

BRIEF OF APPELLANT*

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

(In The Supreme Court)

APPEAL FROM DARLINGTON COUNTY

Marvin L. Lawson, Probate Judge

Appellate Case No. 2014-000689

Harold Wilson,

Appellant

v.

Cynthia Barnett, Louise Sweet, and Hubert Wilson,

Respondent

[INITIAL] BRIEF OF APPELLANT

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Statement of Issues of Appeal

1. Did the trial court err when it proceeded with hearing without giving Appellate Harold Wilson a chance to be heard on Sept. 17, 2012.
2. Did the trial court err when it probated a copy of a will that was not the last will executed by the descendant.
3. Did the trial court err when it accepted an application/petition from the petitioner to probate a copy of a will, knowing there was fraudulent information on the application and there was no sound evidence that the original will was lost or destroyed.
4. Did the trial court err when it did not void the order from Sept. 26, 2012, at the trial hearing on Jan. 8, 2014, after a later will that was executed by the descendant along with the petition or vacate previous order was submitted to the probate court.

Statement of Case

Harold Wilson testimony of events that took place.

A hearing was schedule on Sept. 17, 2012 a result of a Summons and Petition for Formal Testacy and Appointment previously filed by Cynthia Barnett on July 27, 2012. As I testified at the hearing on Jan. 8, 2014, I contacted the Darlington Probate Court at 9:00am on Sept. 17, 2012 to let them know I maybe a little late for the hearing that was scheduled for 9:30am. I had an allergy attack that morning and had to go to McLeod hospital to get some medication. I informed the Darlington Probate Court that at 9:00am that I may be a little late but that I was en route. The lady I talked to from the Probate Court told me the Probate Judge said to get there as soon as I can. When I arrived at the courtroom people were walking out. I entered the courtroom the Probate Judge was still on the stand with the court officer next to him. I looked at his clock on the wall which read 9:40am and asked the Probate Judge what happened, they told me you said to get here as soon as possible, in which his exact words to me were, "My court starts on time!" The Darlington judge went forward and proceeded with the hearing when I notified the court that I may be a little late, but he proceeded to probate the copy of a will from 2001. The judge also granted appointment to Cynthia Barnett as personal representative without me being able to be heard as a party involved in this case.

The Darlington Probate judge was very much aware that the copy of a will he allow to be probated on Sept 17, 2012 was not the last will that was executed by Dorothy Hatcher. The Darlington Probate judge was very much aware of this after the court proceedings that took place between; 2009-2010. On Oct 16, 2009, Cynthia Barnett unlawfully removed Dorothy Hatcher who was 71 years old at that time from her home at 1549 Country Manor Road, in Darlington SC, against her will and transported her out of state and admitted her in the Germantown Nursing Home in Philadelphia, PA. She used a power of attorney document that she had made up and forged Dorothy Hatcher's name on the document. On Oct. 20, 2009, I Harold Wilson went to the Darlington Police Station and filed kidnapping charges on Cynthia Barnett. I also contacted Mr. Ken Baker my mother's attorney, (Dorothy Hatcher) and told him the events that took place on Oct 16, 2009. Mr. Ken Baker sent me to attorney William Tuck because he said he would be better to handle the case. I Harold Wilson hired attorney William Tuck in late Oct, 2009. We hired a private investigator to find out where Cynthia Barnett had taken Dorothy Hatcher too. We found out that Cynthia Barnett had admitted her in the Germantown Nursing Home in Philadelphia, PA, near where she lives, (Cynthia Barnett) out of state against her on will. A case was opened on Dorothy Hatcher in the Darlington Probate Court in Nov 2009, C/A No. 09-GC-16-30. We petitioned the court for a protective order on Dorothy Hatcher being she was removed out of her home and out of state against her will by Cynthia Barnett on Oct 16, 2009. In November, 2009 J. Anthony Floyd who was appointed by the court to be guardian ad item and attorney for Dorothy Hatcher, submitted to the court a list of all assets Dorothy Hatcher owned at that time, also my attorney at that time William Tuck submitted to the court and all parties involved in the case at that time a copy of Dorothy

Hatcher's Last Will and Testament and a copy of Dorothy Hatcher's Living Will. Both legal documents were executed on Sept 10, 2009, with her lawyer Ken Baker.

1. Letter from my attorney William Tuck. 2. Last will and Testament. 3. Living will, Designation of Matter)

On Jan 7, 2010, in case no.09-GC-16-30 an order was entered in the Darlington Probate Court that the power of attorney that Cynthia Barnett had on Dorothy Hatcher, by clear and convincing evidence was a product of forgery. And was voided.

On Sept. 24, 2013, a petition to vacate previous order along with the original will that was executed by Dorothy Hatcher on Sept. 10, 2009 with her attorney Ken Baker was submitted to the Darlington Probate Court. A hearing was scheduled for Jan. 8, 2014 at 10:00am on the matter.

I Harold Wilson testified under oath that I was unable to find the original will that Dorothy Hatcher executed with attorney Ken Baker. As I testified at the hearing my mother Dorothy Hatcher told me that the original will was in the safe that she kept in her closet. But after my mother's death (Dorothy Hatcher) I looked in the safe and it was only a copy of the will that she executed in the safe. I remembered that in 2009 when Dorothy Hatcher executed the will with her attorney Ken Baker, he told me to make sure the will is put in a safe place because you can only probate a original will. When I answered the summons that Cynthia Barnett sent me, saying that I am in receipt of the original will I was thinking the original will was in the safe in the closet, but when I went to get it. It was only the copy in the safe. As I testified at the hearing

I found the original will executed Sept. 10, 2009 when I was cleaning my mother's room (Dorothy Hatcher). I found the original will underneath her bed locked in a security box. Once I found the original Last Will and Testament that Dorothy Hatcher executed on Sept. 10, 2009 with her attorney Ken Baker, I hired attorney Charles Blake to file a petition for a motion to vacate previous order along with the original Last Will and Testament executed by Dorothy Hatcher on Sept. 10, 2009. The motion to vacate previous order along with the original will was submitted to the Darlington probate court within the time limits allowed by law.

Argument

I. The trial court erred when it went forward and proceeded with the trial hearing on Sept. 17, 2012 and rendered a decision to probate a copy of a will from 2001 and granted appointment to Cynthia Barnett as personal representative of the estate of Dorothy Hatcher without given Appellate Harold Wilson his right to be heard.

US Constitution Fourteenth Amendment

Section 1. All person born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

It's clearly evident that Appellate Harold Wilson on Sept. 17, 2012 was denied his right to a fair trial and his right to be heard, a due process violation as party involved in this case. Parties whose rights are to be affected are entitled to be heard, "Baldwin v. Hale, 68 US (1 wall) 223, 233, (1863).

Court reminded that the right to a fair hearing is required that the observations of the parties must be heard and duly examined. According to the principle a court has the obligation to proceed to an effective examinations of the complaints arguments, and evidence offered by the parties in order to access their pertinence. //

Hager v. Reclamation, 111 U.S. 701, 708, (1884)

Due process of laws is process which following the forms of law, is appropriate to the case and just to the parties affected. It must be pursued in the ordinary mode prescribed by law, it must be adopted to the end to be attained and whenever necessary to the protection of the parties. It must give them an opportunity to be heard respecting the justice of the judgment sought. Any legal proceeding enforced by public authority, whether sanctioned by age or custom or newly devised in the discretion of the legislative power, which regards and preserves these principles of liberty of justice, must be held to be "due process of laws". id at 708 Accord Hurtado v California, 110 U.S. 516-537 (1884), Twining v New Jersey, 211 US. 78,101 (1908): Brown v New Jersey 175 U.S. 172. 175 (1899).

Due process requirements of laws

Some form of hearing is required before an individual is finally deprived of a property (or liberty) interest "701. This right is a basic aspect of the duty of government to follow a fair

process of decision making when it acts to deprive a person of his possessions. The purpose more particularly is to protect his use and possession of property from arbitrary encroachment... "702 Thus, the notice of hearing and the opportunity to be heard must be granted at a meaningful time and in a meaningful manner. "703, 697 Mullane v Central Hanover Trust Co, 339 US 306, 314 (1950) See also Richards v Jefferson County 517 US. 793 (1996).

Argument

II. The trial court erred when it probated a copy of a will from 2001 that was not the last will executed by Dorothy Hatcher before her death.

The trial court went forward and probated a copy of a will from 2001 on Sept. 26, 2012, having knowledge that the copy of a will from 2001 was not the last will executed by Dorothy Hatcher. The fact that the trial court probated a copy of a will that was not the last will executed by descendant Dorothy Hatcher goes against the South Carolina code of laws and is a violation of Dorothy Hatcher's rights and power to make a Last Will and Testament and have her intentions carried out as stated in her Last Will and Testament that she executed on Sept. 10, 2009 with her attorney Ken Baker.

Probate of Wills and Administration

Title 62- South Carolina Probate Code

Part 1. Article 3

Section 62-3-101 Devolution of estate at death: restrictions

The power of a person to leave property by will and the right of creditors, devisees and heirs to his property are subject to the restrictions and limitations contained in this code to facilitate the prompt settlement of estates, including the exercise of the powers of the personal representative. Upon the death of a person, his real property devolves to the person to whom it is devised by last will or to those indicated as substitutes for them in cases involving lapse, renunciation or other circumstances affecting the testamentary disposition, to his heirs, or those indicated as substitutes for them in cases involving renunciation or other circumstances affecting the devolution of intestate estates, subject to the purpose of satisfying claims as to exempt property rights and the rights of creditors, and the purposes of administration, particularly the exercise of the powers of the personal representative, under 62-3-710, and 62-3-711, and his personal property devolves, first to his personal representative, for the purpose of satisfying claims as to exempt property rights and the rights of creditors and the purposes of administration, particularly the exercise of the powers of the personal representative under Section 62-3-709, and 62-3-710 and 62-3-711, and at the expiration of three years after the descendant's death, if not yet distributed by the personal representative, his personal property devolves to the persons to whom it is devised by will or who are his heirs in intestacy, or their substitutes, as the case may be, just as with respect to real property. History 1986. Act No.539, Section 1:1987, Act No. 171, Section 16: 2013 Act No. 100 Section 1.eff Jan 1, 2014

It's very clear that Title 62 Section 62-3-101 Article 3 Part 1 states that upon death of a person his real property devolves to the person to whom it is devised by Last Will.

The trial court had knowledge that the copy of a will he allowed to be probated on Sept. 26, 2012 was not the Last Will and Testament that Dorothy Hatcher executed before her death. This fact is known because during the lengthy proceedings that took place between 2009-2010 involving the Matter of Dorothy Hatcher a copy of Dorothy Hatcher's Last Will and Testament and Living Will that she executed on Sept. 10, 2009 with her attorney Ken Baker was submitted to the Darlington Probate Court by my attorney at that time William Tuck to be indexed into Dorothy Hatcher's case files C/A No. 09-GC-16-30. Also a copy of both legal documents were sent to all parties involved at that time, including attorney Gena Ervin and client Cynthia Barnett. Please see Article 1 Letter, Designation of Matter.

Argument

III. The trial court erred when it probated a copy of a will knowing that petitioner gave fraudulent information on the application and there was no sound evidence that the original will was lost or destroyed.

I would like the court of appeals to take notice of the application/petition that Cynthia Barnett submitted to the Darlington Probate Court that was filed July 27, 2012, a petition for formal testacy to probate a copy of a will that was executed in 2001, and petition for an appointment of personal representative in Dorothy Hatcher's estate. Would like the court of appeals to take notice of Cynthia Barnett's answers on this application/petition that she submitted to the courts that he had notarized. Article 4 (Destination of Matter)

On question 1-12 says after the exercise of reasonable, diligence, are you aware of any unrevoked will and/or codicil(s) in this state. Cynthia Barnett's answered no.

On question II-4 says are you aware of any instrumental or document amending or revoking the will? Cynthia answered no.

On question II-5 says have you exercised reasonable diligence to determine there is no instrument or document revoking the will? Cynthia Barnett answered yes.

On question II-6 says do you believe, the Will defined in "1" above is the descendants Last Will? Cynthia Barnett answered yes.

Article 1 Letter (Designation of matter) clearly shows that all parties had knowledge of the Last Will and Testament that Dorothy Hatcher executed on Sept 10, 2009, and full knowledge of the Living Will that Dorothy Hatcher executed on the same day.

Being that Cynthia Barnett knowingly gave fraudulent information on application that she had notarized and submitted to the court is an act of perjury. She knowingly lied under oath in front of a notary which is an act of perjury. South Carolina Code of Law § 26-1-5 provides definitions of notarial acts.

2. Oath a notarial act that is legally equivalent to an affirmation and in which a notary certifies that at a single time and place, all of the following occurred.

a. An individual appeared in person before the notary:

b. The individual was personally known to the notary or identified by the notary through satisfactory evidence: and

C. The individual made a vow of truthfulness on penalty of perjury which involving a deity or using a form of the word swear.

It is clearly evident that Cynthia Barnett lied 4 times on the application/petition that was filed July 27, 2012, which she had notarized, an act of perjury. Being that she had full knowledge that a later will existed that Dorothy Hatcher executed in 2009.

Definition of perjury (Law Dictionary)

Perjury is the criminal offense of lying under oath. A perjury charge maybe brought when someone makes a false statement after being sworn in or promising to tell the truth in a legal situation. For instance a person giving testimony on the stand during a court case who tells a lie maybe charged with perjury. Someone who lies during a deposition, or who lies on a signed declaration or affidavit can also be charged with this offense.

On the application/petition Section II 1 petitioner marked that the original will was lost, destroyed, or otherwise unavailable. There was no clear and convincing evidence in the record to overcome the presumption that the original will from 2001 had been lost or destroyed.

In an action at law decided in the probate court, the circuit court may not dispute the probate courts findings of fact unless there is no evidence to support them. Matter of Howard 315 S.C. 356, 361, 434 S.E 2d 254, 257 (1993).

On appeal, this court will examine the record to see if there is any evidence to reasonably support the factual findings of the probate court.

Dean v Kelgore, 313 S.C. 257, 259, 437 S.E. 2d 154, 155 (ct. App. 1993).

The burden of rebutting the presumption with clean and convincing evidence belongs to the proponent of the will.

Estate of Mason v Mason, 289 S.C, 273, 277 346 SE. 2d 28, 31 (ct. App. (1986)

The presumption of fact must be rebutted by showing evidence that the will existed at the time of his (the testator's) death, was lost subsequent thereto, or had been destroyed by another without authority to do so" Lowe v Fickling, 207 S.C. 442, 447, 36 S.E. 2d 293, 295.

Argument

IV. The trial court erred when it did not void the order rendered on Sept, 26, 2012 to probate a copy of a will, after a later original will was submitted to the Probate Court along with the petition to Vacate Previous Order within time limits allowed by law.

A hearing was scheduled on Jan. 8, 2014, at 10am Darlington Probate Court. I Harold Wilson testified under oath that I was unable to find the original will that Dorothy Hatcher executed with attorney Ken Baker. As I testified at the hearing my mother Dorothy Hatcher told me that the original will was in the safe that she kept in her closet. But after my mother's death (Dorothy Hatcher) I looked in the safe and it was only a copy of the will that she executed in the safe. I remembered that in 2009 when Dorothy Hatcher executed the will with her attorney Ken Baker, he told me to make sure the will is put in a safe place because you can only probate a original will. When I answered the summons that Cynthia Barnett sent me, saying that I am in

receipt of the original will I was thinking the original will was in the closet, but when I went to get it, it was only the copy in the safe. As I testified at the hearing I found the original will executed on Sept. 10, 2009 when I was cleaning my mother's room (Dorothy Hatcher). I found the original will underneath her bed locked in a security box. Once I found the original Last Will and Testament that Dorothy Hatcher executed on Sept. 10, 2009 with her attorney Ken Baker, I hired attorney Charles Blake to file a petition for a motion to vacate previous order along with the original Last Will and Testament executed by Dorothy Hatcher on Sept. 10, 2009. The motion to vacate previous order along with the original will was submitted to the Darlington probate court within the time limits allowed by law.

Title 62-South Carolina Probate Code

Section 62-3-412. Effect of Order: subject to appeal and subject to vacation as provided herein and in section 62-3-413, a formal testacy order under section 62-3-409 through 62-3-411, including an order that the descendant left no valid will and determining heirs is final as to all persons with respect to all issues concerning the descendants estates that the court considered or might have considered incident to its rendition relevant to the question of whether the descendant left a valid will and to the determination of heirs: except that.

(4) The order originally rendered in the testacy proceeding maybe modified or vacated, if appropriate under the circumstances by the order of probate of the later-offered will or the order redetermining heirs.

Being that a later will executed original will along with the petition to vacate previous order was submitted within time limits.

The Last Will and Testament that Dorothy Hatcher executed on Sept. 10, 2009 is the Last Will executed by Ms. Hatcher before her death.

Had my constitutional rights not been violated on Sept. 17, 2012 when a decision was rendered without me have the right to be heard as a party involved in this case, I had the copy to show the Last Will Dorothy Hatcher executed before her death.

Conclusion

For the reasons stated, the Appellate Court should reverse the judgment of the Probate Court and any other relief the court may believe is owed.

March 9, 2015

Respectfully submitted

s/ Harold Wilson

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PROOF OF SERVICE

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Respondent

PROOF OF SERVICE

I certify that I served an Initial Brief and Designation of Matter on respondents and Attorney Gena Ervin by depositing a copy of them in the United States mail postage prepaid on March 9 2015

s/ Harold Wilson

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