7-415. Section 62-2-601 Reporter's Comments ("subsection (B) mirrors Section 62-7-415 in the Trust Code"). Section 62-7-415 is derived from the Restatement (Third) of Property: Donative Transfers Section 12.1. Section 62-7-415, Reporter's Comments (citing Section 12.1 four times and explaining that the 2013 amendment to the Section was designed to "better conform[] the language of this section to the language of the Restatement (Third) of Property provision on which this section is based." Like the South Carolina authorities, the Restatement calls for careful scrutiny of claims that a duly executed will does not represent the testator's true intent:

> The higher standard of proof under this section imposes a heightened sense of responsibility upon the trier of fact. When the case is tried before a judge, the judge should respond by rendering a thorough, reasoned set of findings that deal with the relevant contested facts. A collateral benefit of requiring clear and convincing

> proof is that an appellate court will rightly feel free to scrutinize the trial court's work more closely than in the typical preponderance-of-the-evidence review.

Restatement (Third) of Property: Donative Transfers Section 12.1, cmt. e.

Respectfully, the Probate Court's and Circuit Court's resolution of this case did not meet this high standard. The evidence simply does not support the theory that Decedent made an error. The information in the Spreadsheet indicates that Decedent viewed the Travelers Rest property he transferred to Respondent in 2015 as being worth approximately $14,000 per acre, or $398,751.41. (ROA 494.) It also reflects that Decedent viewed the other property he transferred to Respondent in 2015, Flat Rock Lot 8, as being worth $57,000. (Id.) Thus, he believed he had transferred property with a combined value over $450,000 in exchange for the release of $340,000 in debt, some $90,000 of which was interest. (ROA 192-93.) If Decedent reduced Respondent's inheritance to account for this overpayment, it was well within his rights to do so. That should end this case.

Further undermining the theory that Decedent reduced Respondent's inheritance due to a valuation error is the unrefuted testimony that Decedent never intended to give each of his children an equal monetary share. (ROA 75-77, 153-154, 192.) Rather, he was mindful that some of his children, and Respondent in particular, had greater financial resources already, and were thus less dependent on their inheritance. (ROA 75-76, 118.). The 2015 Will reflects these considerations, with each child receiving significantly different monetary value pursuant to Decedent's calculations. *Supra* p. 9.

Finally, the contemporaneous evidence surrounding the drafting and revision of the 2015 Will shows that Decedent was not particularly happy with the $340,000 estimate of his debt in the first place. (ROA 140-141.) He agreed to it to avoid an argument with Respondent. (Id.) The figure reflected a huge interest payment, unusual for a transaction between family members. (ROA

192-193.)[2] Thus, there is evidence that part of Decedent's alleged belief that he overpaid likely stemmed from his skepticism as to whether he truly owed Respondent $340,000. While the courts below may not have shared this belief, that does not turn it into a "mistake" for purposes of the statute. *See, In Re Estate of Duke* 352 P.3d 863, 875 (Cal. 2015) (when evaluating intent related to mistake in the inducement "the court must ascertain only the subjective intent of a single individual").

It simply cannot be said that clear and convincing evidence shows Decedent made some discrete mistake resulting in a reduction of Respondent's inheritance. The narrative accepted by the courts below is the result of ignoring the greater weight of the evidence described herein and instead cherry-picking data points of dubious value. For instance, both courts below fixated on Respondent's insistence that Decedent thought the 28.48-acre tract in Travelers Rest was worth $620,000, and thus reduced Respondent's inheritance by $280,000. (ROA 621-23 (Probate Ct. Amended Order); Circuit Court Order 9, 11.) This appears to stem from the third page of the Spreadsheet, which has a table showing each child receiving the same amount except Respondent, who receives roughly $280,000 less. (ROA 496.) However, it is undisputed that <u>the Spreadsheet was drafted six months before Decedent finalized his estate plans</u>. At that point, he had not even arrived at the decision to split the Travelers Rest property so as to convey 28.48 acres to

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[2] Decedent was uncomfortable with the manner in which Respondent demanded repayment of the loans. Ann testified that Decedent was surprised by the demand for repayment, having believed some of the amounts he had received from Respondent had been gifts. (ROA 118.) The lawyer who drafted the will testified that Decedent felt he owed Respondent less than the $340,000 for the loans, but agreed to such amount to mollify Respondent. (ROA 59-60, 74-75.) Tom described an argument between Decedent and Respondent in which Decedent finally agreed with Respondent's demands "to get out of there." (ROA 140-41.) It is entirely possible that Decedent was generally unhappy with Respondent's high-pressure tactics and thus chose to reduce Respondent's inheritance rather than continue to argue about the 2015 property transfer.

Respondent. None of the valuation figures in the Spreadsheet (or anywhere else) yields a valuation of the 28.48 tract anywhere close to $620,000.

It is clear that the chart on the third page of the Spreadsheet does not actually reflect the distributions in the 2015 Will. With the exception of Ann and Tom, the value of each sibling's share varied significantly, and not a single one of their values matched the lockstep numbers in the table on the third page of the spreadsheet. *Supra* p. 9. The notion that each sibling received an equal share of the estate other than Respondent, whose share was reduced by $280,000, is not supported by any competent evidence, much less clear and convincing evidence. It is fiction.

B. A disgruntled beneficiary cannot override the intent of the Decedent by obtaining an appraisal that conflicts with the Decedent's assessment of the value of his own property.

Section 62-2-601(B) is a narrow exception to the general rule that a testator's intentions with respect to his estate are best expressed in his duly executed will. Section 12.1 of the Third Restatement of Property emphasizes that reformation of a will is not a general license to second-guess the testator's choices:

> Reformation is a rule governing mistakes in the content of a donative document, in a case in which the donative document does not say what the transferor meant it to say. Accordingly, reformation is not available to correct a failure to prepare and execute a document. Nor is reformation available to modify a document in order to give effect to the donor's post-execution change of mind or to compensate for other changes in circumstances.

Restatement (Third) of Property: Donative Transfers Section 12.1, cmt. h. *See also, Curry v. Humane Soc'y Colorado (In re Estate of Little)* 433 P.3d 172, 181 (Colo. App. 2018) (reformation not available where the testator changes his mind or "to correct a testator's failure to prepare and execute a new document"). South Carolina courts have likewise rejected deviations from the express terms of a will based on speculation about how the testator might have reacted to some later contingency. *Limehouse v. Limehouse*, 256 S.C. 255, 257 (1971). Appellants are aware of

no reported cases, in any jurisdiction, where a probate court changed the terms of a will based on a party's claim that, had the testator more accurately valued his property, he would have divided up his estate differently.

The courts below concluded that Decedent made a mistake by reducing Respondent's inheritance based on an incorrect belief about the value of property he transferred to Respondent in 2015. They reached this conclusion by comparing the value assigned by Respondent's appraiser to the property transferred in 2015 ($300,000) to the amount of debt Decedent and Respondent agreed to discharge via the transfer ($340,000). Because the amount of Decedent's debt was greater than the value of the property he gave Respondent, "Decedent's belief that [Respondent] had received an overpayment . . . was a mistake in fact." (ROA 621.)

The core problem with this line of reasoning is that there is no evidence Decedent would have considered McCravy's appraisal more accurate than his own valuation. The purpose of Section 601(B) is to ascertain the subjective intent of the testator, not to grade his work as a real estate appraiser. The Probate Court's task here was not to determine whether Decedent's opinion lined up with McCravy's 2024 appraisal. Rather, it was to determine what Decedent thought his property was worth, and how he wanted to dispose of it after his death. *See, In Re Estate of Duke* 352 P.3d 863, 875 (Cal. 2015) ("discerning intent in the context of a will" requires that "the court must ascertain only the subjective intent of a single individual").

As explained above, Decedent engaged in some six months of deliberation before executing his 2015 Will. Respondent had the opportunity to, and did, argue his case to his father. Moreover, Decedent had access to very different valuations of the 28.48-acre property during his deliberations. If he wished to favor a market value over his own opinion as to the value of that property, he could have done so.

By substituting the post-litigation appraised value of the property for the value placed on it by Decedent at the time he drafted his will, the Probate Court started down a slippery slope toward a complete re-evaluation of Decedent's testamentary choices. The only way the litigation appraisal would establish a mistake, for purposes of Section 601(B), is if there was evidence that Decedent intended it to follow it but somehow failed. Obviously, that cannot be the case here, as Decedent chose to execute and not amend the 2015 Will with full knowledge of several lower independent third-party valuations.

It is important to note the troubling policy implications of the Probate Court's interpretation of Section 601(B). It is routine for testators to make their own judgments as to the value of assets in an estate. If any disgruntled heir can bring a Section 601(B) motion by hiring an appraiser and showing that the testator undervalued this item and overvalued that one, the courts will be flooded with probate litigation. Moreover, testators will lose the right to make their own decisions about the value of their own property. Their judgment will be subject to being overruled based on appraisals obtained in probate litigation. This is especially problematic in a scenario such as this, where the dispute is not even over the value of an estate asset but rather an asset transferred years before the testator's death. A policy change of this magnitude must be initiated by the Legislature and not the trial courts.

Aside from the policy concerns with using litigation-generated appraisals to "correct" the judgment of testators, the numbers in this case do not add up. Respondent claims Decedent mistakenly believed he overpaid for the release of the $340,000 debt by $280,000, causing a resulting reduction of that same amount in his inheritance. The courts below accepted this theory. (ROA 621-23; 3/16/25 Order 9, 11.) However, even using the litigation appraisal of the 28.48-

acre Travelers Rest property, which came in at approximately $300,000, it is still clear that Decedent overpaid.

In addition to the land, the 28.48-acre tract had an unfinished building and a variety of farm equipment that was also transferred to Respondent. (ROA 173-174.) Tom estimated the building's value at $25,000-$30,000, two tractors at roughly $15,000 and $8,000, and other equipment on the property to be worth about $10,000, for a total value of $68,000 to $73,000. (ROA. 174-175.) Respondent did not dispute these values. In addition to the Travelers Rest property and farm equipment, Tom testified that Decedent transferred property in Flat Rock, North Carolina (designated as "Lot 8"), in repayment of debt. (ROA 138, 139.) That property was designated on the Spreadsheet as being worth $57,000. (ROA 494.) It was appraised at $73,100 in the property records Respondent submitted as a trial exhibit. (ROA 523-24.) It is undisputed that the litigation appraisal did not consider any of these items. (ROA 403-04.)

Adding these items to the litigation appraisal yields a total in the range of $425,000 ($300,000 + $68,000 + $57,000) to $446,000 ($300,000 + $73,000 + $73,000). Thus, even if Respondent could somehow establish that Decedent would have agreed with his litigation appraisal, Respondent still overpaid for the release of debt in 2015 by roughly $100,000. Respondent's theory that Decedent mistakenly believed he overpaid is not supported even by Respondent's own expert.

It is essential that this Court step in and clarify that obtaining a post-death appraisal from a paid expert does not give a disgruntled beneficiary the right to override a testator's duly executed will. There is no doubt that estates across the state of South Carolina are routinely distributed according to the estimates, guesses and subjective, idiosyncratic values of estate assets assigned by testators. Setting aside a lawfully executed will every time a disgruntled beneficiary supplies

a competing valuation of an estate asset will throw the probate system into chaos. It will drastically increase probate litigation and needlessly increase costs for all parties. And most importantly, it will erode the probate system's fundamental rule that a testator is entitled to distribute his own property as he wishes, regardless of whether expert appraisers, or even Probate Judges, would have done it differently.

C. Section 62-2-601(B) does not permit judicial reformation of a will based on an alleged mistake of fact where the testator was notified of the alleged mistake after executing his will, had multiple opportunities to revise or replace the will, met with an estate planning attorney, but ultimately chose not to make any changes.

Reformation of a will "is not available to correct a failure to prepare and execute a document." Restatement (Third) of Property: Donative Transfers Section 12.1, cmt. h. *See also, Curry v. Humane Soc'y Colorado (In re Estate of Little)* 433 P.3d 172, 181 (Colo. App. 2018). Where a testator is given information showing an alleged mistake in his will, and declines to correct that mistake despite time and an opportunity to do so, it must be presumed that either he does not actually believe his will was mistaken or that he does not wish to correct the alleged mistake.

When Decedent began working with attorney Jack Howard in January 2015 to draft a new will, he asked Tom to prepare a spreadsheet reflecting the values of the various properties Decedent owned. (ROA 137, 170.) That spreadsheet, provided to Mr. Howard in January 2015, reflected two values for the property in question, "Pop's Value" of $14,000 per acre, which came from Decedent's notes, and the "Posted Fair Market Value" of $10,803 per acre, which Tom added as a "sanity check" against Decedent's value. (ROA 494.) The latter was virtually identical to Respondent's litigation appraisal ($10,500 per acre/$300,000 total). In other words, for six months before he executed his 2015 Will, Decedent had actual knowledge of an independent valuation of

the Travelers Rest property consistent with what Respondent claims was the true value. He executed the 2015 Will anyway.

Within six months of the will being signed in July 2015, Tom distributed to both Decedent and Respondent an appraisal showing a value of $11,500 per acre. (ROA 149-50.) Thus, by no later than January 2016, Decedent had actual knowledge that "Pop's Value" was substantially higher than both the "Posted Fair Market Value" and an appraisal given to him by Tom.

Faced with these widely divergent valuations, Decedent did not take any action to change the terms of the 2015 Will to increase Respondent's share. Even though Respondent pestered him over the course of the next four years and made several appointments with various estate planning lawyers (ROA 199-201, 373), Decedent did not act on the information he had in 2015 showing that "Pop's Value" was considerably higher than the appraised value. During that four-year period Decedent was of sound mind and regularly drove himself to appointments. (ROA 70, 160, 457.)

The most logical explanation for Decedent's unwillingness to revise or replace the 2015 Will, despite possessing all the same information Respondent offers to establish a "mistake of fact," is that there was no mistake. Decedent knew what the independent appraisals showed. With his eyes wide open, he chose either to ignore them in favor of his own valuation or to distribute his property as he did anyway. Either way, he was well within his rights as a property owner.

The lower courts' finding that clear and convincing evidence established a mistake of fact is irreconcilable with this evidence. As in any will reformation case, the courts are faced with the difficult task of guessing at the intentions of a testator who cannot testify. Where there is a duly executed will, courts should err on the side of respecting that document. *Looper v. Whitaker*, 231 S.C. 219, 227, 98 S.E.2d 266, 270 (1957); *Young v. Levy*, 206 S.C. 1, 19, 32 S.E.2d 889, 896 (1945); Restatement (Third) of Property: Donative Transfers Section 12.1, cmt. e.

Here, there is not only a duly executed will, but powerful circumstantial proof that Decedent knew and understood the factual basis for Respondent's position that he was entitled to a larger inheritance. Yet Decedent resisted Respondent's multiple attempts to pressure him to do exactly what the lower courts here have done – substitute Respondent's preferred distribution of Decedent's property for his own. This Court should restore Decedent's right to dispose of his own property as he sees fit.

D. The courts below erred in substituting an unsigned pre-engagement term sheet, prepared by a lawyer who was never retained by the decedent, in place of the decedent's duly executed will.

Will reformation requires clear and convincing evidence of "the testator's intent." S.C. Code § 62-2-601(B). Accord, S.C. Code § 62-7-415 (requiring clear and convincing evidence of "what the settlor's intention was"); Restatement, cmt g (requiring clear and convincing proof of "what the donor's actual intention would have been in a case of mistake in the inducement."). In other words, it is not enough to produce clear and convincing proof that a mistake was made; there must be clear and convincing proof as to exactly what the testator would have done differently, but for the mistake. *See, In Re Estate of Duke* 352 P.3d 863, 876 (Cal. 2015) (requiring proof of the testator's "actual and specific intent").

Even if the record supported the Probate Court's finding that there was a mistake of fact – that Decedent would have received more property in the 2015 Will if Decedent had not erred in his valuation of the 28.48-acre Travelers Rest property – the remedy authorized by the courts below goes far beyond correcting an error. As illustrated above at page 12, the remedy authorized by the courts below would substantially change the property received by all the beneficiaries. Tom's share would be reduced by over $130,000; Pat's share would be reduced by $113,000; and Bob's share would be increased by nearly $70,000. (Id.) And then there is Respondent. His share would

nearly quadruple. (Id.) Far from "correcting an error" to bring his share in line with those of his siblings, the unsigned Patterson memo, treated as authoritative by the courts below, would raise Respondent's share well above most of his siblings. For example, Respondent would receive property worth over $140,000 more than his brother Pat. (Id.) There is not a shred of evidence that when Decedent executed his will in July 2015, he meant to do something so completely different than what appears within the four corners of the duly executed document.

The circumstances surrounding the creation of the Patterson memo suggest it is far less reliable than the 2015 Will. The 2015 Will involved the participation of all Decedent's then-living children, a trusted long-time attorney, and months of careful deliberation. The Patterson Memo was the product of a single meeting with a lawyer who was never retained. It was preceded by years of badgering and complaining from Respondent but no meaningful participation from the other siblings. Indeed, Tom testified that the other siblings "felt awkward" about Respondent's push to get the 2015 Will changed. (ROA 202.) And, most importantly, the 2015 Will was duly executed according to law. Decedent did not sign anything connected to the Patterson Memo – not an engagement letter, not the memo itself, and not a new will.

At best, Respondent can establish that four years later, in a state of advanced decline just weeks from his death in July 2019, Respondent finally gave in to Respondent's incessant badgering and met with Attorney Patterson to reconsider the choices he made in 2015. But the undisputed testimony is that when Patterson's office called and offered to bring a new will to Decedent to sign, Decedent emphatically said no. (ROA 253.) That testimony was offered by Ann, whose inheritance would have increased under the Patterson memo allocation. *Supra* p. 12. She obviously had no reason to lie, and nothing in the record casts the slightest doubt on the accuracy of her testimony.

Even if Decedent changed his mind in 2019 and decided to redo his will, and even if he would have signed the Patterson Memo given more time, Section 62-2-601(B) is not available as a substitute for a decedent's failure to memorialize a change of heart. *In Re Estate of Meeks*, 421 P.3d 963, 967 (Wash. Ct. App. 2018) (holding that a comparable statute "does not enable the court to import into a valid will terms that conform to the testator's intent in executing a different document at a later date that was not executed with the formalities of a will"). *See also,* Restatement (Third) of Property: Donative Transfers Section 12.1, cmt. h (a mistake of fact cannot be used "to modify a document in order to give effect to the donor's post-execution change of mind"); *Curry v. Humane Soc'y Colorado (In re Estate of Little)* 433 P.3d 172, 181 (Colo. App. 2018) (reformation not available where the testator changes his mind or "to correct a testator's failure to prepare and execute a new document").

The remedy issue points up yet again just how novel the lower courts' approach to Section 601(B) was. In all the will reformation cases based on mistake of fact that the undersigned has been able to locate, the relevant mistake is a discrete thing – a misplaced number; an incorrect name; an inaccurate property description. The remedy therefore flows naturally and obviously from the mistake itself. None of the parties has been able to locate any case, in any jurisdiction, in which a probate court declared that a chain of events led to underpayment of one beneficiary in some arbitrary amount and then upset the specific real property bequests to six other beneficiaries in order to remedy that problem. This case is truly an outlier.

Decedent, with full knowledge of the risks of misjudging the value of his own property, made choices about how to distribute his estate, memorializing those choices in his 2015 Will. Despite no shortage of opportunities to change the terms of the 2015 Will, over the intervening

four years, and despite Respondent's aggressive efforts to facilitate a change, Decedent chose to leave the 2015 Will in place shortly before he died. This Court is obliged to respect those choices.

CONCLUSION

The record does not supply clear and convincing evidence establishing that any portion of the 2015 Will is the product of a mistake of fact or that the terms of the Patterson Memo reflect Decedent's true intent when he executed the 2015 Will. As such, Appellants respectfully request that this Court reverse the lower courts and remand this matter for the settling of Decendent's estate pursuant to the terms of the 2015 Will.

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