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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

Common Pleas Case No. 2024-CP-23-01663

Appellate Case No. 2025-001252

In the Matter of the Estate of William Rhett Taber, III

William Rhett Taber, III ....Respondent

v.

Thomas Neel Taber as Personal Representative of the
Estate of William Rhett Taber, Jr., Thomas Neel Taber
Individually, Anne C. Taber, and Robert Fishburne Taber .... Appellants

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STATEMENT OF FACTS 3

STANDARD OF REVIEW 9

ARGUMENT

I. Appellants failed to preserve their arguments for appellate review. 10

II. The Probate Court has express statutory authority to reform a will to correct a mistake of fact. 13

III. The Probate Court has authority to reform a Will to correct a mistake regardless of whether the Decedent knew about the mistake or took any steps to fix the mistake prior to his death. 17

IV. The Probate Court has authority to consider all of the evidence of Decedent's intent when determining how to reform the terms of a will to correct a mistake in fact. 19

CONCLUSION 21

TABLE OF AUTHORITIES

CASES

Baker v. Wood, Ris & Hames, Prof'l Corp., 364 P.3d 872 (Colo. 2016) 16

Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) 10, 19

Curry v. Humane Society of Colorado, 433 p. 3d 172 (Colo. App. 2018) 13, 15, 16

Gurganious v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct. App. 1995) 12

Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997) 12

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) 11, 19

In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005) 9

In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997) 9

Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (2004) 9

Limehouse v. Limehouse, 256 S.C. 255, 257, 182 S.E.2d 58, 59 (1971) 15

Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 715 S.E.2d 348, 352 (Ct. App. 2011)..10

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903, 907 (2007) 10, 19

State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) 15

Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) 10

STATUTES

S.C. Code Ann. §62-2-601(B) 13, 15, 16, 17, 18

S.C. Code Ann. §62-7-415 13

OTHER AUTHORITIES

Rule 52, SCRCP 11, 12

Rule 59, SCRCP 10, 11, 12

Restatement (Third) of Property: Donative Transfers Section 12.1 13

STATEMENT OF ISSUES ON APPEAL

1. Did Appellants preserve their arguments for appellate review when their objections were not specifically raised to and ruled on by the trial judge and Appellants have changed their theory of case at every stage the appeal?
2. May the Probate Court reform a will when the clear and convincing evidence establishes that the testator's intent and the terms of the will were affected by a mistake of fact?
3. Is ratification by silence a defense in an action to set aside a will based upon mistake of fact in the inducement?
4. When the clear and convincing evidence in the record establishes that a testator's intent and will were affected by a mistake of fact in the inducement, may the Probate Court reform to terms of the will to conform to the terms of the testator's intention?

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, along with all of the other intestate heirs of Decedent, 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 15, 2024, 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 the mistake of fact, the Probate Court reformed the 2015 Will 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.

By Amended Order filed March 12, 2020, 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.

Paul Kershaw Taber, Andrew Patton Taber, and Michael Tyndall did not join in the appeal.

By Order affirming Probate Court filed March 17, 2025, the Circuit Court affirmed the Amended Order of the Probate Court in its entirety. (ROA p. __, Order Affirming Probate Court).

Appellants filed a Rule 59(e) motion which the Circuit Court denied by Form 4 Order filed May 27, 2025. (ROA pp. ____, Form 4 Order).

Appellants then appealed to the Court of Appeals by Notice of Appeal filed June 23, 2025.

STATEMENT OF FACTS

Decedent and his wife, Anne Fishburne Taber, had seven children during their long marriage which ended upon Anne's death on January 30, 2003. By all accounts, Decedent had a good relationship with all of his children.

Decedent and his wife did not live extravagantly during their marriage. (Transcript of proceedings held February 14-14, 2024 pp. 99-101, 264). They were, however, able to acquire numerous parcels of real estate over the years through either purchase or inheritance. (Tr. pp. 264-265). Despite these substantial real estate holdings (or perhaps because of them), Decedent and his wife were not always financially stable while their children were growing up. (Tr. pp. 91-101, 264).

Rhett Taber was the oldest of the seven children and he enjoyed some financial success as an adult. He was an officer in the Air Force and worked as a pilot for American Airlines for thirty -six (36) years. (Tr. p. 260). As soon as he became an officer in the Air Force, Rhett started depositing a "large share of [his] paycheck into [his] parents' checking account." (Tr. p. 267, l. 8).

Rhett also loaned his parents money over the years. Rhett testified that he transferred "hundreds of thousands of dollars" to his parents. (Tr. p. 273, ll. 4-11). Decedent's personal banker confirmed that Rhett transferred "hundreds of thousands of dollars" into Decedent's account to cover or prevent Decedent's chronic overdrafts. (Tr. p. 70, ll. 11-19).

Paul Kershaw Taber ("Paul Taber") testified that there was "no doubt" that Rhett helped his parents financially throughout their lifetimes. (Tr. p. 216, ll. 10-15).

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." (Tr. p. 206, ll. 11-15).

Some of the loans from Rhett to Decedent were memorialized by promissory notes prepared in 2011 and 2012. (Petitioner's Exhibits 7 and 8).

As Decedent got older, he met with attorney Jack Howard in 2015 to "put his affairs in order." (Tr. p. 12). Attorney Howard and Decedent met several times to discuss Decedent's estate plan. As part of this process, Attorney Howard also met with Tom Taber. Although he testified that he had met other siblings "in a friendly way," Attorney Howard confirmed that Tom Taber was the sibling who was primarily assisting Decedent with his estate plan. (Tr. pp. 12-13).

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. (Tr. pp. 103-104, Petitioner's Exhibit #1) (hereinafter "Spreadsheet"). In five separate places, this Spreadsheet referenced a debt from Decedent to Rhett Taber in the amount of $340,000.00 (hereinafter "Debt"). (Petitioner's Exhibit #1). The $340,000.00 value placed on this Debt was a negotiated amount agreed to by Decedent and Rhett. (Tr. pp. 105-106, 219-220). Attorney Howard confirmed this negotiated amount as well. (Tr. pp. 25-27, 41).

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 on the Spreadsheet prepared by Tom Taber was a flat $14,000.00 per acre. (Petitioner's Ex. 1, p. 1 of Spreadsheet).

Attorney 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. (Tr. pp. 25-27, 61-62). At the $14,000.00/acre figure, the value assigned to the 28.48 acres would be $398,720.00.

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. (Tr. pp. 105-106, 131-132, 208, 219-220).

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 itself states as the consideration for this conveyance "satisfaction of indebtedness from Grantor [Decedent] to Grantees [Rhett Taber and his wife]". (Petitioner's Exhibit #3).

Despite the foregoing, 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. (Tr. pp. 113-114).

According to Tom Taber, the value of the 28.48 acres on Belvue School Road was actually $427,200.00 (at $15,000.00 per acre). (Tr. p. 139). It was also Tom Taber's testimony *at trial*[1]

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[1] Tom Taber admitted that the first time he mentioned the fact that he was including the value of a lot in Flat Rock and personal property in the calculation of the alleged "overpayment" was at trial despite the fact he had given a sworn deposition prior to trial. (Tr. pp. 141-142). The belated notion that the conveyance of the lot in Flat Rock was in any way related to the satisfaction of the Debt does not have any merit. The conveyance of the acreage to satisfy

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 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. (Tr. pp. 110, 128, 131-132, 139-142).

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. (Tr. pp. 113-114, 126-219, 139-140, 144, 146-147). Once again, Tom testified that "Pop thought the same" when he signed the 2015 Will. (Tr. pp. 113-114).

On the Spreadsheet created by Tom Taber, Tom reduced Rhett's inheritance by $279,242.00 based upon the mistaken valuation of the alleged "overpayment." (Petitioner's Exhibit #1 (last page)). In fact, the Spreadsheet contains a notation " — OP" which Tom Taber admitted stood for "overpayment." (Tr. p. 114).

Accordingly, Rhett's "Individual Inheritance" less the "overpayment" was only $26,650.00 compared to the $305,892.00 allocated to the other heirs. (Petitioner's Exhibit #1 (last page); Tr. p. 60). This alleged "overpayment" was the reason Rhett's inheritance was reduced by approximately $280,000.00. (Tr. p. 113). Tom admitted that he spoke about the overpayment with Jack Howard outside the presence of Rhett. (Tr. p. 115).

Anne Taber also believed that Decedent thought Rhett had received an overpayment related to the loan satisfaction and, therefore, the 2015 Will reduced Rhett's inheritance by $280,000.00. (Tr. pp. 185-186).

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the Debt occurred on July 15, 2025. (ROA p. __, Petitioner's Ex. 3). The conveyance of the lot in Flat Rock was on November 12, 2015- four months later. (ROA p. __, Petitioner's Ex. 9).

Based upon the Spreadsheet prepared by Tom Taber, Attorney Howard prepared the 2015 Will. (Petitioner' Ex. 2). This 2015 Will allocated Decedent's assets in the same manner as set forth in the Spreadsheet. (Tr. pp. 17-20; Petitioner's Exhibits 1 and 2). As Personal Representative of Decedent's estate, Tom Taber acknowledged this fact as well. (Tr. pp. 127-128). Decedent signed the 2015 Will on July 23, 2015. (Petitioner's Ex.2).

The 2015 Will was premised on the mistake in valuation of the property conveyed to Rhett to satisfy the $340,000.00 debt and the mistaken "overpayment" of the Debt.

After Decedent signed the 2015 Will, Tom Taber testified that he had the 28.48 acres on Belvue School Road appraised. According to Tom, the property appraised for "roughly $11,500.00 per acre" which equates to approximately $327,500.00 in total. (Tr. p. 117, ll. 8-9). This valuation was significantly less than the value assigned to this asset by Tom Taber on the Spreadsheet which was relied upon by Decedent and Attorney Howard to prepare the 2015 Will. This valuation further confirmed the mistake in the notion that that Decedent overpaid Rhett by $280,000.00 when he conveyed the 28.48 acres on Belvue School Road to Rhett.

Several years after the execution of the 2015 Will, Decedent met with attorney Jackie Patterson to revise his estate plan because there were "errors in that prior Will." (Tr. p. 82, ll. 7-12). During his meeting with Attorney Patterson in June of 2019, Decedent explained how he did not think that the 2015 Will prepared by attorney Howard was fair. (Tr. pp. 86, 91). Decedent explained "all the things that Rhett Taber had done for him" and he just wanted to make his will "fair." (Tr. p. 86, ll. 10-12).

Based upon her conversations with Decedent, Attorney Patterson created a representation letter dated June 26, 2019 (hereinafter "2019 Patterson Correspondence"), which confirmed how Decedent wanted his estate divided to correct the mistaken 2015 Will. (Tr. p. 78, ll. 83-86).

Decedent was clear that he wanted to revoke the 2015 Will and replace it with one consistent with the 2019 Patterson Correspondence. (Tr. pp. 84-86). The main 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").[2]

In the 2015 Will, the Farm Property was divided equally between all of the children. (Tr. p. 173, Petitioner's Exhibit #2 (Item IX)). Pursuant to the 2019 Patterson Correspondence, the Farm Property was allocated solely to Rhett Taber. (Petitioner's Exhibit #4, at para. 1(g)).

Unfortunately, Decedent never signed the 2019 Patterson Correspondence or any revised estate planning documents because he died on July 16, 2019. (Tr. p. 85). Attorney Patterson testified that the daughter living with Decedent (Anne) was interfering with the law office's attempt to get Decedent to sign the 2019 Patterson Correspondence so that the estate planning documents could be finalized. (Tr. pp. 85, 89, 91).

At trial, Allen McCravey was qualified as an expert in the field of real estate appraisals. (Tr. p. 365). 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. (Tr. p. 366, Petitioner's Exhibits #2 and #12). 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). (Tr. pp. 366, 372, Petitioner's Exhibit #12). McCravey did not assign any value to the alleged structure on the property. (Tr. pp. 370-371, 374-375).

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. (Tr. p. 118). Tom also acknowledged that if the property Rhett received in 2015 was worth substantially less than

[2] The 2019 Patterson Correspondence refers to the Belvue School Road property as the property on "Shelton Road, Travelers Rest, South Carolina."

$620,000.00, it was a mistake to reduce Rhett's inheritance and that mistake "should be fixed." (Tr. pp. 145-147).

Bob Taber agreed that if there was a mistake in the 2015 Will, he knew that Decedent would want that mistake "rectified." (Tr. p. 214).

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. (Tr. p. 192). 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. (Tr. p. 201).

Pat Taber also agreed that "if there was a mistake [on the Spreadsheet], it – it should be fixed." (Tr. p. 238). He also agreed that Decedent wanted Rhett to receive the entire Farm Property. (Tr. pp. 239-240).

Certified estate planning specialist Dan Collins testified as an expert in the field of probate and estate law. He testified about the 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. (Tr. pp. 384-386).

STANDARD OF REVIEW

An action to determine the validity of a will, contest a will, or construe a will is an action at law. In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005); Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (2004); In re Estate of Weeks, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997). If the proceeding in the Probate Court is in the nature of an action at law, the circuit court on appeal

may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support the findings of fact. Id. at 261, 495 S.E.2d at 460.

If construed as an action in equity as suggested by Appellants, the case at bar will be reviewed *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 is 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. Consequently, the appellate court will affirm the findings of the Probate Court in an equity case unless the appellant satisfies the appellate court that the preponderance of the evidence is against the findings of the Probate Court. Id.

ARGUMENT

I. Appellants failed to preserve their arguments for appellate review.

"It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." Wilder Corp. v. Wilke, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903, 907 (2007).

"When a trial court makes a general ruling on an issue but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal." Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d

437, 449 (Ct. App. 2005). "If the losing party has raised an issue in the lower court, but the court fails to rule on it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Most of the arguments raised by Appellants in this appeal were not preserved for appellate review. In addition to not being preserved, Appellant's arguments keep changing in an effort to resuscitate this appeal.

At trial, Appellants' theory of the case was simply that there was no mistake in fact but, if there was a mistake, then Decedent ratified that mistake based upon silence. (Tr. pp. 415, 416-451.)

In their motion for directed verdict at the conclusion of Respondent's case-in-chief, Appellants argued:

> … there was a four year time period from 2015 when this will was drafted and signed until 2019. And we've had testimony from numerous witnesses that if Pop Taber wanted to go – go find a lawyer to draft a will, he could have found one. We've had, I – I believe at least seven lawyers mentioned that he dealt with on an estate plan basis and he could have called any one of them maybe accepting (sic) Charlie Stewart if he wasn't living at that time and he could have re-done his will. And by not redoing the will, he ratified his will for four years. (Circuit Court ROA p. 447 l. 20- p. 448 l. 4).

In closing argument at trial, Appellants argued once again:

> To summarize, the petitioner [Respondent] cannot prove to you by clear and convincing evidence that Pop's intent would've been anything different than what is in his will. And even if they could, the court must consider that Pop ratified his will by not amending it. (Circuit Court ROA p. 484 ll. 14-19).

The Probate Court ruled against Appellants on both of their arguments raised at trial. Appellants did not file a motion under Rule 52 or 59, SCRCP.

On appeal to the Circuit Court, Appellants added the following arguments:

A. A Probate Court lacks authority to reform a will based on an expert appraisal not known to the Decedent, but instead generated in connection with litigation, concerning an item not even in the will.

B. Reformation of a will cannot be based on speculation that the testator's incorrect belief about the value of non-estate property caused him to shortchange a beneficiary in his will.

. . .

D. The Probate Court 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. (See Appellants' Brief to Circuit Court p.1)

As part of these new arguments, Appellants argued that the differences between the disposition of assets as provided by the 2015 Will and the disposition of assets as provided in the 2019 Patterson Correspondence somehow established an error in the Probate Court's findings or fact or conclusions of law. Once again, these arguments were not raised to and ruled upon by the Probate Court and Appellants did not file a motion pursuant to Rule 52 or 59, SCRCP. These arguments were not preserved.

In its brief to the Circuit Court (as well as the brief to the Court of Appeals), Appellants include various charts highlighting differences in allocations of assets between the Spreadsheet. The 2015 Will, and the 2019 Patterson Correspondence. The arguments purportedly supported by these various charts were not made to the Probate Court. Appellants advanced these arguments for the first time to the Circuit Court.

Having lost at the Circuit Court level, Appellants now assert the following new arguments to the Court of Appeals:

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.

Appellants are prohibited from changing their theory on appeal. See Hanahan v. Simpson, 326 S.C. 140, 485 S.E.2d 903 (1997)(to be preserved for appellate review, issues raised on appeal

must be the same as the issues raised at the trial level). See also Gurganious v. City of Beaufort, 317 S.C. 481, 488, 454 S.E.2d 912, 916 (Ct. App. 1995)(holding a party may not present one ground at trial and then change his theory on appeal). A party simply cannot keep changing its arguments at every stage of an appeal in hopes that one of the arguments will eventually prevail.

The only issues properly and consistently preserved for appellate review are whether Decedent's intent and the terms of the 2015 Will were affected by a mistake of fact and whether Decedent ratified the 2015 Will by silence. The Probate Court properly ruled on these issues and the circuit court did not err in affirming the Probate Court.

II. The Probate Court has express statutory authority to reform a will to correct a mistake of fact.

Based on clear and convincing evidence in the record, the Probate Court held 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 evidence supports the Probate Court's findings and conclusions, the Circuit Court properly affirmed the Probate Court's Amended Order filed March 12, 2024.

Instead of relying on S.C. Code Ann. §62-2-601(B), Appellants rely upon another statute, an unrelated treatise, and case law from foreign jurisdictions to argue that the Probate Court lacks authority to reform the 2015 Will. (See Appellants' Brief pp. 14, 15, 17 citing S.C. Code Ann. §62-7-415, the Restatement (Third) of Property: Donative Transfers, and Curry v. Humane Society of Colorado, 433 p. 3d 172 (Colo. App. 2018)). The only relevant inquiry is S.C. Code Ann. §62-2-601(B) as relied upon by the Probate Court.

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.

As found by the Probate Court, the facts and evidence clearly show that a mistake of 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." (Amended Final Order, p. 6).

As thoroughly cited in the Statement of the Case *supra*, the following facts were established by clear and convincing evidence presented at trial. Rhett Taber loaned his father Decedent hundreds of thousands of dollars. Decedent and Rhett agreed that the amount of the Debt was $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 referenced the "overpayment" to Rhett. The Spreadsheet implied 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 prepared by Tom Taber, 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. Attorney 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[3], 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 clear and convincing facts, the Probate Court properly found that Rhett's inheritance was improperly reduced in the 2015 Will based upon a mistake of fact in the inducement. (Amended Order p. 6). 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 as stated by Tom Taber on the Spreadsheet he prepared which was relied upon by Attorney Howard to prepare the 2015 Will.

Appellants cite the 1971 case of Limehouse v. Limehouse, 256 S.C. 255, 257, 182 S.E.2d 58, 59 (1971) for the proposition that a court cannot deviate "from the express terms of a will based on speculation about how a testator might have reacted to some later contingency." (Appellants' Brief p. 14). In 1971, it was true that a court could not deviate from the express terms of a will. The statute granting the Probate Court the authority to deviate from the express terms of a will was not enacted until 2014. S.C. Code Ann. §62-2-601(B) (effective January 1, 2014). The new statute clearly grants the Probate Court the authority to reform a will, "even if unambiguous." Id. The holding in Limehouse has no relevancy to the inquiry in this case.

Appellants also cite a case from Colorado for the proposition that "reformation is not available where the testator changes his mind or to correct a testator's failure to prepare and execute a new document." (Appellants' Brief p. 17 citing Curry v. Humane Society of Colorado,

[3] The Probate Court found that Attorney Patterson attempted to contact Decedent to discuss the Patterson Correspondence but was "blocked from speaking to Decedent by Anne [Taber]." (Amended Order p. 5). This finding and conclusion is amply supported by the record. Attorney Patterson, who had nothing to gain by her testimony, clearly testified to this fact. (Tr. pp. 85, 89, 91). If her testimony contained any hearsay, as now argued by Appellants, Appellants did not object contemporaneously during Attorney Patterson's testimony and this objection was not preserved for appellate review. State v. Sweet, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007).

433 p. 3d 172 (Colo. App. 2018)). First of all, this was not the holding in Curry. The holding in Curry was simply that an ex-husband had standing to seek reformation of his ex-wife's will.

Nevertheless, Rhett is not arguing, and the Probate Court did not hold, that the 2015 Will should be reformed because Decedent changed his mind after he executed the 2015 Will. Similarly, Rhett is not arguing, and the Probate Court did not hold, that the 2015 Will should be reformed to correct Decedent's failure to prepare and execute a new will. Rhett is arguing, and the Probate Court and Circuit Court held, that the 2015 Will should be reformed because Decedent's intention and the terms of the 2015 Will were affected by a mistake of fact.

As relevant to the case at bar, Curry actually confirms that the Colorado will reformation statute similar to S.C. Code Ann. §62-2-601(B) "provides a means by which disappointed beneficiaries can litigate what they perceive to be the testator's true intent." Curry, 433 P.3d at 180 (citing Baker v. Wood, Ris & Hames, Prof'l Corp., 364 P.3d 872 (Colo. 2016)).

Appellants also argue "that there is no evidence Decedent would have considered McCravey's appraisal more accurate than his own." (Appellants' Brief, p. 18). Quite to the contrary, the record reveals that Tom Taber had the 28.48 acres on Belvue School Road appraised sometime after Decedent executed the 2015 Will. The property appraised for approximately $327,500.00. (Tr. p. 117, ll. 8-9). Decedent was apparently aware of this appraisal. (Tr. p. 121, ll. 22-24). Decedent ultimately met with Attorney Patterson to correct "errors" in the 2015 Will to make it "fair" to Rhett Taber. (Tr. p. 82, ll. 7-12, p. 86, ll. 10-12). Nobody even suggested that there were any other material mistakes or errors in the 2015 Will other than the mistaken disinheritance of Rhett based upon the mistaken "overpayment."

Accordingly, the evidence suggests that Decedent considered the appraisal ordered by Tom Taber to be more accurate than the values assigned to the acreage on Belvue School Road on the

Spreadsheet. The appraised value per Tom Taber's appraisal ($327,500.00) was very close to the appraised value per McCravey ($300,000.00). Since Decedent realized he had not overpaid Rhett for the $340,000.00 Debt with the 28.48 acres on Belvue School Road valued at $327,500.00, he certainly would not have considered that he had overpaid Rhett if the value of the property was only $300,000.00 as opined by McCravey.

The bottom line is that 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 all of the fact witnesses confirm this mistake.

The Probate Court had express authority to reform the 2015 Will based upon the mistake of fact related to the satisfaction of the $340,000.00 debt. It is important to highlight that the Probate Court could have corrected this mistake of fact even without *any* testimony or evidence from Attorney Patterson. Attorney Patterson's testimony and the 2019 Patterson Correspondence merely serve to provide even more evidence of the mistake and Decedent's intentions in light of the mistake.

Furthermore, as confirmed by expert testimony from Dan Collins, the situation at bar is the exact scenario where the Probate Court is authorized to reform a will based upon a mistake of fact pursuant to the relatively new S.C. Code Ann. §62-2-601(B). (Tr. p. 383-386).

III. The Probate Court has authority to reform a Will to correct a mistake regardless of whether the Decedent knew about the mistake or took any steps to fix the mistake prior to his death.

Appellants argue that the Probate Court does not have authority to correct a mistake of fact because several years passed between execution of the 2015 Will and Decedent's death and Decedent did not alter his estate plan during those years. 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 when he satisfied the $340,000.00 Debt. Tom manipulated 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. These findings triggered the Probate Court's authority to reform the 2015 Will.

The Probate Court's authority to reform a will is not contingent upon a testator even knowing that there is a mistake. Furthermore, the Probate Court's authority to reform is not contingent upon a testator taking any steps to correct a mistake in a will after the fact. The mistake occurred at execution and since that mistake affected the terms of the 2015 Will, the Probate Court had authority to reform the 2015 Will to correct the mistake.

At trial, Appellants argued that Decedent ratified the mistake based upon his silence. (Tr. pp. 8, 415, 451). Ratification by silence is not a defense under S.C. Code Ann. §62-2-601(B). The Probate Court has authority to correct a mistake of fact regardless of the lapse in time between the mistake and the testator's death.

In the present case, the Probate Court was fortunate to have the benefit of knowing that Decedent recognized the mistake in the 2015 Will and he wanted to fix that mistake. It does not matter whether these attempts to correct the mistake started one day after the execution of the 2015 Will or ten years after the execution. The fact that Decedent took steps to correct the 2015 Will is not the *only* evidence of the mistake. It is just *additional* evidence of not only the mistake but also Decedent's true intent.

IV. The Probate Court has authority to consider all of the evidence of Decedent's intent when determining how to reform the terms of a will to correct a mistake in fact.

The Probate Court found that the Decedent's intent and the 2015 Will were affected by a mistake of fact in inducement and that Rhett Taber's share of his inheritance was improperly reduced based upon that mistake of fact. To remedy this mistake, the Probate Court reformed the 2015 Will to be consistent with the estate plan set forth in the 2019 Patterson Correspondence. Appellants now object to the remedy ordered by the Probate Court but failed to preserve that objection for appellate review. Regardless, the remedy ordered by the Probate Court is supported by the clear and convincing evidence admitted at trial.

Appellants never raised their objection to the remedy with specificity to the Probate Court and the Probate Court never ruled on this objection. Accordingly, Appellants' objection is not preserved to appellate review. S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903, 907 (2007). Perhaps more importantly, Appellants failed to file a Rule 59(e) motion objecting to the remedy and, thus, failed to preserve their objection for appellate review. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (if the losing party has raised an issue in the lower court, but the court fails to rule on it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review); Cowburn v. Leventis, 366 S.C. 20, 41, 619 S.E.2d 437, 449 (Ct. App. 2005) (when a trial court makes a general ruling on an issue but does not address the specific argument raised by a party, that party must make a Rule 59(e) motion asking the trial court to rule on the issue in order to preserve it for appeal).

Even if preserved, Appellants belated objection to the remedy is not supported by the record. As acknowledged by Appellants, "[r]eformation is designed to ensure the written instrument reflects the intent of the drafter at the time it was drafted." (Appellants' Brief to circuit court p. 23). 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 the Decedent's intent to reform the terms of the 2015 Will to conform to that intent.

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 were fortunate enough to have the benefit of Attorney Patterson's testimony and the 2019 Patterson Correspondence. Decedent's own words are the best evidence of his intent in light of the mistake of fact.

Decedent told Attorney 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." (Tr. p. 86, ll. 10-12). All witnesses who testified on the matter 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 and 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).

CONCLUSION

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 confirmed by the testimony of the witnesses and memorialized in the 2019 Patterson Correspondence. The Circuit Court properly affirmed the Probate Court.

Respondent William Rhett Taber, III respectfully requests an Order of this Court affirming the Order Affirming Probate Court filed March 12, 2025.

November 5, 2025

s/ David A. Wilson
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