

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Trial Court Case No. 2011-ES-10-0465
Appellate Case No. 2013-001817

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SC Court of Appeals

In Re: Estate of Sylvia J. Reagan

Linda Reagan Shelley..... Appellant.

v.

Ramona D. Becker, individually and as Personal Representative of
the Estate of Sylvia J. Reagan, Beryl Routon, Kayla Dawn Kastrup,
and Tom Coats,Defendants

Of Whom

Ramona D. Becker, individually and as Personal Representative of
the Estate of Sylvia J. Reagan isRespondent.

REPLY BRIEF OF APPELLANT

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I. RESPONDENT'S PROCEDURAL ARGUMENTS TWIST THE COURT'S ORDER TO AVOID A DETERMINATION ON THE NOVEL LEGAL ISSUE PRESENTED.

Respondent argues the probate court's order should be affirmed by the "two-issue rule" and under the 'any evidence' standard. While her arguments are faulty, even assuming these arguments to be valid, the probate court's order should be overturned.

First, a *de novo* review is appropriate because the court below interpreted a statute. The probate court's sole holding was: "While the statute does allow for the Notary Public to be a witness to a Will along with Notarizing the Will there is no provision for a Notary Public to Notarize without also signing as a witness." Order at 4. This holding is clearly an interpretation of the statute. The appellate courts of this state apply, "a *de novo* review of all issues of law, and [are] free to decide matters of law with no particular deference to the trial court." *Menezes v. WL Ross & Co., LLC*, 403 S.C. 522, 530 744 S.E.2d 178, 182 (2008). Accordingly, because the decision of whether a notary can properly serve as a witness was the probate court's sole grounds for its determination and the issue is admittedly one of first impression in South Carolina, the standard of review is *de novo*.

Second, nothing in the probate court's order could be construed as holding that witness Jones was disqualified as a witness and the only holding was the legal one that notary could not be a witness. As to Ms. Jones, there was nothing to appeal as it was not the basis for the court's order and the "two-issue rule" does not apply. "Under the 'two issue rule,' **where a decision is based on more than one ground**, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case." *Atlantic Coast Builders and Contractors, LLC v. Lewis*, 398 S.C. 323, 730 S.E.2d 282 (2012)(emphasis). Here, the order simply implies that some part of her testimony was, "inconsistent." The court did not hold anywhere that Ms. Jones either did not see the Testrix sign the Will, or declare it to be her Will, or was otherwise not a valid witness under the statute. As such, the comment that her testimony was 'inconsistent' does not constitute a holding. The sole basis for the probate court's order was that a notary could not serve also as a witness. Order at 4.¹

Nevertheless, even if the standard were 'any evidence,' the order still must be overturned. While the witnesses' testimony varied as to the circumstances of how they came to be at Ms. Reagan's house, both witnesses

¹ To the extent the order is unclear as to its holding, it was the respondent's duty to file a motion to alter or amend to seek further clarification. She failed to do so.

testified unequivocally that they either saw Ms. Reagan sign the Will and/or that Ms. Reagan told them the document was her Will. Sarah Jones' testimony of what she saw that is relevant to the court's determination was crystal clear:

Q: You recall Ms. Reagan telling you that was her will?

A: Yes.

Q: And after she told you that was her will, did she tell you that was her signature to the will?

A: Yes.

Tr. P. 29, ln. 11-17. Nurse Jones then proceeded to identify her signature as a witness to it. Doris Belin-Burns testified similarly:

Q: Now, on February the 25th of 2011, did Ms. Reagan bring this document to your attention?

A: Yes, she called me.

Q: What did she tell you the document was?

A: She said it was her will.

Tr. p. 36, ln. 2-19. The testimony of both witnesses is sufficient to meet the requirements of S.C. Code Ann. §62-3-406. The respondent points to NO

EVIDENCE to support her argument that the witnesses do not comply with the statute. To the extent the court held otherwise in any fashion, it erred.²

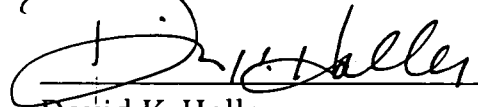
CONCLUSION

The court below erred in its interpretation of S.C. Code §62-2-502. Nowhere in the statute, in South Carolina's statutory scheme, in the Reporter's Comments from the intent of the drafters and General Assembly, or in case law does South Carolina exclude a Notary Public as a witness. Instead of applying the statute as written, the probate court, relying on foreign law from states that have not adopted the Uniform Probate Code, inserted additional requirements into it to disqualify Doris Belin-Burns as a witness—even though she met the statutory criteria. The appeals court can reach the decision that the probate court erred regardless of the standard of review and the respondent's arguments do not fix the probate court's error of law.

² Appellant incorporates by reference all arguments raised in her initial brief.

For the reasons stated herein and in the appellant's initial brief, the probate court's order should be reversed. The appellant prays for this relief and for such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read "D. K. Haller", written over a horizontal line.

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17th day of February, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2012-CP-10-7929
Appellate Case No. 2013-001817

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Linda Reagan Shelley Appellant.

v.

Ramona D. Becker, individually and as Personal Representative of
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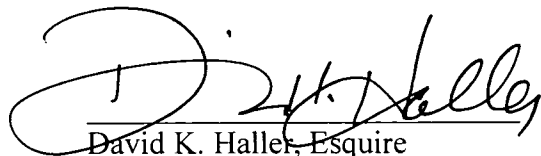
Of Whom

Ramona D. Becker, individually and as Personal Representative of
the Estate of Sylvia J. Reagan is Respondent.

PROOF OF SERVICE

I certify that I have served the Reply Brief of the Appellant on Respondent's counsel at
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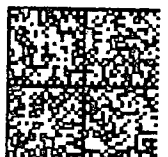
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