

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM LANCASTER COUNTY

Court of Common Pleas

Brian M. Gibbons Circuit Court Judge

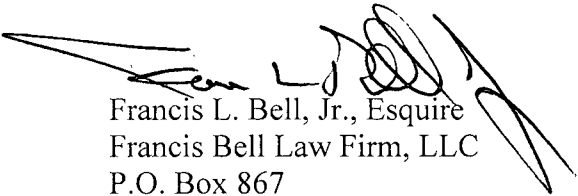
Case No. 2012-CP-29-00127

Janice Gregory, Grady L. Martin, Jr., Kevin Martin, Teresa B. Martin, and
William D. Martin, Appellants,

v.

The Estate of Janice Broughton and Jill Gainey, as Personal Representative of the
Estate of Janice L. Broughton, Respondents.

INITIAL BRIEF OF THE RESPONDENTS



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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. THE LOWER COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF WHETHER JILL GAINY EXERTED UNDUE INFLUENCE UPON JANICE L. BROUGHTON.

- II. THE LOWER COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF WHETHER DECEDENT WAS COMPETENT ON DECEMBER 6, 2007, THE DAY SHE SIGNED THE WILL.

STATEMENT OF THE CASE

Appellants filed this action April 6, 2011, in the Probate Court of Lancaster County seeking to invalidate the Last Will and Testament of Janice L. Broughton. By consent of the parties, the matter was properly moved to the Court of Common Pleas for Lancaster County. Appellants alleged that Janice L. Broughton lacked the requisite capacity to execute a valid Will and/or the contested Will was product of undue influence and therefore should be overturned. After several depositions, but before trial, Respondents moved for Summary Judgment. The Honorable Brian M. Gibbons granted Respondents' motion and the case was dismissed. Appellants served their Notice of Appeal on April 16, 2014.

FACTS

Appellants claim to be the children of decedent Defendant Janice L. Broughton; all were born before Mrs. Broughton's death. Mrs. Broughton's husband died in 2006. She hired Attorney Phil Wright to prepare a deed of distribution which was completed on or about August 8, 2007, which included one or more meetings with Attorney Wright.

Mrs. Broughton next met with Attorney Wright on December 6, 2007, for the purpose of getting a Will prepared, at which meeting Mrs. Broughton told Attorney Wright about having children but due to distance and not seeing them for some time she was leaving all her Estate to her cousin, Jill B. Gainey. The said Will was prepared and signed by Mrs. Broughton in the presence of the two witnesses who signed, all according to §62-2-503 Code of Law of South Carolina, 1976, as amended, as attestation and self-proving, all on December 6, 2007, at Attorney Wright's office. Mrs. Broughton drove herself and arrived alone at Attorney Wright's office. Though Mrs. Gainey previous to the appointment

called to alert Mr. Wright's office of potential appointment, Mrs. Broughton set her own appointment.

Mrs. Broughton next met with Attorney Wright on or about July 27, 2009, for the purpose of selling some real estate. At all times Mrs. Broughton was of sound mind and under no constraint or undue influence. Mrs. Broughton died October 28, 2010.

ARGUMENTS

I. THE LOWER COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT ON THE ISSUE OF WHETHER JILL B. GAINNEY EXERTED UNDUE INFLUENCE UPON JANICE L. BROUGHTON.

There was no undue influence by Jill B. Gainey upon Janice L. Broughton. Janice L. Broughton called and set up her own appointment with attorney Phil Wright to write her Will. Ms. Broughton drove herself to the appointment with attorney Phil Wright. Jennifer Collins even stated in her deposition that on the day of the Will signing Janice L. Broughton was not under Constraint or undue influence. (Deposition of Jennifer Collins Pg. 25 ln 2-4) Attorney Phil Wright also stated in his deposition that he did not see any indication that Janice Broughton was under any pressure or stress of any type and also noted that she came to the appointment by herself. (Deposition of Phil Wright Pg. 19 ln 3-6) A person has the right to by Will give his property to whomever as long as not in violation of law as set by statute, case decisions or constitution. *Brown v. Drake*, 270 S.E.2d 130 (S.C.1980), 275 S.C. 299

The mere existence of influence is not enough to void a Will. Undue influence sufficient to void a Will must be such a degree that it takes away testator's free will and judgment as to the contents of his Will. It must be tantamount to force and fear. *Todd v.*

Woodard, 376 S.E.2d 276 (S.C. 1989), 297 S.C. 264; *In re The Last Will and Testament of Holly B. Smoak*, 334 S.E.2d 806 (S.C. 1985), 286 S.C. 419; *Calhoun vs. Calhoun*, 290 S.E.2d 415 (S.C. 1982), 277 S.C. 527. There is no evidence of undue influence, but even if it existed, it would have to be severe enough to remove the testator's free will, which there is also no evidence of from the depositions of Jennifer Collins and Phil Wright who were with her the day she signed her will. The only other statements on the record were affidavits of Janice Gregory and Terry Gregory, who both last saw Janice Broughton around Mother's day in May, 2007, well before the Will was written and signed .

Even if undue influence is established time and an unhampered opportunity to change Will destroys such undue influence. *Hembree v. Estate of Hembree*, 428 S.E.2d 3 (S.C.App. 1993), 311 S.C. 192. Janice L. Broughton signed her Will on December 6, 2007. Her death was not until October 28, 2010, which is over 1,000 days after she had signed the Will. Other than her death coming almost three years after the signing of the Will, she also continued to do business with attorney Phil Wright, using him for a real estate transaction in the summer of 2009. Even if undue influence was established, the time elapsed from the date of the signing of the Will and Ms. Broughton's death would destroy such undue influence because of the ample opportunities to change the Will.

There was no undue influence shown by any evidence presented on the record during the summary judgment hearing, and therefore the granting of the summary judgment was correct and it should be affirmed.

**II. THE LOWER COURT DID NOT ERR IN GRANTING SUMMARY
JUDGMENT ON THE ISSUE OF WHETHER DECEDENT WAS
COMPETENT ON DECEMBER 6, 2007, THE DAY SHE SIGNED THE
WILL.**

Janice Broughton was competent on December 6, 2007, the day the Will was signed. Her mental capacity was observed by two people whose depositions were part of the record at the summary judgment hearing. With no evidence to show that Janice L. Broughton did not possess the required mental capacity, summary judgment was correctly granted for the Respondents.

The capacity required to make a Will is one of sound mind and not a minor. §62-2-501 *Code of Laws of South Carolina, 1976, as amended*. Further is whether the person knew (1) their estate, (2) the objects of their affections and (3) to whom they wished to give their property. *Matheson v. Matheson*, 118 S.E. 312 (S.C. 1923), 125 S.C. 165; *In re Estate of Weeks* 495 S.E.2d 454 (S.C.App. 1997); 329 S.C. 251. The Matheson case shows what capacity the person signing the Will must have, and does not require that an attorney ask certain questions to the testator. Attorney Wright went through his normal procedure to determine the capacity of Janice L. Broughton and was of the opinion that she was of sound mind and knew what she was doing. Attorney Phil Wright not asking Janice L. Broughton directly about the extent of her estate in no way shows that Janice L. Broughton did not know the extent of her estate and no evidence has been introduced by Appellants to prove she did not know the extent of her estate.

There is a presumption in favor of validity of a Will. *Abrams v. Templeton*, 465 S.E.2d 117 (S.C.App. 1995), 320 S.C. 325. There is a presumption testator knew of

contents of Will. *Hembree v. Estate of Hembree*, 428 S.E.2d 3 (S.C.App. 1993), 311 S.C. 192; *Hanahan v. Simpson*, 485 S.E.2d 903 (S.C. 1997), 326 S.C. 140. Because of these presumptions, the Appellants must show evidence that the Will was not valid. At the summary judgment hearing, Respondents introduced evidence in the form of depositions of Attorney Phil Wright and Jennifer Collins who were both present during the reading and signing of the Will, and they were both of the opinion that Janice L. Broughton was competent and sound mind on December 6, 2007. Appellants introduced two affidavits from Janice Gregory and Terry Gregory, neither of whom were present during the signing of the Will. Janice Gregory and Terry Gregory admit that the last time they saw Janice L. Broughton before the signing of the will and her death was in May of 2007. Because of the presumption of the validity of the Will, and no evidence presented to show any lack of competency, summary judgment was correctly awarded.

Janice L. Broughton also knew who she was passing her property to in her Will. She specifically devised the property to Jill B. Gainey and if she predeceased the testatrix, then to Macie Gainey. The indication of planning to execute a memorandum in the Will does not show that Janice L. Broughton did know whom she was passing her estate to. No memorandum was found with the Will, and is deemed not to exist. Lack of a memorandum to the Will does not show Janice L. Broughton lacked the competency required for a valid and the granting of the summary judgment was correct.

Even if Janice L. Broughton is deemed to have been not competent, a lucid interval during the reading and signing of the Will would be sufficient for the mental capacity

requirement. Even an insane person can make a Will if done during a sane interval. *In re Estate of Weeks*, 494 S.E.2d 454 (S.C.App. 1997), 329 S.C. 251.

The Appellants claim that Janice L. Broughton was on medication at the time that would limit her mental capacity required to be competent. Intoxification or under the influence of drugs is insufficient as long as testator knew his estate, object of his affections, and to whom he wished to give the property. *Hellams v. Ross*, 233 S.E.2d 98 (S.C. 1977), 268 S.C. 284. Janice L. Broughton knew her estate and who she wanted to it to pass to after her death, and was deemed competent by the opinion of two of the witnesses of the Will.

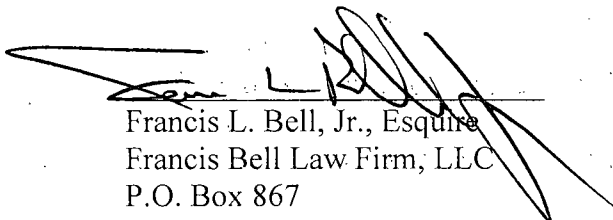
Janice L. Broughton was competent on December 6, 2007, the day she signed the Will. No evidence was provided by Appellants that on the day of the signing of the Will, Janice L. Broughton lacked capacity so summary judgment was correctly granted and should be affirmed.

CONCLUSION

Janice L. Broughton made a valid will on December 6, 2007. Depositions by Attorney Phil Wright and Jennifer Collins were introduced that state they were of the opinion Janice Broughton was of sound mind and not under any undue influence. Not only did Attorney Phil Wright believe Janice L. Broughton was of sound mind on the day of the signing of the Will, but they continued to do business together before her death in 2010 and he observed a similar cheery and competent demeanor at every meeting. No evidence was introduced at the summary judgment hearing that Janice L. Broughton lacked the mental capacity to make a valid Will or that she was under any undue

influence. Because there was no evidence to show the Will was invalid, summary judgment was granted correctly for the Respondents and it should be affirmed.

October 17, 2014



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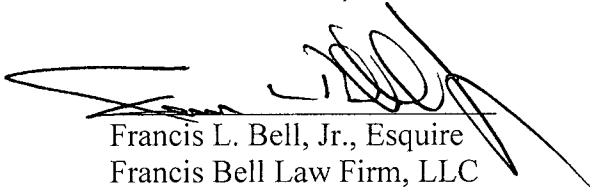
PROOF OF SERVICE

I certify that I have served the Initial Brief of the Respondents by depositing copies of same in the United States Mail, postage prepaid, on October 17, 2014, addressed to Appellants' attorneys of record as follows:

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