

STATE OF SOUTH CAROLINA)
)
 COUNTY OF FLORENCE)
)
 Elizabeth J. Langley,)
)
 v.)
)
 Wendy J. Lynch, Rebecca M.)
 Lynch, James M. Lynch II, Donald)
 Jordan, III, Jimmy White and S.)
 Porter Stewart, II., as Personal)
 Representative of the Estate of)
 James M. Lynch,)
)
 _____)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE TWELFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-21-01408

**ORDER GRANTING
 MOTION FOR SUMMARY
 JUDGMENT**

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SC Court of Appeals

JENNIE REEL-SHEPARD
 CCOP & GS
 FLORENCE COUNTY, SC

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FILED

THIS MATTER came before me on motion of counsel for the Defendant, Wendy J. Lynch, for an Order of Summary Judgment. This matter was heard on June 17, 2015. Defendant, Wendy J. Lynch, was represented by Joseph M. McCulloch and Plaintiff, Elizabeth J. Langley, was represented by James T. Irvin, Jr. After carefully reviewing and considering the motion, memoranda of both parties, and all exhibits and attachments thereto, I hereby GRANT Defendant Wendy J. Lynch's motion for summary judgment and find as follows:

1. The undisputed evidence establishes that the testator, James M. Lynch ("Judge Lynch") was diagnosed with cancer in April 2012. He executed a will in Attorney Frederick ("Rick") Hoefer's office on May 11, 2012. Judge Lynch continued to serve as magistrate until sometime late in June of 2012 and thereafter passed away on February 9, 2013;
2. Plaintiff, Elizabeth Langley, filed a complaint on April 30, 2013 challenging the will of Judge Lynch on the basis of incompetence and undue influence;
3. On December 29, 2014, Defendant Wendy Lynch filed her motion for

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 Clerk of Court
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

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summary judgment along with numerous affidavits in support of her motion including the affidavit of the attorney who drafted the will, Rick Hoefler, medical providers who treated the testator, and numerous other witnesses addressing the testator's competence and lack of undue influence;

4. On the day of the hearing, Plaintiff filed a Memorandum in Opposition to Motion for Summary Judgment which contained affidavits and other documents. It appears some of the supporting material was provided to defense counsel the day prior to the hearing.

5. At the hearing, defense counsel moved under Rule 56(c), SCRCF, for the exclusion of Plaintiff affidavits served upon defense counsel the *day prior* to the hearing as untimely. Specifically, defense counsel made reference to the Affidavits of Dr. Joseph Healy, the purported affidavit of Dr. Troy Gamble, the Affidavit of Rebecca White, and the signed Affidavit of Donald Campbell. It is undisputed that neither Dr. Healy nor Dr. Gamble was included in Plaintiff's list of witnesses. Although the Complaint was filed on April 30, 2013 and Plaintiff was questioned about experts and other witnesses at her deposition on November 25, 2014, it is further undisputed that the identity of these medical witnesses and their affidavits were not produced to the defendant until the day before the hearing. Further, defense counsel pointed out that the Affidavit of Dr. Healy attached to the Plaintiff's Memorandum in Opposition contained changes from the affidavit provided the day earlier. Defense counsel also pointed out that the purported affidavit of George McClam attached to the Plaintiff's Opposition motion had not been earlier provided;

6. While I find the affidavits were untimely and provided in violation of Rule 56(c), SCRCF, in consideration of the motion in the light most favorable to the Plaintiff, I have considered the affidavits and other materials provided by Plaintiff to this Court;

7. As to Plaintiff's claim of **incompetence**, the burden of proof is upon the contestant to show lack of mental capacity at the time of the execution of the will. See Havird v. Schissell, 252 S.C. 404, 166 S.E.2d 801 (1969). Pursuant to Sumter Trust Company v. Holman, 134 S.C. 412, 132 S.E.811 (1926), the standard for capacity to make a will is whether at the time of the execution of the will the testator knew his estate, the objects of his affection, and to whom he wished to give his property and incompetence must be established by a preponderance of evidence standard;

8. In reviewing the memoranda of counsel and supporting documents, including the Plaintiff's Memorandum in Opposition and accompanying affidavits, all in the light most favorable to Plaintiff, I find that there is no genuine issue of material fact as to Plaintiff's allegations of incompetence. In my review of the affidavit of Dr. Healy and purported affidavit of Dr. Gamble, I find that neither examined the testator for competency at the time the will was made and neither can offer an opinion to a reasonable degree of medical certainty as to the testator's competency at the time the will was made on May 11, 2012. The doctors who did examine the testator in May of 2012, including Dr. Ranjan, found him to be competent to handle his affairs. Similar findings of competency were made by examining physicians as late as December of 2012 as established by defense affidavits;

9. I find Plaintiff has provided no affidavits or other evidence to create a genuine issue of material fact as to the testator's competency to make a will on May 11th, and I therefore GRANT summary judgment to Defendant Lynch as to Plaintiff's claim of lack of capacity/incompetence;


10. As to the **undue influence** claim of the complaint, there is a higher standard

as set forth in Russell v. Wachovia which requires the contestant to prove undue influence by “unmistakable and convincing evidence.” Id., 353 S.C. 208, 578 S.E.2d 329 (2003). Once again, the affidavits of the defense persuasively establish an absence of undue influence, and the affidavits and documents of Plaintiff presented to the Court fall far short of “unmistakable and convincing” evidence and provide only conclusory statements of opinion that do not raise a genuine issue of material fact. The affidavits of the defense establish the testator took up residence with a friend, well beyond the influence of the Defendant, for several months after the will execution on May 11, 2012. Where the testator has an unhampered opportunity to revoke the will and does not change it, undue influence is destroyed. See Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982).

11. In reviewing the evidence in the light most favorable to Plaintiff, I find that there is no genuine issue of material fact as to Plaintiff’s claim of undue influence. The only affidavit or other evidence provided by Plaintiff that even touches on the subject is that of Rebecca White, and I find that it contains a bald assertion of undue influence with nothing more. As such, I GRANT summary judgment to Defendant as to Plaintiff’s claim of undue influence;

12. I further find that this action should be dismissed in its entirety.

IT IS SO ORDERED.



The Honorable Craig D. Brown,
Presiding Judge

This 22 day of June, 2015

Florence, South Carolina

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