

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 Martin, Jr., Kevin Martin, Teresa B. Martin, and Williams D.
Martin, Appellants,

v.

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

REPLY BRIEF OF APPELLANTS

Tommy L. Stanford, Esquire
Post Office Box 3321
Greenwood, South Carolina 29648
(864) 229-3987
Attorney for Appellants

La'Keabian Henderson, Esquire
P.O. Box 25908
Greenville, SC 29616
(864) 862-2800
Attorney for Appellants

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OCT 30 2014

SC Court of Appeals

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ARGUMENTS

I. THE LOWER COURT ERRED IN RULING THAT THERE WAS NO GENUINE ISSUE OF A MATERIAL FACT AS TO THE UNDUE INFLUENCE EXERTED UPON JANICE L. BROUGHTON BY JILL B. GAINNEY.

In this case, the Decedent's husband predeceased her. The Personal Representative of the Decedent's estate and beneficiary Jill Gainey became a major person in the life of the Decedent. It was Jill Gainey who referred the Decedent to Attorney Phillip Wright's office to make a will. The Decedent appeared to have totally withdrawn from everyone except Jill Gainey. The Affidavit of Janice Gregory states that the uncle of the decedent's dead husband, Robert Broughton, observed how withdrawn the Decedent had become. Evidence also shows that the decedent suffered from and had a history of a brain tumor and was prescribed medications for depression and pain.

Additionally, the totality of the facts of this case clearly shows that Jill Gainey had a sustaining confidential relationship with the Decedent. The Decedent was on pain and depression medication and the Attorney Phillip Wright failed to ask minimum questions that are necessary to have a valid will, void of undue influence. In this case, as often times, in undue influence cases, the evidence is such, there are rarely "smoking guns." The totality of the facts and evidence in the case before us establishes that the Court erred in granting Summary Judgment as to the issue of undue influence by Jill Gainey.

[S]ummary judgment is a drastic remedy which "should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues." Baughman v. American Tel. Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting Watson v. Southern Ry Co., 420 F. Supp. 483, 486 (D.S.C. 1975)). The trial court was required, but did not, give Appellants the benefit of favorable inferences from these facts – to include that the Decedent was particularly susceptible to undue influence from Jill Gainey because of her continuing confidential relationship with Decedent, due to her fragile physical and mental health at the time the Will was signed, and because of the impairment that resulted from the medications she took for her medical conditions. As such, the trial court erred in granting summary judgment to appellee on this issue.

II. THE LOWER ERRED IN RULING THAT THERE WAS NO GENUINE ISSUE OF A MATERIAL FACT AS TO WHETHER THE DECEASED, JANICE L. BROUGHTON WAS COMPETENT ON DECEMBER 6, 2007, THE DAY SHE SIGNED THE WILL.

Respondent argues that the Court did not err in granting Summary Judgment on an issue of whether Decedent was competent on December 6, 2007, the day she signed the will. The Affidavits of both Janice Gregory and Terry Gilbert Gregory states that in 2007, the Decedent appeared confused, nervous, and depressed. The Decedent was observed rocking back and forth, talking to her dead husband saying, "Howard, what you going to do?" and "You said you were going to help me." (Affidavit of Terry Gilbert Gregory)

It is not disputed by the Respondent that the Decedent had many medical.

conditions, which includes a brain tumor and that the Decedent was prescribed Darvocet-N for pain and Trazodone for pain and depression. (Affidavit of Janice Gregory) There is evidence that shows the Decedent was not competent in the year of 2007 and the Respondent would have to establish that an insane person did have a sane interval.

The Decedent was never questioned to determine whether she understood the nature and extent of her estate by Attorney Phillip Wright. In his deposition, Attorney Wright admits that he didn't ask the Decedent's questions regarding the extent of her estate, nor specific desires. The question was asked, "When Ms. Broughton came into your office, what did she tell you was the extent of her estate?" (Attorney Wright Deposition, Pg. 28, LN 18) He stated, "I didn't ask her the extent of her estate." (Phillip Wright's Deposition, Pg. 28, LN. 20). It is undisputed that only Jill Gainey and her immediate family are named as beneficiaries in the Will. The record reflects that Attorney Wright, the drafting attorney, did not question the Decedent as to the extent of her estate. The Decedent was interviewed and the Will drafted and executed all in one sitting. (Deposition of Phillip E. Wright, Pg. 11, Lines 12-13). The Respondent argues that the failure of Attorney Wright to ask the Decedent directly about the extent of her estate does not show that the Decedent did not know the extent of her estate. Clearly, in South Carolina, as part of the sound mind requirement, one must know the bounds of her estate in order to make a valid Will. Matheson v. Matheson, 125 S.C. 165 (1923). In this instance, the attorney whose duty it was to ensure that the Decedent was of a sound mind at the time of the making of the Will did not make the inquiry necessary under

South Carolina law to make the determination of soundness of mind. In addition, also casting doubt upon whether the decedent had knowledge of the extent of her estate is the fact that the Will mentions that Decedent planned “to execute a memorandum directing the Personal Representative to distribute certain items of personal property to selected persons.” (Will, P.1, Paragraph 2). No such Memorandum was filed with the Probate Court.

In Summary Judgment, “[the] standard of review in evaluat[ion] is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom.” Estes v. Roper Temp. Servs., Inc., 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Appellants were entitled to receive the benefit of a favorable inference from the fact that the Will was missing the Memorandum assigning property to certain persons that the Decedent desired it to have – such an inference could include that the Decedent was not aware of the extent of her estate enough to reduce the same to writing.

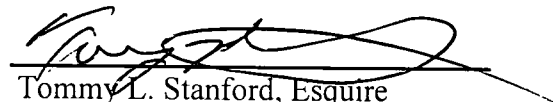
CONCLUSION

The lower court committed an error by granting Summary Judgment. The facts established by Appellants clearly established genuine issues of material facts. A case should not be summarily dismissed unless there is no issue of material facts considering evidence in the light most favorable to the non-moving party. Summary Judgment is a drastic remedy which “should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.” Baughman v. American Tel. Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (quoting Watson v. Southern Ry Co., 420

F. Supp. 483, 486 (D.S.C. 1975)). As such, this Court should reverse the ruling of the trial court.

October 27, 2014

Respectfully submitted,



Tommy L. Stanford, Esquire
Post Office Box 3321
Greenwood, South Carolina 29648
(864) 299-3987
Attorney for Appellants

La'Keabian Henderson, Esquire
P.O. Box 25908
Greenville, SC 29616
(864) 862-2800
Attorney for Appellants

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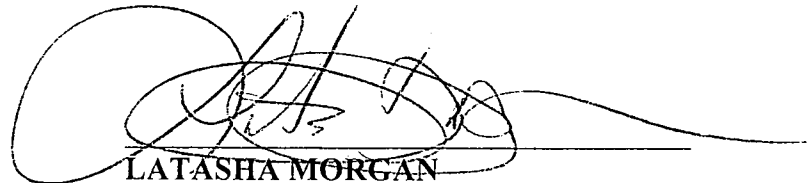
vs.

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

PROOF OF SERVICE

I certify that I have served the Reply Brief of the Appellants on Francis L. Bell, Jr. and William C. Tindal, attorneys for the Respondents, P.O. Box 867 Lancaster, SC 29721-0867 by depositing a copy of it in the United States Mail, postage prepared on the 27th day of October, 2014.

October 27, 2014.



LATASHA MORGAN

Legal Assistant of Tommy L. Stanford, Esq.

Attorney for Appellants, Janice Gregory, et. al.

307 Main Street

Greenwood, SC 29646

Mailing: P. O. Box 3321

Greenwood, SC 29648

Phone: (864)-229-3987

Fax: (864)-229-6304

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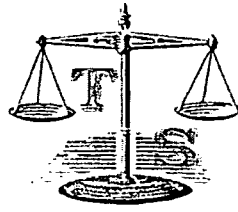
SC Court of Appeals

TOMMY L. STANFORD LAW FIRM, PC

Attorney At Law

Phone: (864) 229-3987

307 Main Street
Greenwood, SC 29646



Fax: (864) 229-6304

Mailing Address:
Post Office Box 3321
Greenwood, SC 29648

October 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court for South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Janice Gregory, et. al. vs. The Estate of Janice L. Broughton, et. al.
Appellate Case No. 2014-000936

Dear Madam Clerk:

Please find enclosed the Reply Brief of Appellants and Proof of Service along with one copy of each, in reference to the above captioned matter. Please file the same and return the clocked copies to me in the enclosed self-addressed stamped envelope. Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tommy L. Stanford'. The signature is fluid and cursive, written over the printed name.

Tommy L. Stanford
Attorney for the Appellates

Enclosures

CC: La'Keabian Henderson, Esquire, Attorney for the Appellants
Francis L. Bell, Jr., Esquire, Attorney for the Respondents
William C. Tindal, Esquire, Attorney for the Respondents

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