

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON)
)
 IN RE: Thomas Cecil Wallace, II)
)
 Kristin Queen,)
)
 Petitioner,)
)
 -vs-)
)
 Daniel Jason Wallace,)
)
 Respondent,)

IN THE PROBATE COURT



ORDER

Case No. 2024-ES-04-00023



HEARING DATE: ~~July 10, 2023~~ *October 7, 2024*
PRESIDING JUDGE: J.T. Foster
PETITIONER’S COUNSEL: J. Kirkman Moorhead
RESPONDENT’S COUNSEL: Joshua B. Raffini

This matter was before this Court on October 7, 2024, pursuant to the Petitioners’ Summons and Petition for Formal Probate and Motion to Remove Personal Representative. Respondent, Daniel Jason Wallace, was previously appointed as Personal Representative in this estate through informal probate. At the time of initial filing, Respondent submitted a Will he alleged was executed in 2011 (hereinafter “2011 Will”). Petitioner Kristin Queen filed her Petition for Formal Probate and Motion to Remove Personal Representative on March 1, 2024. Petitioner subsequently filed an Amended Petition on August 21, 2024. Petitioner, at the time of her Petition, submitted an alleged subsequent Will of Decedent, said Will allegedly executed in March 2020 (hereinafter “2020 Will”). Petitioner alleges that the 2020 Will is valid, should be admitted to probate, and that as a subsequent Will is the valid Will of Decedent rather than the 2011 Will. Petitioner’s Motion to Remove Personal Representative is based on Respondent’s refusal to recognize the 2020 Will, which he contends is a forgery.

The matter proceeded to trial. The Court heard testimony and received exhibits from both parties, as well as witnesses on behalf of both parties. Based upon the parties' pleadings, testimony, exhibit(s), and other available information appearing of record, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. I find that at the time of his death, Decedent resided in the County of Anderson, State of South Carolina. The parties stipulated as to the date of death of Decedent. No party challenged jurisdiction or venue. I therefore find that this Court has jurisdiction over the parties and the subject matter of this action, and venue is proper in Anderson County.

2. I find that the 2011 Will was validly executed in accordance with statutory requirements. Respondent, as part of his application for informal probate, provided affidavits from attesting witnesses as to due execution. Furthermore, the affidavits presented indicate that one of the subscribing witnesses was also a notary.

3. I find that, on their face, the Affidavits of Due Execution were executed outside of the State of South Carolina. Neither party presented any evidence that the subscribing witnesses to the 2011 Will were located in this jurisdiction or available to testify in this matter.

4. I find that the 2020 Will was not validly executed. I find that while Petitioner presented testimony from both alleged witnesses to the 2020 will, their testimony was not wholly credible. Other testimony indicated that both witnesses had relationships with at least one (1) beneficiary of the 2020 Will. Ms. Queen testified that the 2020 Will was located in a storage building of the decedent, located on the real property of the decedent, together with many other personal documents of the decedent.

5. Furthermore, I find that the Respondent's testimony demonstrated internal inconsistencies in the 2020 Will. First, Respondent testified that the alleged notary who signed the 2020 Will was not a qualified notary as of the alleged execution date. Furthermore, while it is conceivable that a notary may inadvertently allow their notarial commission to lapse the 2020 Will reflected a notarial expiration which it appears had no relationship to the notary in question. Furthermore, Respondent's testimony, consistent with the 2020 Will, reflected that the notarial stamp on the original document was for an altogether different notary than the individual alleged to have signed as notary. Respondent testified he located the obituary for the individual whose notarial seal was apparently applied to the 2020 Will. Finally, Respondent testified that the 2020 Will reflected the transfer of firearms from the Decedent to Respondent. Respondent admitted receiving firearms from the Decedent but not until 2021. Assuming this is true, it would have been impossible for the Decedent to identify his property by reference to its subsequent location at the time of execution.

6. The Court heard testimony from Theresa Dean who was qualified as an expert in handwriting analysis. Ms. Dean testified that the alleged signatures of Decedent on the 2020 Will did not match exemplar signatures, alleged to be those of Decedent, provided to her for analysis. Ms. Dean identified multiple inconsistent features between signatures she compared. The Court finds Ms. Dean's testimony credible and persuasive in this matter.

7. I find that the testimony of Meghan Selman, offered by Petitioner, was not credible and should be afforded no weight. Ms. Selman acknowledged that she previously signed a statement indicating that the 2020 Will was a forgery and that she witnessed its execution after Decedent's death. However, Ms. Selman offered a different story at the hearing in this matter and testified that her prior sworn statement was false and given in exchange for payment while she

was under the influence. Accordingly, the Court lends no weight to her prior statements or testimony in this matter.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 62-1-302(a)(1), this Court has jurisdiction over this subject matter;
2. Pursuant to S.C. Code Ann. § 62-3-201(a)(1), proper venue is in Anderson County, South Carolina;
3. Pursuant to S.C. Code Ann. § 62-1-302(a)(1), this Court has continuing jurisdiction over all parties and subject matters relating to the Decedent's Estate;
4. The proponent of a will has the burden of proving due execution. SC Code § 62-3-407. Similarly, contestants of a will have the burden of proof as to any of the enumerated grounds for refusing probate of a duly executed will.
5. Pursuant to SC Code § 62-2-502 a valid will must be (1) in writing, (2) signed by testator ... (3) signed by at least two individuals either witnessing the testator's signing or acknowledgment of his signature. The Probate Code sets forth requirements for due execution. SC Code § 62-3-303(7)(c). Evidence of due execution may include testimony of witnesses to due execution or "an affidavit of an attesting witness. SC Code § 62-3-406.
6. Scriveners' errors do not preclude the Court from finding that an otherwise valid will was properly executed. South Carolina courts have previously looked to the language of challenged wills, as a whole, and disregarded internal inconsistencies upon review of other evidence pertaining to due execution. *See Smith v. Lawton*, 435 S.C. 179, 865 S.E.2d 782 (Ct.App. 2021) (finding due execution despite conflict in name of testatrix).

7. In a formal probate proceeding, the proponent of an alleged subsequent Will has the burden of proving that the alleged subsequent will is entitled to probate. SC Code § 62-3-407.
8. South Carolina law anticipates and allows evidence of due execution apart from the face of the will. *See, e.g.*, § 62-3-303(7)(c). Testimony from subscribing witness may be required where such witnesses reside in this jurisdiction. However, proof of due execution by “other evidence” beyond testimony of witnesses is sufficient where the South Carolina Probate Code explicitly permits use of “an affidavit of an attesting witness.” § 62-3-406.
9. As the proponent of an alleged subsequent will, Petitioner had the burden to prove that such alleged will was valid. SC Code § 62-3-407.

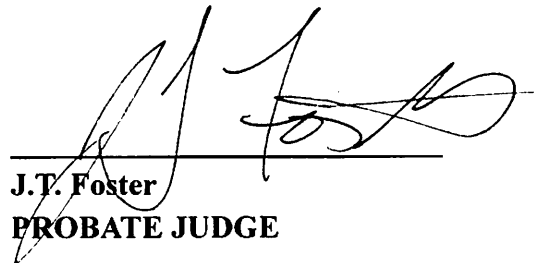
NOW, THEREFORE, IT IS ORDERED, ADJUDGED, and DECREED that:

1. The prior Order of this Court admitting the 2011 Will into probate and appointing Daniel Jason Wallace as Personal Representative is hereby confirmed.
2. The 2011 Will is the valid will of Decedent Thomas Cecil Wallace, II.
3. The 2020 Will is not valid and is therefore not entitled to probate as a subsequent will of Decedent.
4. Petitioner’s Motion to Remove Personal Representative is DENIED.

IT IS SO ORDERED.

17th December 2024

ANDERSON, SOUTH CAROLINA



J.T. Foster
PROBATE JUDGE