

STATE OF SOUTH CAROLINA IN THE COMMON PLEAS COURT
COUNTY OF SUMTER FOR THE THIRD JUDICIAL CIRCUIT

RECORDED
2014 AUG 12 PM 3:46

DOCKET NO: 2012-CP-43-2148

RECEIVED

Milton Oakley Dickson,

PETITIONER,

vs.

Arthur B. Beasley,

RESPONDENT.

SHARON H. DUSSEAU
CLERK OF COURT
SUMTER COUNTY, S.C.

APPEAL FROM THE PROBATE
COURT CASE NO.
2008-ES-43-00411

SEP 05 2014

SC Court of Appeals

CERTIFIED TRUE COPY
OF ORIGINAL FILED

ORDER

Sharon H. Dusseau
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

IN RE: ESTATE OF HERBERT
FRANKLIN DICKSON, SR.

This case came before the Court as an appeal from the Sumter County Probate Court (Docket Number: 2008-ES-43-00411).

By agreement of the parties, oral arguments were waived and both parties submitted the following documents to the court: (1) Application for Probate of Will and Appointment; (2) Transcript from Hearing held on July 21st, 2010; (3) Transcript from Hearing held on July 3rd, 2012; (4) Probate Court Order; (5) Appeal from Probate Court; (6) Appellant, Milton Oakley Dickson's Grounds for Appeal; (7) Respondent's Return to Appellant's Appeal; (8) Case Law (Fenzel v. Floyd, 289 S.C. 495, 347 S.E. 2d 105 (1986)); and (9) Pictures of the property known as "Santee Property".

This Court has reviewed the transcripts, the Last Will and Testament of the Decedent, Herbert Franklin Dickson, Sr., the Order of the Probate Court, Appellant's Grounds for Appeal, Respondent's Return to Appellant Milton Oakley Dickson's Grounds for Appeal, and the case law submitted. While the Appellant states in his grounds for appeals that the Order was not supported by the record, this Court finds that the Order of the Probate Court was supported by the testimony given at two separate hearings. It is apparent from the record that the Appellant failed to prove his allegations.

As to the 10th ground for appeal, involving the property owned by the Decedent located on Lake Marion in Clarendon County, State of South Carolina, referred to in the Decedent's Last Will and Testament as "Santee, South Carolina", the Appellant had requested that the Probate Court issue a Declaratory Ruling that item 3, number 2, of the Will, that the decedent did not own property in Santee, South Carolina and item

3. number 2 be declared inutility. If the Court had done that the "Santee Property" would have handled in the residuary clause of the Last Will and Testament and the Appellant and his siblings would have then shared in the ownership of the property.

The Probate Court found that all of the parties agreed that the decedent owned no property in Santee, South Carolina and this is supported in the transcript of the two hearings. The Respondent took the position that the only reasonable interpretation of the decedent use of the term "Santee Property" in his Last Will and Testament is the way the Decedent used the term which was his property in the Santee portion of Clarendon County, State of South Carolina.

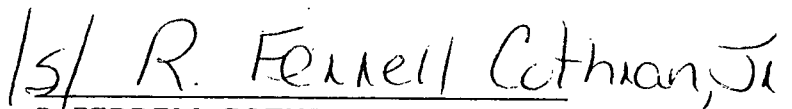
"In construing a Will, purpose of the Court is to discover and give a effect to the intent of the Testator, May v. Riley, 279, S.C. 248, 305 S.E. 2d 777 (1983)". When the terms of the Will are ambiguous, the Court may resort to extrinsic evidence to resolve the ambiguity Shelley vs. Shelley 244, S.C. 244, S.C. 598, 137 S.E. 2d 851 (1964).

The Sumter Probate Court properly found from the evidence presented that the Testator clearly intended to convey the property that he referred to as "Santee Property" to the Respondent as evidenced by the language in his Last Will and Testament. This is obvious from the fact that he had never owned property in Santee, South Carolina, which was agreed to by all parties concerned. It would have been error to find otherwise.

The Probate Court Order of September 21, 2011, is hereby affirmed and it is

ORDERED that the Sumter County Probate Court Order of September 21, 2011, is hereby affirmed.

IT IS SO ORDERED.


R. FERRELL COTHRAN, JR.
JUDGE, COMMON PLEAS OF THE
THIRD JUDICIAL CIRCUIT

At Chambers
Clarendon, South Carolina
August 11, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COMMON PLEAS COURT FOR
THE THIRD JUDICIAL CIRCUIT

Milton Oakley Dickson,)
)
PLAINTIFF,)

DOCKET NO: 2012-CP-43-2148

vs.)

CERTIFICATE OF SERVICE

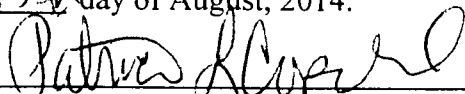
Arthur B. Beasley,)
)
DEFENDANT.)

I, the undersigned employee of Young, Keffer & Associates, P.A., attorneys for Arthur B. Beasley, do hereby certify that I have served the following parties in this action with a copy of the **Order** by mailing a copy of same by United States Mail, postage prepaid, to the following address:

S. Jahue Moore, Esquire
Post Office Box 5709
West Columbia, SC 29171



SWORN to before me this
15th day of August, 2014.



Notary Public for South Carolina

My Commission Expires: 4/27/17

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Milton Oakley Dickson,

vs.

Arthur B. Beasley, Jr.,

Respondent.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Appellant

PN 2: 34

2012-CP-43-2148

COURT OF COMMON PLEAS
SUMTER COUNTY, S.C.

Submitted By: S. Jahue Moore, Esquire
Address: 1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171

SC Bar #: 4063
Telephone #: 803-796-9160
Fax #: 803-791-8410
Other:
E-mail: jake@mttlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case #, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order, Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (990), Employment Security Comm (991), Other (999)
Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (310)

Submitting Party Signature:

Date: October 31, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

2012 NOV - 1) PM 2:34

Milton Oakley Dickson,)

C/A # 2012-CP-43-2148

Appellant,)

vs.)

APPEAL FROM PROBATE COURT

Arthur B. Beasley, Jr.,)

Respondent.)

IN RE: Estate of Herbert Franklin)

Dickson, Sr.)

Case No.: 2008-ES-43-00411)

TO: THE HONORABLE DALE ATKINSON, JUDGE, SUMTER COUNTY PROBATE COURT, AND KENNETH R. YOUNG, JR., ESQUIRE:

The Appellant, Milton Oakley Dickson, by and through his undersigned counsel, appeals the decision issued by the Honorable Dale Atkinson on October 17, 2012, denying Appellant's Motion for Reconsideration in the above referenced matter, and the original Order dated September 21, 2011.

MOORE, TAYLOR & THOMAS, P.A.

BY: _____

S. Jahue Moore
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
(803) 796-9160

ATTORNEYS FOR APPELLANT

West Columbia, South Carolina
October 31, 2012

Probate Court



DALE ATKINSON
Probate Court Judge

BETTY P. BROWN
Associate Probate Judge

Sumter County

Sumter, South Carolina

29150

Room 111
Courthouse
141 North Main Street
803.436.2166
Fax 803.436.2407

October 17, 2012

Mr. S. Jahue Moore
Moore, Taylor and Thomas
P O Box 5709
West Columbia, SC 29171

Mr. Kenneth R. Young, Jr.
Young & Keffer
23 West Calhoun Street
Sumter, SC 29150

InRe: Estate of Herbert Franklin Dickson, Sr.
File No: 2008ES4300411

Dear Mr. Moore and Mr. Young,

On July 3, 2012 a hearing was held in response to a Motion for Reconsideration filed by Mr. S. Jahue Moore. This court previously ruled that the property owned by the decedent located on Lake Marion in Clarendon County, South Carolina was indeed the property referred to in the decedent's Last Will and Testament as "in Santee, SC". In the Motion for Reconsideration, Mr. Moore states that the Will was clear and unambiguous. This court had found that the Will was ambiguous, in part, because Lake Marion and surrounding properties, including properties in Sumter, Clarendon and Orangeburg counties in South Carolina are commonly referred to as "Santee". After hearing Mr. Moore's Motion for Reconsideration, it is still the opinion of this court that the decedent was referring to his property on Lake Marion when he mentioned his property in Santee, SC.

Therefore, the Motion for Reconsideration is denied.

Sincerely,

Dale Atkinson
Probate Court
Sumter County

STATE OF SOUTH CAROLINA) AM 9:53 IN THE PROBATE COURT

COUNTY OF SUMTER) S.C. Docket No.: 2008- ES-43-00411

Milton Oakley Dickson,)

Petitioner,)

vs.)

Arthur B. Beasley, Jr.,)

Respondent.)

IN RE: Estate of Herbert Franklin)
Dickson, Sr.,)

ORDER

CERTIFIED TRUE COPY OF ORIGINAL
FILED IN THIS OFFICE.

Dale Atkinson
DALE ATKINSON - Judge of Probate
Sumter County
South Carolina

This case involves the Estate of Herbert Franklin Dickson, Sr., who was born on April 29, 1928 and died on August 20, 2008. The Petition for Probate of Will and Appointment was filed with this Court on August 26, 2008.

The Petition For Probate shows that the heirs of Mr. Dickson's Estate are Herbert Franklin Dickson, Jr., son; Milton Oakley Dickson, son; Finley Mylo Dickson, son; Byron Eugene Dickson, son,; Arthur B. Beasley, Jr., step-son; and Linda B Chaplin, step-daughter.

The Last Will And Testament Of Herbert Franklin Dickson, Sr., under ITEM VI, clearly appoints his wife, Melba McSween Dickson as his Personal Representative to serve without bond. If she is unable or unwilling to serve he appointed Arthur B. Beasley as Alternate Personal Representative to serve without bond. This Court has been informed that the Testator's wife predeceased him.

On September 5, 2008, this Court issued its Order for a Formal Probate and Order Of Appointment appointing Arthur B. Beasley, Jr., as the Personal Representative of the Estate of

Herbert Franklin Dickson, Sr.

On September 19, 2008, one of the Testator's sons, Milton Oakley Dickson, filed a Petition with this Court stating that he was not challenging the validity of his father's Will or the distribution under the Will, but wanted this Court to decide the rights of the parties and to prohibit Arthur B. Beasley, Jr., from serving as the Personal Representative of this Estate. The Petitioner also raised several other issues which will each be dealt with in this Order.

The Respondent, Arthur B. Beasley, Jr., as Personal Representative of the Estate of Herbert Franklin Dickson, Sr., timely filed his Answer dated October 28, 2008, denying the allegations of the Petitioner's Petition and raising the Incontestability Clause contained in the Testator's Will Item V. As stated above this Court will deal with each issue of Mr. Beasley's Answer in this Order.

This Court held several hearings with the Final Hearing being held on June 2, 2011, and has considered all of the testimony, evidence submitted, motions, and arguments of counsel, and makes the following Finding of Facts and Conclusions of Law.

FINDING OF FACTS AND CONCLUSION OF LAW

1. I find as a matter of law that this matter is properly before the Court and that this Court has jurisdiction of the parties and the subject matter hereto.
2. The Petitioner is one of the sons of the Testator who died on August 20, 2008. On September 5, 2008, this Court issued its Order for Informal Probate and Order of Appointment appointing Arthur B. Beasley, Jr., as the Personal Representative of the Estate and accepted into the records of this Court the Will of the Testator which was executed on March 9, 2007.
3. Petitioner's Petition first states that he does not challenge the validity of the Will or

the distributions thereunder. There has been no other challenge to the Last Will and Testament of Herbert Franklin Dickson, Sr., or the distributions thereunder. The testimony confirmed that the Will submitted to the Court has been accepted by all of the parties and heirs as the authentic Last Will And Testament of Herbert Franklin Dicks on, Sr. The Petitioner states that there are issues regarding the construction of the Will, and based upon the pleadings and testimony of the parties this Court specifically finds that the Will submitted to the Court is in fact the Last Will and Testament of Herbert Franklin Dicks on, Sr., and the distributions contained thereunder should be complied with by the Personal Representative subject to the issues of construction being resolved.

4. The second issue raised by the Petitioner's Petition was to declare the rights of the parties and to prohibit Arthur B. Beasley, Jr., as serving as the Personal Representative of his father's estate. The Respondent filed a general denial to this allegation and submits that there has been insufficient evidence to warrant prohibiting him from acting as the Personal Representative of this Estate. As to the Declarations Of Rights To The Parties, this Court is charged with the responsibility of ensuring that the Last Will And Testament of the Testator are carried out within the parameters of the laws of this State.

5. Petitioner has alleged that the Personal Representative, Arthur B. Beasley, Jr., should be prohibited from serving as the Personal Representative. Respondent has denied this allegation and therefore the Petitioner has the burden of proving to the Court by the preponderance of the evidence that the Respondent should be removed as the Personal Representative. The Court has reviewed the testimony of the parties and can find no evidence that would rise to the level of removal of the Respondent as the Personal Representative of this Estate. The Court realizes that the Petitioner may resent the fact that his father chose the Respondent, a

step-son, to be the Personal Representative of his Estate, but the Court also realizes that the Testator has an absolute right to select the Personal Representative of his choice, unless the Personal Representative for some legitimate reason is not qualified to serve.

6. Petitioner next asserts that prior to the death of the Testator, Herbert Franklin Dickson, Sr., came under domination and control of his wife and the Respondent. Respondent, denied this allegation and alleged that the Petitioner had failed to state sufficient facts to substantiate the allegation. Taking into consideration all of the testimony presented by the parties, this Court finds that there is not sufficient evidence to establish that Herbert Franklin Dickson, Sr., came under the domination and control of his wife, the Respondent, or anyone else.

7. The Petitioner then alleges that the Respondent used a Power of Attorney to remove assets from the decedent prior to his death and that the Respondent owed the Estate significant amounts of money. This Court has again reviewed the testimony of the parties and the evidence presented and finds no evidence that the Respondent used the Power of Attorney that he did have to remove assets from the Testator, or that the Respondent owes the Estate significant amounts of money. Petitioner has the burden of proving these allegations and this he has failed to do.

8. Petitioner next alleges that the Respondent has a conflict of interest and is not fit to serve as Personal Representative on the basis that the Personal Representatives converted money from the Estate and owes money to the Estate. As stated in the previous paragraph the Petitioner has failed to prove these two allegations to the satisfaction of this Court and therefore the Court finds that these allegations have no merit.

9. In paragraph 10, of Petitioner's Petition, the Petitioner asked the Court to appoint

another individual to serve as the Personal Representative of the Estate so that person might assert a claim against the respondent for the monies owed at the time of the death of the Testator, Herbert Franklin Dickson, Sr. As stated above, there has been no evidence which would warrant this Court's removal of the Respondent as the Personal Representative of this Estate, and that request is respectfully denied.

10. It was next alleged, that ITEM V of the Will contained an "Incontestability Clause" and ask the Court to issue a Declaratory Judgment as such a provision is contrary to the public policy of the State of South Carolina. In the Respondent's Answer he asked for the clause to be enforced but during his testimony the Respondent said that he would not enforce the terms of the Incontestability Clause. This issue is therefore not before the Court and no longer a concern of this Court.

11. The Petitioner also request that the Court issue a Declaratory Ruling as to ITEM III, No. 2, of the Will, that Herbert Franklin Dickson, Sr., did not own property in Santee, South Carolina and that ITEM III, No. 2, be declared a nullity as the property never existed. Respondent answered stating that the only reasonable interpretation of the descendants use of the term "Santee Property" in the Last Will and Testament of the decedent is the way the decedent used the term, which was his property in the Santee portion of Clarendon County, South Carolina. All parties agree that the Testator owned no property in Santee, South Carolina at the time of his death and never had owned property in Santee, South Carolina. It is clear from the evidence presented that the Testator clearly intended to convey the property that he referred to as the "Santee Property", the property in Clarendon County to the Respondent as evidenced by the language in his Will. The Court will also take judicial notice of the fact that all property bordering the Lake Moultrie

and Lake Marion properties located in Clarendon County are commonly referred to as Santee Property by individuals from Sumter and Clarendon Counties. Therefore, this Court declares that the words "Santee Property" as used in the Will of Herbert Franklin Dickson, Sr., was in fact the property owned by the Testator at the time of his death located in Clarendon County, South Carolina.

THEREFORE, it is hereby

ORDERED,

1. I find that there is no justifiable reason to remove the Personal Representative from this Estate and he is hereby instructed to bring this Estate to a close as soon as practicable and to make all distributions in accordance with the terms of the Last Will and Testament of Herbert Franklin Dickson, Sr.;
2. That the Incontestable Clause contained in ITEM V of the Last Will And Testament of Herbert Franklin Dickson, Sr., is no longer an issue before this Court, in light of the fact, that the Personal Representative has stated that he does not intend to enforce the provisions of ITEM V. Should the Personal Representative attempt to enforce the provisions of ITEM V, then any aggrieved party may petition this Court for relief;
3. That the provisions under ITEM III, No. 2, of the Last Will And Testament of Herbert Franklin Dickson, Sr., describing the "Santee Property" is in fact the

Testator's property which was located in Clarendon County, South Carolina at the time of his death and the Personal Representative of the Estate may issue a Deed of Distribution in accordance with the terms of Mr. Dickson's Will.

IT IS SO ORDERED!



DALE ATKINSON
Judge, Sumter County Probate Court

In Chambers,

Sept 21
~~August~~ _____, 2011

Sumter, South Carolina

STATE OF SOUTH CAROLINA)

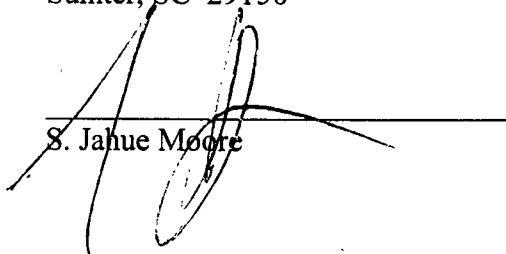
COUNTY OF LEXINGTON -1 PH) 2: 34

AFFIDAVIT OF SERVICE BY MAIL

PERSONALLY appeared before me S. Jahue Moore who, on oath, says that he is the Attorney for the Appellant in this action; and that he has this day effected service of the **CIVIL ACTION COVERSHEET AND APPEAL FROM PROBATE COURT** upon the Honorable Dale Atkinson, Judge, Sumter County Probate Court, and upon Attorney for the Respondent, by placing a copy of said **CIVIL ACTION COVERSHEET AND APPEAL FROM PROBATE COURT** in an envelope in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

The Honorable Dale Atkinson
Judge, Sumter County Probate Court
141 North Main Street
Sumter, SC 29150

Kenneth R. Young, Jr., Esquire
YOUNG, KEFFER & ASSOCIATES, PA
23 West Calhoun Street
Sumter, SC 29150


S. Jahue Moore

SWORN to before me this 31st
day of October, 2012.


Notary Public for South Carolina

(SEAL)

My Commission Expires: 11/19/14