STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

IN THE MATTER OF:)
)
Estate of James D. Rucker, Jr.,)

Case No. 2013-CP-46-01569

IN RE:)
)
James D. Rucker, Jr. Trust,)
Marian Shamu,)
James D. Rucker, Sr. Endowed)
Scholarship Fund,)
Howard University School of)
Dentistry,)
Mt. Prospect Baptist Church,)
Frances Julie Buchanan,)
and Benedict College,)
Respondents,)
Tanzella Gaither,)
Petitioner.)

ORDER DENYING MOTION TO ALTER OR AMEND

This matter came before the Court on February 5, 2014, for a hearing on the Motion to Alter or Amend filed by Petitioner Tanzella Gaither in connection with the Order filed in this matter on October 31, 2013 (the "October Order"). The Motion raises three issues that Petitioner contends were not addressed in the October Order, and they are addressed separately below.

1. **Whether South Carolina would adopt the rule that opinion testimony by a handwriting expert is insufficient to overcome the unimpeached testimony of eye witnesses to a will's execution;**

Regarding this question, the October Order thoroughly addressed the applicable law regarding the lower court's authority to evaluate the credibility of witnesses, and to weigh the evidence presented. Although the October Order did not address whether South Carolina would adopt the rule proposed by Petitioner, a ruling on this issue was not necessary based on the record of the proceedings in the Probate Court.

Further, it is not within the purview of this Court to make new law. In South Carolina, our Supreme Court "is a law-giving court," while lower courts are "error-correction" courts. *Appellate Practice in South Carolina* (2d. Ed.), Toal, Vafai, Muckenfuss, p. 12. Thus, I decline to adopt a rule not in agreement with existing precedent.

2. **Whether evidence was presented to the Probate Court to rebut the presumption that the signatures on the questioned will were made by someone other than the testator at the direction of the testator.**

Concerning this issue, it was specifically addressed in the October Order. Nothing in the record presented to this court suggests that this argument was ever presented to the Probate Court. Therefore, this issue is not preserved for review. *See Duncan v. CRS Sirrine Eng'rs, Inc.*, 337 S.C. 537, 524 S.E.2d 115 (Ct.App.1999).

3. **Whether Petitioner is entitled to a trial *de novo* in the circuit court.**

The last issue raised in the Motion is whether Petitioner is entitled to a trial *de novo* in the circuit court to determine the validity of the will. In support of this argument, Petitioner relies on *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct.App. 1985). However, the decision in *Martin v. Skinner* was based on S.C. Code Ann. § 18-5-10, *et seq.*(1976, as amended), the statutes that governed appeals from the Probate Court prior to 1987. These statutes were repealed in 1987 in connection with the adoption of the Probate Code, S.C. Code Ann. § 62-1-100 *et seq.* (1976, as amended). Since the adoption of the Probate Code, it is clear that when any appeal is made to the circuit court from an order of the Probate Court, the circuit court must determine "the appeal according to the rules of law. The hearing must be strictly on appeal and no new evidence shall be presented." *See* S.C. Code § 62-1-308(d). Therefore, Petitioner is not entitled to a trial *de novo* in the circuit court.

Based on the foregoing, Petitioner's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.

February 10, 2014

S. Jackson Kimball
Special Circuit Judge
York County

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