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

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 is — Respondent.

FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

Is a notary public a valid witness to a Will under the South Carolina Probate Code when she meets all statutory requirements, but signs as a notary public?

STATEMENT OF THE CASE

This case involves the determination of whether a Will created by Ms. Sylvia J. Reagan on February 25, 2011 (hereinafter the "February 25, 2011 Will") was validly executed and should be probated as her Last Will and Testament. Tr. p. 148. The Petitioner is Linda Reagan Shelley. The Respondents are Ramona D. Becker, individually and as Personal Representative of the Estate of Sylvia J. Reagan, Beryl Routon, Kayla Dawn Kastrup, and Tom Coats, each of whom claim some interest in the estate.

Sylvia J. Reagan died March 16, 2011, a resident of Charleston County. Tr. p. 72. On March 22, 2011, Respondent Becker, who is of no relation to the decedent, filed an Application for Informal Probate of Will and Appointment, seeking her appointment as Personal Representative of the Estate of Ms. Reagan and probate of a Will dated December 29, 2009 (hereinafter the "December 29, 2011 Will"). Tr. pp. 146-147. The Charleston County Probate Court granted the petition that day.

Ms. Shelley filed a motion to set aside Ms. Becker's appointment, which was granted because of a competing Will presented by Ms. Shelley. Tr. p. 25. Both parties filed cross-petitions for the probate of a Will and Appointment of a Personal Representative. Tr. pp. 12-22. After a hearing, the Probate Court entered judgment for Respondents. Mrs. Shelley timely filed a Motion to Alter or Amend

the Judgment, which was denied May 7, 2012. Tr. 27; 6. Ms. Shelley timely appealed the Probate Court decision to the Circuit Court. Tr. p. 52. The Circuit Court affirmed the Probate Court order. Tr. p. 8. This appeal followed.

STATEMENT OF THE FACTS

The parties are various beneficiaries under two prospective wills, one dated December 29, 2009, and another February 25, 2011. Tr. 146-148. Petitioner, Ms. Shelley, is the decedent's stepdaughter, a beneficiary and designated personal representative under the February 25, 2011 Will, and an intestate heir pursuant to S.C. Code Ann. § 62-2-103(6).[1] Ms. Shelley was also the decedent's longtime caretaker. Tr. p. 103, ln. 20-22.

On February 25, 2011, Ms. Reagan asked Sara Jones, RN and Doris Belin-Burns to sign a document she identified to each of them as, "her Will." Ms. Jones was Ms. Reagan's home health hospice nurse. Tr. p. 73, ln. 4-6. Ms. Jones testified that on February 25, 2011, she arrived at Ms. Reagan's home for her regularly scheduled visit. Tr. p. 78, ln. 9-15. Upon Ms. Jones' arrival, Ms. Reagan called her next-door neighbor and longtime friend, Ms. Belin-Burns, and asked her

[1] "The part of the intestate estate not passing to the surviving spouse under Section 62-2-102, or the entire estate if there is no surviving spouse, passes as follows: (6) if there is no surviving issue, parent or issue of a parent, grandparent or issue of a grandparent, great-grandparent or issue of a great-grandparent, but the decedent is survived by one or more stepchildren or issue of stepchildren, the estate passes to the surviving stepchildren. . . ." S.C. Code Ann. § 62-2-103(6) (2010).

to come over. Tr. p. 78, ln. 9-15. Ms. Belin-Burns is a Notary Public. Ms. Shelley was also present at the home of Ms. Reagan during this time. Tr. p. 78, ln. 9-15.

While Ms. Jones, Ms. Belin-Burns, and Ms. Shelley were together in the room with Ms. Reagan, Ms. Reagan had before her the February 25, 2011 Will and acknowledged to all present that the document was her Will and the signature was in fact hers. Tr. p. 75, ln. 22- p. 76, ln. 1. Subsequently, Ms. Jones and Ms. Belin-Burns signed the Will. Tr. p. 76, ln. 10-21; p. 94, ln. 2-7. Ms. Belin-Burns added her notary credentials to the Will. Tr. p. 94, ln. 23-24.

In referring to the February 25, 2011 Will created by Ms. Reagan, Ms. Jones testified as follows:

Q: Did Ms. Reagan tell you that to be her will?

A: Yes.

Q: Did she tell you that that document indicated how she wanted her property disposed?

A: She didn't go so far as to say that. She did say that this was her intent, that this represented her intent on that day.

Tr. p. 75, ln. 2-9.

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

A: Yes.

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

A: Yes.

Tr. p. 86, ln. 11-17.

In referring to the February 25, 2011 Will, Ms. Belin-Burns testified as follows:

Q: Are you familiar with Ms. Reagan's handwriting?

A: Somewhat.

Q: Do you recognize that to be her signature?

A: It looks like it.

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. 93, ln. 2-19.

Ms. Shelley testified that following her father's divorce from Ms. Reagan, she and Ms. Reagan maintained a mother-daughter relationship. Tr. p. 103, ln. 9-24. When Ms. Reagan returned to Charleston more than 15 years ago, Ms. Shelley became her primary caregiver, assisting Ms. Reagan with everything from doctor

visits and banking to house cleaning and personal hygiene. Tr. pp. 99, ln. 7-10. At various times, Ms. Reagan placed Ms. Shelley's name on her bank accounts and allowed her use of credit cards so that Ms. Shelley could assist Ms. Reagan with her needs. Tr. p. 104, ln. 3-12.

Shortly after Ms. Reagan's death, but before the December 29 Will was probated, Ms. Shelley presented the February 25 Will to the Probate Court. Tr. p. 110, ln. 24- p. 111, ln. 3. However, the clerk refused to probate the February 25 Will because the clerk claimed only one witness signed the Will. Tr. p. 111, ln. 4-25. Ms. Shelley informed Ms. Becker of the February 25, 2011 Will. Id. Ms. Shelley, who was not served Information to Heirs and Devisees, learned of Ms. Becker's appointment as Personal Representative on June 17, 2011, when she inquired with the Probate Court as to the status of Ms. Reagan's estate. Tr. p. 10.

ARGUMENTS

Standard of Review

The validity and admission to probate of a testatrix's last will and testament are reviewed *de novo*. *S.C. Nat'l Bank of Charleston (Columbia Branch) v. Copeland*, 248 S.C. 203, 210, 149 S.E.2d 615 (1966).

I. THE TRIAL COURT ERRED IN HOLDING THAT A NOTARY PUBLIC CANNOT PROPERLY SERVE AS AN ATTESTING WITNESS TO A WILL, WHERE THE NOTARY MEETS ALL OTHER REQUIREMENTS OF LAW FOR WITNESSES.

South Carolina is one of 16 states to adopt the Uniform Probate Code in its entirety.[3] S.C. Code Ann. § 62-1-100, et seq. The execution requirements for a Will to be valid in South Carolina are reflected in Section 62-2-502:

> Except as provided for writings within Section 62-2-512 and wills within Section 62-2-505, every will, shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

S.C. Code Ann. § 62-2-502 (2010).[4] Because a notary public is not excluded from serving as a witness to a Will, nor must she be asked specifically to sign a document knowing that it is a Will, the February 25 Will is Ms. Reagan's valid Will and the probate court's decision to not probate it should be reversed.

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[3] The following states have adopted the Uniform Probate Code in its entirety: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. *Uniform Commercial Code Locator*, Cornell University Law School Legal Information Institute (September 12, 2013), http://www.law.cornell.edu/uniform/probate.html.

[4] S.C. Code § 62-2-502 was amended in 2013 to reflect the following changes. "[E]very will shall be: (1) in writing; (2) signed by the testator or signed in the testator's name by some other individual in the testator's presence and by the testator's direction; and (3) signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgement of the signature or of the will." S.C. Code Ann. § 62-2-502 (2013) (substituting the term "individual" for "person"). However, the changes do not impact the result in this case.

A. South Carolina's Adoption of Section 62-2-502 of the Uniform Probate Code Does Not Prohibit a Notary Public From Serving as a Witness to a Will Nor Does the Code Add Additional Requirements for a Notary Public to Attest a Will.

An issue of first impression in South Carolina, a notary public signing in her official capacity after witnessing the proper acknowledgements to a Will is sufficient to meet the attestation requirements under the South Carolina statutory scheme. A writing in South Carolina is valid as a Will when a testatrix signs the same or directs another to sign for her and the writing is executed by two individuals who either saw the testatrix sign her name to the will, saw her declare the same signature, or saw her declare the will. S.C. Code Ann. § 62-2-502 (2010). Where two persons-- whether they be strangers, interested persons, or notary publics-- sign a Will upon receiving an acknowledgment from the testatrix that the document is the testatrix's Will or upon an acknowledgment from the testatrix that the signature is hers, the witness requirements are met. *See Id.*, Reporter's Comments *citing Turnipseed v. Hawkins*, 12 S.C.L. 72 (1821 McCord); *Black v. Ellis* 21 S.C.L. 68 (1836 Hill); *Tucker v. Oxner*, 46 S.C.L. 141 (1859 Rich.).

Declaring that witnesses to a Will may not sign as a notary public adds language to a statute that has never existed, and changes the intention of the General Assembly and the testatrix. Further, limiting witnesses to exclude notary publics contradicts the Code as a whole. Specifically, S.C. Code Ann. § 62-2-504

(2010) addresses the qualification of witnesses, and even allows individuals who have an interest in the estate or are devised gifts under the will to witness the specific will. If an interested person can be a witness, it would logically flow that a disinterested officer, whose obligation is to take oaths, could also serve as a witness. *See S.C. Notary Public Reference Manual*, http://sos.sc.gov/forms/Notary/NotaryPublicReferenceManual.PDF (last visited September 14, 2013). Further, determining that a witness is disqualified by virtue of her also signing in her official capacity as a notary public would invalidate a large number of Wills. For example, any attorney would be disqualified as a result of being an officer of the court, even though most Wills are drafted by lawyers and subsequently witnessed by the same attorney.

The Reporter's Comment to § 62-2-502 provides that the Code "requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, *nor a specific request by the testator that the witnesses attest and sign.*" Comments to S.C. Code Ann. § 62-2-502 (2010) (emphasis added). It is well settled law that to create a valid will in South Carolina there is no requirement that the testator publish his will or even declare the nature of the instrument. *See S.C. Nat'l Bank of Charleston (Columbia Branch) v. Copeland*, 248 S.C. 203, 149 S.E.2d 615 (1966); *Black v. Ellis*, 21 S.C.L. 68 (1836

Hill); *Verdier v. Verdier*, 42 S.C.L. 135 (1855 Rich.). Additionally, it is not necessary that the witnesses should know at the time of attestation that the instrument was even a will. *S.C. Nat'l Bank of Charleston (Columbia Branch) v. Copeland*, 248 S.C. 203, 149 S.E.2d 615 (1966).

The South Carolina Supreme Court specifically addressed the question of "whether under our law the subscribing witnesses to a will or codicil must have knowledge that they are witnessing the execution of a testamentary document." *Id.* at 211. There, the testatrix specifically concealed from the attesting witnesses the type of document they were signing. *Id.* at 212. Nonetheless, the Court followed the general rule that a witness need not know at the time of attestation that the document is a will, holding the document was validly executed. *Id.*

The foreign law followed by the Probate Court is inconsistent with South Carolina's statutory standard. The primary case relied on by the Probate Court hails from Illinois, a state that has not adopted the Uniform Probate Code. *See In re Estate of Alfaro,* 301 Ill. App.3d 500, 703 N.E.2d 620 (Ill. App. Ct. 1998). The Illinois court enacted strict requirements for all individuals to follow when witnessing a will, including notary publics. *Id.* The strict requirements demanded that the notary sign with the specific intent to attest the will and the testamentary capacity of the testator. *Id.* at 509. The Illinois case law is in direct contradiction to South Carolina Code require for execution requirements of a Will: Nothing in

South Carolina requires a testatrix ask an individual to witness her will and nothing prohibits a notary from bring a witness. *See* S.C. Code Ann. § 62-2-502 (2010).

On its face, the February 25, 2011 Will is a validly executed will that meets the requirements of the South Carolina Probate Code. Tr. p. 148. The Will is a writing signed by the testatrix, Ms. Reagan. Upon acknowledgment by Ms. Reagan that the document was her Will and that the signature reflected on its face was her own, two individuals, Ms. Jones and Ms. Belin-Burns served as witnesses by signing below Ms. Reagan's signature. Hence, the February 25, 2011 Will was validly executed pursuant to South Carolina's statutory requirements.

Respondents assert that Ms. Belin-Burns was not a valid second witness because she signed as a notary and because she testified that she was not asked by Ms. Reagan to sign as a witness to the will but as a notary to Ms. Jones' signature attesting to the Will. This is an invalid distinction. Again, nothing in the Code prevents Ms. Belin-Burns from attesting a Will either as an individual or a notary public. Second, the Code's Comments specifically allow a witness to validly attest a will without a specific request being made by the testatrix for the witness to attest and sign the will. Respondents have provided no valid law to support the position that a witness must have been asked by a testatrix to serve as her witness for the attesting signature to be valid. To require Ms. Reagan to specifically ask the witness to serve in the role as a witness to the Will adds an element to S.C. Code

Ann. § 62-2-502 that was not intended by the Legislature and defeats the cardinal rule of testamentary interpretation.[5]

The February 25, 2011 Will was validly executed according to S.C. Code Ann. § 62-2-502 (2010). Ms. Jones and Ms. Belin-Burns properly witnessed Ms. Reagan's Will following her acknowledgment of the Will and her signature. As a result, the February 25, 2011 Will is the proper Will to probate for Ms. Reagan's estate.

B. The Testatrix's Intent Governs

It is well known that the cardinal rule for construing a will is interpreting the intent of the testatrix. *See* S.C. Code Ann. § 62-2-601 (2010). "The intention of a testator as expressed in his will controls the legal effect of his dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will." *Id.* Section 62-2-601 codified the cardinal rule of testamentary interpretation as created by South Carolina case law.[6]

South Carolina's laws governing the probate of a testator's estate following his or her death favor disposing of the property as the decedent intended. In this

[5] "The intention of a testator as expressed in the testator's will controls the legal effect of the testator's dispositions. The rules of construction expressed in the succeeding sections of this part apply unless a contrary intention is indicated by the will." S.C. Code Ann. § 62-2-601 (2010).
[6] "The primary purpose in construing a will is to determine from the entire instrument the intent of the testator as expressed in the words used. Such intent, when so found, must be given effect unless it contravenes some well settled rule of law or public policy." *King v. S.C. Tax Comm.*, 253 S.C. 646, 649, 173 S.E.2d 92 (1970).

case, it appears undisputed that Ms. Reagan intended to pass her estate to Ms. Shelley upon her death. Respondents have not contested Ms. Reagan's wishes as evidenced in the February 25, 2011 Will. The only issue being disputed is the qualifications of one witness to the Will. It is clear Ms. Reagan intended to pass her estate pursuant to the February 25, 2011 Will. As a result, Ms. Reagan's intentions should be honored and her estate should pass according to the February 25, 2011 Will.

CONCLUSION

For the reasons stated, this Court should reverse the trial court's judgment on the requirements for a Notary Public to serve as an attesting witness to a Will. Specifically, this Court should find that the signatures of Ms. Jones and Ms. Belin-Burns on the February 25, 2011 Will are sufficient to fulfill the witness requirements for executing a Will in South Carolina. Finally, this Court should find that the February 25, 2011 Will was validly executed and is the proper Will to be probated for the Estate of Ms. Sylvia J. Reagan.

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March 18th, 2013
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CERTIFICATION OF COUNSEL

I certify that the forgoing Final Brief of Appellant complies with Rule 211(b), SCACR.

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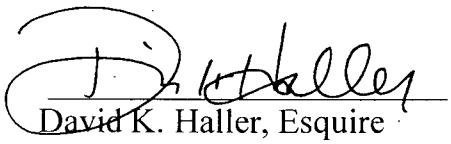

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March 18, 2014

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PROOF OF SERVICE

I certify that I have served the Final Brief of the Appellant and the Final Reply Brief of the Appellant Respondent's counsel at the following address:

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