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' FINAL REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

ARGUMENT

A. Respondent misstates the standard of review.

Respondent contends this Court may review the decision below under a deferential standard of review because this case is "[a]n action to determine the validity of a will, contest a will, or construe a will" and thus is an action at law. (Resp. Br. 9-10.) However, the claim in this case involves an effort to "reform the terms of [a] will." S.C. Code § 62-2-601(B). As such, it is a claim in equity and a *de novo* standard of review applies. *In re Howard*, 315 S.C. 356, 362 (1993); *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 248 (Ct. App. 2011). This Court therefore must undertake a *de novo* review of whether Respondent met each of the requirements for will reformation under Section 62-2-601(B) by clear and convincing evidence.

B. Respondent's arguments are premised on an inaccurate characterization of the "Spreadsheet" used by Decedent in connection with the 2015 Will.

The centerpiece of Respondent's argument that Decedent made a mistake in connection with his 2015 Will is his reliance on "the Spreadsheet" – a three-page document Decedent used as a guide. (Resp. Br. 4-7, 14, 16-18.) Respondent omits the pertinent context, instead repeating over and over that the Spreadsheet was created by Tom Taber and that it shows Respondent received $280,000 less than his siblings. (Id.) Without citation to the record, Respondent claims that Tom "manipulated the Spreadsheet to create the appearance of an 'overpayment.'" (Resp. Br. 18.) In fact, the undisputed testimony concerning the Spreadsheet was as follows:

- The spreadsheet was derived from Decedent's handwritten notes, with Tom Taber merely serving as a scrivenor. (R. p. 170, lines 1-22; p. 199, lines 4-22.)
- The sole addition made by Tom Taber was a "Posted Market Value" column of property values. (R. p. 170, lines 7-14; p. 527.)
- The "Posted Market Value" for the Travelers Rest property, some of which was exchanged for the release of debt to Respondent, was substantially lower than Decedent's assigned value and virtually identical to Respondent's expert's appraisal. (R. p. 527.)

- The Spreadsheet showed a split of the Travelers Rest Property into tracts of 41.71 and 12.7 acres but the actual split Decedent settled on in July 2015 was 28.48 acres to Respondent and 25.93 acres left to all surviving siblings in the 2015 Will. (R. pp. 527, 536.)

- The Spreadsheet was circulated in January 2015, six months before Decedent executed his 2015 Will. (R. pp. 525-26.)

- Between January and July 2015, Decedent had meetings involving all his children, Respondent included, and there was significant discussion and argument about how Decedent's property should be divided. (R. p. 101, line 11-p. 102, line 14; p. 104, lines 17-23.)

- The list on the third page of the Spreadsheet, purportedly showing a proposed distribution of $305,892 to each sibling except Respondent, and a distribution of $26,650 to Respondent, does not correspond to any of the property values set forth on the first page of the Spreadsheet. (R. pp. 527, 529.)

- Each sibling's share of the estate was different under the 2015 Will, according to Decedent's property values from the first page of the Spreadsheet. None received property worth $26,650 and none received property worth $305,892. (R. p. 527; Apps. Br. 8-10.)

These points are not in dispute. Respondent, who testified after all the other siblings, did not challenge any of this evidence. There is no evidentiary support for Respondent's claim that Tom Taber used the Spreadsheet to manipulate Decedent. Respondent's argument that he received an inheritance of $25,650, while each of his siblings received property worth $305,892, is demonstrably false.

Perhaps the most fundamental problem with Respondent's argument about the Spreadsheet comes down to a matter of timing. Respondent's argument relies heavily on speculation about what the figures in the Spreadsheet meant. Respondent contends the calculations on the third page of the Spreadsheet show that Decedent believed his conveyance of the Travelers Rest property to Respondent in 2015 would be worth $280,000 more than the debt. (Resp. Br. 6-7.) However, the Spreadsheet was generated in, or sometime prior to, January 2015. (R. pp. 525-26.) It contemplated a split of the Travelers Rest property that was significantly different than the actual split Decedent settled on six months later in July 2015. The Spreadsheet called for a split of 41.71

acres and 12.7 acres; the actual split in July 2015 was 28.48 acres (given to Respondent) and 25.93 acres (distributed through the 2015 Will). (R. 527, 536.)

Even assuming, for the sake of argument, that Decedent originally believed he was overpaying by $280,000 for the retirement of debt, that belief would have been based on the original plan to give Respondent 41.71 acres. When Decedent ultimately chose to give Respondent a smaller piece of the Travelers Rest property, this changed the basic math concerning whether Decedent overpaid, and by how much.

Respondent's attempt to create a factual basis for the lower courts' rulings by cherry-picking data from the Spreadsheet, and speculating about what it meant, does not hold up under scrutiny. It simply cannot be said that the figures on the Spreadsheet provide clear and convincing evidence of a mistake affecting the 2015 Will. Decedent considered the data on the Spreadsheet and then changed the proposed distribution, giving Respondent less property right away and leaving him more in the 2015 Will than the figures on the third page of the Spreadsheet suggest. This indisputable fact destroys Respondent's argument that he was cheated out of $280,000.

C. To the extent Decedent believed he overpaid Respondent for the release of debt by transferring property to him in 2015, such belief was correct.

Respondent completely ignores the evidence that Decedent did in fact overpay when it transferred property to him in 2015. According to Respondent's expert's testimony, the 28.48-acre tract transferred in 2015 was worth approximately $300,000. (Resp. Br. 8.) The expert admitted he did not appraise the structure on the property or the equipment provided with it. (R. p. 432, lines 5-6; p. 436, lines 19-21; p. 442, lines 19-25, p. 607 (Appraisal, "Condition 24").) Tom Taber testified that the structure was worth 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. (R. p. 207, line 19-p.208, line 8.) Tom testified that another property, Flat Rock No. 8,

was also part of the debt repayment. (R. p. 171, lines 20-23; p. 172, lines 1-4 & 18-21.) It was valued on the Spreadsheet at $57,000. (R. p. 527.) Respondent, who testified after Tom, did not dispute any of this testimony. Thus, the total value transferred to Respondent in 2015 was approximately $415,000. The parties agree the debt in question had a value of $340,000. (Resp. Br. 4.) Thus, according to the undisputed testimony, including the testimony of Respondent's expert, Decedent did in fact overpay, to the tune of $75,000.

With no evidence to dispute any of these figures, Respondent is left to nitpick. He complains that Tom failed to volunteer information about the Flat Rock property in his deposition. (Resp. Br. 5, fn. 1.) But witnesses are not required to volunteer information in a deposition. Respondent does not contend that Tom's deposition testimony was non-responsive or that his trial testimony contradicted anything he said in his deposition. Next, Respondent argues that a property record printout for the Flat Rock property shows the sale was not recorded until later in 2015, rather than in July. (Id.) But the Travelers Rest property transfer was not recorded until October 2015 either. (R. p. 536.) In any event, quibbling over the dates the transactions were recorded is a far cry from disputing that the Flat Rock property was in fact part of the repayment of debt in 2015. The simple math is inescapable: Decedent overpaid for the release of debt. If he felt the need to adjust his will to account for such overpayment, it was not a "mistake" for him to do so.

D. Respondent did not establish by clear and convincing evidence that Decedent's 2015 Will was based on a mistake of fact.

With no way to make the numbers support his theory that he was cheated out of $280,000, Respondent attempted at trial, by sheer force of repetition, to get the witnesses to accept the notion that Decedent believed he gave Respondent property worth $620,000 ($280,000 more than the debt of $340,000). He claims that was Tom Taber's "opinion" and that Decedent "thought the same." (Resp. Br. 6.) Tom's opinion on the question of overpayment has little, if any, relevance

to the question whether Decedent made a mistake. Moreover, the record does not reflect that Decedent believed he overpaid by $280,000. The testimony cited by Respondent merely establishes Tom's belief that Decedent thought he overpaid in general:

> Q: So it was your opinion that Rhett had been overpaid in that transaction?
>
> A: It was my opinion, yes.
>
> Q: Did you communicate that opinion to Pop?
>
> A: Pop thought the same, yes.

Nowhere in the record did anyone testify that Decedent specifically believed he overpaid by $280,000.[1] This is critically important because, as explained above and in Appellants' opening Brief, Decedent did overpay. It would not be a "mistake" for Decedent to have taken the overpayment into account in his 2015 Will.

Finally, it is important to recognize the enormous amount of speculation required to support the theory that Decedent made a mistake. The record reflects that:

- Decedent's estate consisted almost entirely of real estate, making it impossible to leave equal shares to his children without liquidating everything or dividing ownership of each property; (R. p. 527.)
- Decedent believed the $340,000 value Respondent demanded for repayment of debt was excessive, agreeing to that number primarily to mollify Respondent; (R. p. 107, lines 22-25; p. 285, lines 7-12.)
- Decedent deliberately took his children's disparate financial circumstances into consideration, including Respondent's relative affluence; (R. p. 108, line 18-p. 110, line 17; p. 252, lines 2-5) and
- Respondent did not expect or intend for the values each child received to be equal. (R. p. 18, line 18-p. 110, line 17; p. 186, line 5-p. 187, line 4; p. 225, lines 1-4.)

[1] Respondent also claims Anne Taber testified that Decedent believed he overpaid and therefore reduced the distribution to Decedent by $280,000. (Resp. Br. 6, citing R. pp. 251-52.) This is simply false. Anne testified that Decedent believed he overpaid. R. p. 251, line 12-p. 252, line 5.) She was not asked and did not testify about any amount.

Again, none of this testimony was disputed or contested by Respondent.

For the mistake theory of this case to be viable, it would be necessary for this Court to find that none of these factors, alone or cumulatively, explain the differences in value between the property distribution to the siblings. It must find that Decedent would have relied on Respondent's expert's valuation of the Travelers Rest property rather than his own, even though he had access to a similar valuation at the time he executed the 2015 Will. (R. p. 527 ("Posted Fair Market Value").) It must further find that Decedent would want to correct an overpayment to Respondent resulting from his use of his own valuation, even though he knew at the time it was substantially higher than the "Posted Fair Market Value." And finally it must find that, despite compelling evidence that Decedent did overpay, any adjustment of his 2015 Will to account for that overpayment was a "mistake."

Respondent's theory of the case requires speculation piled on top of speculation. This does not even meet the standard of proof by a preponderance of the evidence. It certainly does not meet the clear and convincing evidence standard.

E. Respondent did not establish by clear and convincing evidence that Decedent's actual intent, when he executed his 2015 will, was to distribute his property as provided in the 2019 Patterson Memo.

The second requirement to establish will reformation based on a mistake of fact is clear and convincing proof as to what the testator intended, had his intent not been thwarted by the mistake. 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 (Third) of Property: Donative Transfers Section 12.1, 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.").[2] Respondent must produce 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").

The testator's intent is evaluated as of the date of execution of the will, not on some later occasion. *In Re Estate of Meeks*, 421 P.3d 963, 967 (Wash. Ct. App. 2018); 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").

Respondent admits that he must prove that any reform to the 2015 Will reflects Decedent's intent at the time he executed it; he cannot prevail by establishing that Decedent changed his mind in 2019. (Resp. Br. 16.) In other words, the decisions below can be affirmed only if this Court concludes, viewing the evidence *de novo* and pursuant to the clear and convincing evidence standard, that Decedent's intent at the time he executed the 2015 Will was to distribute his property as directed in the 2019 Patterson Memo. The record contains no support for this conclusion.

Decedent owned eight pieces of real estate at his death. Of those eight properties, the 2015 Will and the Patterson Memo contemplate different recipients, or combinations of recipients, for seven of them. (Apps. Br. 12.) The Patterson Memo would increase the value of Respondent's inheritance by $312,000. (Id.) (This is of course more than the alleged $280,000 value of the "mistake.") It would also change the value received by every other sibling, with some receiving

[2] Respondent objects to Appellants' citations to the Restatement, albeit without articulating anything in the Restatement that is inconsistent with South Carolina law. (Resp. Br. 13.) Far from an "unrelated treatise," the Restatement is cited repeatedly by courts applying testamentary mistake statutes. *See, e.g., Miller v. Almer (Est. of Moe)*, 16 N.W.3d 193, 197, 198, 201 (N.D. 2025); *In Re Estate of Meeks*, 421 P.3d 963, 967 (Wash. Ct. App. 2018); *In Re Estate of Duke* 352 P.3d 863, 879 (Cal. 2015).

substantial increases and some dramatic cuts. (Id.) Yet the record contains not a shred of evidence that Decedent intended these results. It defies logic that, in the course of correcting a discrete "mistake" concerning Rhett's share, Decedent would have wanted to cut Pat Taber's inheritance by over $100,000 and increase Bob Taber's by nearly $70,000. Yet that is what the Patterson Memo provides. (Id.)

It is undisputed that Decedent could have executed a new will at any time between July 2015 and his death in 2019, but chose not to do so. The only witness with personal knowledge of the contacts between Decedent and Patterson's office was Anne. She testified that Decedent rebuffed or ignored several attempts to contact him. (R. p. 254, line 7-p. 255, line 11.) When she specifically asked Decedent whether he wanted Patterson's staff to bring a new will to the home for him to sign, he emphatically declined. (R. p. 266, lines 10-20.)

Respondent cites testimony from Ms. Patterson speculating that one of the other siblings prevented Decedent from retaining her and paying for a new will. (Resp. Br. 15, fn. 3.) He contends that Appellants are unable to dispute Patterson's testimony because they did not object to it as hearsay. (Id.) A hearsay objection was not an option because Patterson did not admit she had no personal knowledge to support her "opinion" until she was cross-examined. (R. p. 149, lines 1-2 (direct); p. 150, line 25-p. 151, line 13 (direct); p. 154, lines 1-5 (cross); p. 155, lines 16-21 (cross).) Moreover, even when hearsay testimony is admitted, it is substantially less reliable than testimony from personal knowledge. Here, it was error to give Patterson's speculation, based on what her employees supposedly told her, greater weight than Anne's testimony based on personal knowledge. Patterson's employee(s) were neither identified nor called. While Rhett contends Patterson "had nothing to gain by her testimony" (Resp. Br. 15, fn. 3), that is not true of Patterson's employees, who had every reason to blame someone else for their inability to obtain

Decedent's signature on the retainer agreement before his death. And Patterson's testimony was derived entirely from what she was told by her unidentified employees.

Anne's testimony to the effect that Decedent expressly refused to retain Patterson or change his will was against her own interest, as the Patterson Memo would increase her inheritance, which she knew because she read it. (R. p. 263, line 21-p. 264, line 14; Apps. Br. 12.) It would have made no sense for Anne to block Decedent from changing his will. Particularly in light of the clear and convincing standard, it was error to rely on Patterson's hearsay-tainted opinion over Anne's testimony against her own interest and from personal knowledge.

The circumstances surrounding the two documents also strongly favor the 2015 Will as the true representation of Decedent's wishes. It was the result of a lengthy collaboration between Decedent and his attorney John Howard. (R. p. 101, line 11-p. 102, line 14; p. 104, lines 17-23.) They met repeatedly over a six-month period both with and without the beneficiaries. (Id.) At the conclusion of the process, Decedent observed all the necessary formalities to execute an enforceable legal document. (R. pp. 530-35.)

By contrast, the 2019 effort was spearheaded entirely by Rhett, who pushed Decedent to make a change even as he was in declining health. (R. p. 232, line 25-p. 233, line 7; p. 234, lines 17-21; p. 406, lines 9-17.) The other siblings were left out of the process. Tom testified that the other siblings "felt awkward" about Rhett's push to get the 2015 Will changed. (R. p. 235, lines 4-12.) Anne testified that when Decedent showed her the contemplated changes, she recognized her inheritance would increase and expressed her opinion that it did not seem fair. (R. p. 263, line 21-p. 264, line 14.) Patterson met with Decedent only once, and observed that he was ill at the time of their meeting. (R. p. 156, lines 5-18.) In short, the Patterson Memo was clearly a hasty effort by a single disgruntled beneficiary to increase his own inheritance in the face of Decedent's

declining health. It is not a reliable indicator of what Decedent actually intended to do when he executed the 2015 Will four years earlier, following a thorough and painstaking collaboration with his attorney.

F. Appellants adequately preserved all their arguments for appeal.

Respondent contends Appellants failed to preserve certain of their arguments by not raising them with the courts below. (Resp. Br. 10-13, 19-20.) But what Respondent objects to are little more than minor variations in phrasing and the use of charts to summarize issues presented in greater detail to the trial court. These practices do not amount to a failure to preserve arguments. Indeed, it is common for parties at various stages of appeal to make minor adjustments to the manner in which they present arguments rather than reproducing the exact same brief at each stage.

Where an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal. *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 60 (1993); *Lafaye v. Timmerman (in Re Estate of Timmerman)*, 331 S.C. 455, 459-61 (Ct. App. 1998). However, Rule 59(e) motions need not be used to reargue matters already addressed in a trial court's ruling. Rather, they are necessary where the non-prevailing party receives an order that "grants certain relief not previously contemplated or presented to the trial court." *Id. See also, Bailey v. Segars*, 346 S.C. 359, 365 (Ct. App. 2001) (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 77 (1998)) ("Post-trial motions are not necessary to preserve issues that have been ruled upon at trial; they are used to preserve those that have been raised to the trial court but not ruled upon.").

"Error preservation rules do not require a party to use the exact name of a legal doctrine in order to preserve an issue for appellate review." *State v. Brannon*, 388 S.C. 498, 502 (2010) (citing *State v. Dunbar*, 356 S.C. 138, 142 (2003)). *See also, S.C. DOT v. First Carolina Corp.*, 372 S.C.

295, 302, 641 S.E.2d 903, 907 (2007) (finding argument was preserved for appeal even where the appellant "did not phrase its objection in the exact terms used in the issues on appeal").

Appellants' arguments at trial boiled down to two issues: the lack of evidence that Decedent made a mistake of fact and the lack of evidence that, if such a mistake was made, Decedent would have wanted his will changed. (R. p. 479, line 24-p. 481, line 17; p. 512, line 2-p. 517, line 21.) These are the core requirements of the statute, which requires clear and convincing evidence of both a mistake and of the testator's actual intent. S.C. Code § 62-2-601(B). These core points have been discussed throughout Appellants' briefing in the Circuit Court and this Court. (Apps. Circuit Court Br. 14-23; Apps. Br. 14-26.)

In an attempt to keep this Court from reviewing this case on the merits, Respondent insists that Appellants made a much narrower argument. He claims Appellants argued only that there was no mistake and that, if there was a mistake, Decedent ratified it. (Resp. Br. 11, 13.) This is a distortion of the trial record. The concept of ratification was introduced into the case by Dan Collins, a retired lawyer offered by Respondent as an expert on S.C. Code § 62-2-601(B).[3]

Appellants' trial counsel pointed out to Collins on cross-examination that in this case Decedent knew about the alleged mistake for several years after he executed the 2015 Will and did not make any effort to have a new will drafted. (R. p. 466, lines 6-13.) Collins was asked how this sequence of events would impact the availability of a claim for reformation under the statute. Collins responded by introducing a variation of the concept of ratification into this case:

> [Y]ou get into something called the law of mistakes, which is interesting. There's a whole body of law out there called the law of mistakes. I just stumbled onto this while I was prepar[ing] for this. So I think at some point in time, the old thing of

[3] Respondent contends Collins "confirmed that the present situation is just the type of mistake which triggers the Probate Court's authority to reform a will." (Resp. Br. 9, citing R. pp. 450-52.) Collins said no such thing. While he responded to a variety of hypotheticals, he did not opine on the facts of this case. (R. p. 450, line 5-p. 452, line 19.)

> silence, gifts, consent might find its way into some sort of statement of law that I think they should be deemed to have consented to it to ratify by, if somebody raises the question, you couldn't have the requisite clear and compelling evidence that the mistake of fact defeated their intention if he was wrong about it, if he's happy with it and hasn't corrected. So I think it would be in the terms more or less of a of an approval or ratification, not, you know, reformation, but just to ratify that mistake. Silence gives consent.

(R. p. 466, line 14-p. 467, line 3.)

In closing arguments, Appellants returned to Collins' testimony to make a larger point about Decedent's conduct over the last four years of his life:

> Pop lived for four years after he executed that will, he had access to at least seven different attorneys and he never changed it. And to quote Dan Collins petitioner's own expert, silence is ratification. To summarize, the petitioner cannot prove to you by clear and convincing evidence that [Decedent's] intent on July 23, 2015 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.

(R. p. 517, lines11-19.) Thus, while it is true that Appellants referenced Collins and his use of the term ratification, they did so in the context of making the larger point that the evidence in this case shows Decedent already had the information Respondent relies on to establish a mistake at the time he executed the 2015 Will and for several years thereafter. Yet he made a conscious decision not to change the distribution of assets. Whether this is characterized as ratification or simply circumstantial proof that Decedent decided not to change his will, the fact remains that it is powerful evidence that he was comfortable with the distribution scheme in the 2015 Will and did not wish to change it.

Respondent next attacks the charts appearing in Appellants Brief to this Court and to the Circuit Court. (Resp. Br. 12.) Respondent does not object to the charts themselves, but rather contends that "[t]he arguments purportedly supported by these various charts were not made to the Probate Court." (Id.) This is simply too vague to merit a response. The charts summarize evidence

at trial, demonstrating numerous evidentiary problems with the Probate Court's ruling. Among the facts summarized by the charts are the following:

- The value of Respondent's inheritance pursuant to the 2015 Will was not $26,650.00, as Respondent has claimed, but roughly four times that amount; (Apps. Br. 9.)

- The value of each other sibling's inheritance was not $305,892.00, as Respondent has claimed; (Id.)

- Each sibling's inheritance under the 2015 Will varied, as each received a different combination of real property interests; (Id.)

- The Probate Court's Ruling did not merely correct an alleged mistake as to Respondent's inheritance but changed the disposition of seven of the eight pieces of real property and drastically altered each sibling's inheritance; (Apps. Br. 12) and

- Far from placing Respondent on par with his siblings, the Probate Court's ruling quadrupled his inheritance, such that his share exceeded that of most of his siblings by a substantial margin. (Id.)

All of these issues were apparent from a review of the pertinent exhibits (R. p. 527 (Spreadsheet Property Value List); p. 530-35 (2015 Will); p. 538-39 (Patterson Memo)) and thus were plainly before the trial court.

Respondent next alleges that Appellants failed to preserve their argument that a post-death appraisal obtained by a disgruntled heir cannot be used to displace the decedent's own opinion of his property's value because it is ultimately the Decedent's opinion that matters, not the opinion of a paid expert. (Resp. Br. 12.) This was argued to the trial court. (R. p. 481, lines 5-17; p. 516, lines 1-23.) It was argued to the Circuit Court as well. (R. pp. 658-661.) This argument is therefore preserved for appeal.

Finally, Respondent argues that Appellants failed to preserve the argument that the trial court erred by substituting the terms of the Patterson Memo for the much different distribution plan in the 2015 Will. (Resp. Br. 19.) Once again, this was a core issue at trial repeatedly raised before the Probate Judge.

Both the 2015 Will and the Patterson Memo were submitted as exhibits. (R. pp. 530-35; pp. 538-39.) Respondent argued repeatedly that the Patterson Memo represented Decedent's true intent upon his alleged discovery of the "mistake." (R. p. 482, lines 7-15; p. 504, lines 14-22; p. 507, lines 7-12; p. 508, lines 13-17.) Appellants vigorously opposed Respondent's argument that the Patterson Memo reflected Decedent's true intent. (R. p. 514, line 22-p. 515, line 22.) They pointed out that the Patterson Memo had no connection to the 2015 Will and that none of the evidence suggested any connection between the two documents. (Id.) Further, they argued that even if the Patterson Memo represented Decedent's preferences in 2019, it was obvious from the evidence in the record that it did not represent his preferred distribution of his property when he executed his 2015 Will. (Id.) This was more than sufficient to make the Probate Court aware that replacement of the 2015 Will with the Patterson Memo was flatly contrary to Decedent's intent when he executed the 2015 Will.

Finally, while Appellants strongly disagree with the assertion that any arguments were not preserved for appeal, they contend that even if some issues might have been clarified by the filing of a Rule 59(e) motion, no such motion should be required in this case. In an ordinary appeal, South Carolina Appellate Court Rule 203(b)(1) expressly provides that a Rule 59(e) motion shall toll the time for appeal. However, this appeal arises pursuant to SC Code Section 62-1-308, which sets forth the rules and requirements for perfecting an appeal. Unlike Rule 203(b)(1), the statute does not contain any tolling provision for Rule 59(e) motions. Instead, it requires that a notice of intent to appeal be filed in the Circuit Court ten (10) days after receipt of the Probate Court order. S.C. Code § 62-1-308(a). Courts have been strict in requiring adherence to the letter of Section 62-1-308(a). *See, e.g., In re Estate of Cretzmeyer v. Bloch*, 365 S.C. 12, 14 (2005).

It is therefore unclear whether the tolling provision of Rule 59(e) can be applied to alter the deadline for filing with the Circuit Court in Section 62-1-308. SCRCP 81 acknowledges that the Rules of Civil Procedure apply only "to the extent they are not inconsistent with the statutes and rules" applicable to the courts. And SCACR 203(b)(5) states that the tolling rule of 203(b)(1) applies only to "direct" appeals from the Probate Court. Because this is not a direct appeal, but first had to be filed in the Circuit Court, it does not appear that any tolling rule would have applied to a Rule 59(e) motion in the Probate Court.

Faced with the prospect of losing their right to appeal ten days after entry of the Probate Court's Amended Order, Appellants knew that filing a Rule 59(e) motion may not have been a viable option. They chose to ensure a timely appeal rather than asking the Probate Judge to revisit issues already argued and decided. This was a reasonable choice under the circumstances. *Herron v. Century BMW*, 395 S.C. 461, 470 (2011) ("We are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner.").

CONCLUSION

Respondent cannot prove by clear and convincing evidence that 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. Based on the arguments herein and in their opening Brief, 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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