

2013-CP-21-1334

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Eris Gail Smith,)
)
 Plaintiff,)
)
 Vs.)
)
 Judy Smith Jones, Jacquelyn Brown,)
 James Ervin Smith, Timothy David)
 Smith, Jamie Smith, and Mikie Smith,)
)
 Defendants.)


IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT
 C/A # 2013-ES-21-190

ORDER DENYING PLAINTIFF'S
 MOTION TO RECONSIDER

FILED
 2013 DEC -4 PM 1:39
 CONNIE REEL-SMITH
 C.C.P. & G.S.
 FLORENCE COUNTY, S.C.

The Court issued an Order on October 22, 2013 granting Defendant's Motion for Summary Judgment. The Plaintiff requested the Court to Reconsider, Alter, or Amend the Order. The Court has reviewed the Plaintiff's Motion and finds that oral arguments would not assist in this matter and finds that any additional hearing would be redundant and unnecessary. Therefore, it is

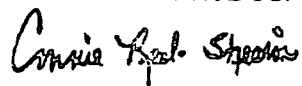
ORDERED that the Plaintiff's Motion to Reconsider is Denied, and the prior ruling is reaffirmed in toto.



 R. Knox McMahon
 Presiding Judge,
 Eleventh Judicial Circuit

Lexington, South Carolina
 October 27, 2012
 Nov

Received 12-9-13

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 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

In the Matter of
Estate of Eris Singletary Smith

Judy Smith Jones,

Petitioner,

v.

Eris Gail Smith,

Respondent.

Eris Gail Smith,

Petitioner,

v.

Judy Smith Jones,

Respondent.

IN THE COURT OF COMMON PLEAS

C/A # 2013-CP-21-01334

C/A # 2013-ES-21-190

ORDER

2013 OCT 24 AM 11:38
CONNIE REEL-SHERARD
Clerk
C.C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

This matter is before the court on the Petitioner/Respondent Judy Smith Jones' motion for summary judgment as to: (1) her Petition filed on March 13, 2013 to probate the last will and testament ("Will") of Eris Singletary Smith ("Decedent") dated October 18, 2011, and to appoint herself as the personal representative of the Decedent's estate ("Estate"); (2) the Petition filed by Eris Gail Smith on March 13, 2013 to probate a will signed by the Decedent on March 30, 2011 and to appoint herself as the personal representative of the Estate; and (3) the Petition filed by Eris Gail Smith on April 11, 2013 to challenge the October 18, 2011 Will. In support of her motion Judy Smith Jones offered the affidavit of attorney Robert E. Lee and the depositions of attorney Cyrus Sloan and Brittany Hooks. In opposition, Eris Gail Smith offered her deposition

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

and the deposition of Pam Jordan. All depositions were filed without objection. A hearing was held before me on August 7, 2013.


Prior to the hearing, the attorney for Eris Gail Smith requested that the hearing be continued so that he could take additional depositions that had been noticed for September 11, 2013. I held the request in abeyance until I listened to the arguments of counsel and reviewed the evidence presented to me. After listening to counsel's recitation of the purported testimony to be offered by such witnesses, it was obvious that none of them were present when the Will was signed on October 18, 2011 and they would be unable to offer any additional testimony that would affect my decision. Consequently, at the conclusion of the hearing I denied the request.

After listening to the arguments of counsel and reviewing the other evidence presented, and viewing this evidence in the light most favorable to the non-moving party Eris Gail Smith, and for the following reasons, I grant Judy Smith Jones motion of summary judgment. The October 18, 2011 Will shall be formally probated and Judy Smith Jones shall be appointed as the Personal Representative of the Estate of Eris Singletary Smith ("Estate").

BACKGROUND

The Decedent died on March 11, 2013. Seventeen months prior to her death, the Decedent signed her Last Will and Testament on October 18, 2011. The Will was properly executed by the Decedent, and properly witnessed and notarized such that it was a self-proving will. The Will revoked all prior wills which included the March 30, 2011 will ("Revoked Will") that the Decedent signed and that Eris Gail Smith is attempting to probate.

The Decedent signed her last Will on October 18, 2011 in Marion South Carolina at the law office of Robert Lee. Robert Lee had previously prepared a Will for the Decedent in 2001. All of the parties acknowledge that the Decedent possessed the necessary capacity to make the

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Will. On October 18, 2011, the Decedent was taken to Marion by her granddaughter Rebecca Cain, Judy Jones' daughter, to meet with attorneys Robert Lee and Cyrus "Russ" Sloan to discuss her Will. At the meeting, the Decedent wrote notes and identified therein who she wanted to inherit her assets. In the notes she also stated that she wanted Judy Smith Jones to serve as the personal representative of her estate. She gave her notes to Robert Lee. After Robert Lee drafted the Will, he provided it to Russ Sloan who reviewed it carefully with the Decedent. While discussing her Will with Russ Sloan, the Decedent named each of her children and she listed her major assets for him. The Decedent even corrected Russ Sloan when he assumed that her grandsons that were named in the will were the children of her deceased son. Russ Sloan prepared notes of his meeting with the Decedent. Thereafter, the Decedent signed the Will in the presence of attorney Russ Sloan, Brittany Hooks and Sarah Carlson. The Decedent was taken back to her home in Florence by her granddaughter Pam Jordan.

Russ Sloan testified that during his meeting with the Decedent, she was relaxed and under no duress or stress. Russ Sloan further testified that no one was threatening her and she was under no undue influence that affected her ability to sign the Will. Russ Sloan's testimony is consistent with that of Robert Lee who states that the Decedent was under no undue influence that would have affected her ability to freely sign the Will. Likewise, Brittany Hooks, an employee of Robert Lee's testified that when she met with the Decedent on October 18, 2011 that the Decedent was very relaxed and she was under no stress at all.

ANALYSIS

Rule 56(c) of the South Carolina Rules of Civil Procedure provides: "The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and the moving party is entitled to a judgment as a matter of law." Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Osborne v. Adams, 346 S.C. 4, 550 S.E.2d 319 (2001); Baughman v. American Telephone & Telegraph Co., 306 S.C. 101, 111, 410 S.E.2d 537, 545 (1991); Fender & Latham, Inc. v. First Union Nat'l Bank of S.C., 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994).

Eris Gail Smith argues that the Will is invalid because she claims that the Decedent was subjected to undue influence when she signed the Will. Eris Gail Smith has the burden of proof to prove such undue influence. S.C. Code § 62-3-407. "The mere existence of influence is not enough to void a will as all influences are not unlawful. For influence to vitiate a will, it must destroy free agency and amount to force and coercion." Hairston v. McMillan, 692 S.E.2d 549 (S.C.Ct.App. 2010) (citing Hembree v. Estate of Hembree, 428 S.E.2d, 3, 5 (S.C.Ct.App.1993)). "Circumstances must unmistakably and convincingly point to the substitution of another's will for that of the testator." *Id.* "Evidence of undue influence may include threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." *Id.* "A contestant must show that the influence was brought directly to bear upon the testamentary act." *Id.* "General influence is not enough." *Id.*

In the instant case, the Respondent Eris Gail Smith has failed to meet her burden and provide any evidence of any acts of undue influence exerted upon the Decedent in regard to the Will. She has been unable to offer any evidence of any acts exerted upon the Decedent that would have destroyed the Decedent's free agency or that would have amounted to force and coercion upon her. Alternatively, the petitioner Judy Smith Jones has offered the testimony of the two attorneys who meticulously reviewed with the Decedent, her estate plan and her Will.

She has also offered the testimony of Brittany Hooks, an employee at the Robert Lee law firm, who met with the Decedent when she came to their office to sign the Will. All of the attorneys have testified that no such undue influence existed. Ms. Hooks testified that the Decedent was relaxed and under no duress to sign the Will.

Eris Gail Smith has claimed that the Decedent was not given a copy of the Will and that the Decedent called attorney Russ Sloan to obtain a copy of it but one was never sent to her. Although not pled in Ms. Smith's petition, Ms. Smith argued that the failure send the Will amounted to a fraudulent act that prevented her from revoking the Will. Such evidence does not amount to a fraudulent act or undue influence. Additionally, the alleged failure to send a will to a testator is not a recognized way to revoke a Will in South Carolina. See, S.C. Code § 62-2-506 (2009). Even if this was recognized by South Carolina as a method of revocation and if this was truly a problem for the Decedent, the Decedent had ample time to obtain a new will or to revoke the Will as the Will was signed seventeen months before her death. See, Hembree v. Estate of Hembree, 428 S.E.2d 3 (S.C. Ct.App. 1993) ("Even if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion." citations omitted).

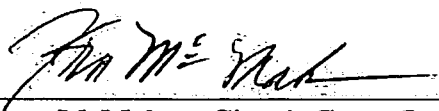
As to the claim by Eris Gail Smith in her March 28, 2013 Petition, that the Decedent was "fraudulently induced" to execute the Will, Eris Gail Smith has failed to provide any evidence of such fraudulent inducement that would support such a claim as to a last will and testament. Consequently, Judy Jones' motion as to the fraudulent inducement cause of action is likewise granted.

CONCLUSION

It is therefore ordered, for the foregoing reasons that Judy Smith Jones' motion for summary judgment is granted. The Decedent's last will and testament dated October 18, 2011 shall be probated in this matter and Judy Smith Jones shall be appointed as the personal representative of the Estate.

AND IT IS SO ORDERED

Date: 22 Oct 13



R. Knox McMahon, Circuit Court Judge

FILED
2013 OCT 24 AM 11:38
CONNIE REEL SHEARER
CCCP & GS
FLORENCE COUNTY, SC

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