THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
In the Court of Common Pleas

R. Ferrell Cothran, Jr., Presiding Judge

Appellate Case No. 2014-001903

Milton Oakley Dickson,.....Appellant,

v.

Arthur B. Beasley, Jr.,.....Respondent,

IN Re: Estate of Herbert Franklin Dickson, Sr.

REPLY BRIEF OF APPELLANT

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I. THE LANGUAGE OF TESTATOR'S WILL WAS CLEAR AND UNAMBIGUOUS.

As set forth in Appellant's Brief, the Sumter Probate Court and Judge Cothran ignored the plain and clear language of the testator's will and created an ambiguity where none was present. There was no need for the Court to look beyond the clear and plain language of Testator's will to determine his intent. Both the Probate Court and Judge Cothran erred by failing to enforce the Testator's will as written. Respondent's arguments to the contrary are not persuasive and not controlling.

Respondent correctly recognizes that in South Carolina the cardinal rule of will construction is the determination of the testator's intent as ascertained from the language of the will itself. *See, Bob Jones University v. Strandell,* 344, S.C. 224, 543 S.E.2d 251 (Ct. App. 2001). However, Respondent's arguments in his brief overlook and ignore the plain, clear, and unambiguous language of the testator's will.

There was no latent ambiguity in the Testator's will. The evidence is clear, contrary to Respondent's position, that the Testator was not referring to the Goslin Pond property when he made the bequest at issue in this case.

First, the Testator did not refer to this property as *the* "Santee property." He did not use the words, "all the property I own" to describe this property. The language of the will, ignored by the Court, and by Respondent in his Brief, describes this property as, "*any* property which I own, at the time of my death *in* Santee, South Carolina." (Emphasis added). The language used in the will is far more definite and specific than that at issue in the case of *Fenzel v. Floyd,* 289 S.C. 495, 347 S.E.2d 105 (Ct. App. 1986), cited and relied upon by Respondent in its brief.

Contrary to Respondent's argument, the Testator is not bequeathing any specific piece of property in his will. He is bequeathing *any* property that he may own in Santee at the time of his death. Judge Atkinson and Judge Cothran misconstrued this provision to, in effect, find that while Testator did not own property at the time of his death in Santee, other property that he did own, but was not described or bequeathed in his will, must be substituted in its place. Judge Atkinson and Judge Cothran in effect rewrote Testator's will and substituted their own interpretation in direct contravention of the language used by the Testator. This is clearly erroneous.

Further, the will bequeaths any property that Testator owns, at the time of his death, *in* Sumter, South Carolina. As set forth above, at the time of his death the Testator owned no property in Santee, South Carolina. The evidence is clear on this point. (Order of the Honorable Dale Atkinson, R. ____; Order of the Honorable Ferrell Cothran, R. _____). There was no need for the Court to rewrite the Testator's will.

II. THE PROBATE COURT ERRED IN ALLOWING EXTRINSIC EVIDENCE OF TESTATOR'S INTENT.

Because the Testator's will was clear and unambiguous and there was no latent ambiguity present, there was no need for the Court to resort to extrinsic evidence to attempt to interpret the Testator's will. There was no ambiguity in the devisee. The Court erred by resorting to extrinsic evidence to find as a matter of law that the Testator intended to convey the Summerton, South Carolina, property in his will.

III. THE LOWER COURT MISCONSTRUED AND MISINTERPRETED THE TESTATOR'S WILL

The Lower Court misconstrued and misinterpreted the Testator's will. Respondent's arguments to the contrary are not controlling. In this case Testator was very specific in the bequest at issue and the language used in his will. There is no need to

resort to a tortured interpretation of the Testator's will or extrinsic evidence to determine what he meant to do, or not do. The language used by Testator was not an effort to distinguish this property from that property as argued by the Respondent in his Brief. Testator's will clearly manifests an intent to bequest any property that he may own at the time of his death in Santee at the time of his death. Because he owned no property in Santee at the time of his death, the bequest fails. The Lower Courts erred in ruling otherwise and the Orders of the Lower Court should be reversed.

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PROOF OF SERVICE

I, Lynn G. Ivey, an employee of Moore Taylor Law Firm, P.A., certify that I have on this day effected service of the below listed document upon counsel of record, by placing a copy of same in the United States mail in an envelope with sufficient postage affixed thereto, addressed as listed below.

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DOCUMENT(S): 1. Reply Brief of Appellant

Lynn G. Ivey

West Columbia, South Carolina
February 2, 2015