THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
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.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

TABLE OF AUTHORITIES (CONT'D)

Cases **Page**

STATEMENT OF ISSUES ON APPEAL

A. Did the probate court and the circuit court err in finding that a provision in a testator's Will was ambiguous and was intended to devise the testator's real property located in the subdivision known as Goslin Pond in Clarendon County, South Carolina, where the Will stated the testator devised and bequeathed real property located in Santee, South Carolina to the beneficiary?

B. Did the lower courts err in allowing extrinsic evidence of the testator's intent concerning the identity of the parcel of real property he meant to convey to the beneficiary?

C. Did the lower courts err in interpreting the testator's will as validly conveying real property he owned in the subdivision known as Goslin Pond in Clarendon County, South Carolina to the beneficiary under a provision that stated the testator devised and bequeathed real property located in Santee, South Carolina to that beneficiary?

COUNTER-STATEMENT OF THE FACTS[1]

This case involves a family dispute concerning the interpretation of a Will that bequeathed the testator's real property located "in Santee," South Carolina, to the testator's stepson, Respondent Arthur B. Beasley Jr. ("Beasley"). Appellant Milton

[1]The Statement of the Case set forth in the Initial Brief of Appellant accurately sets forth the underlying proceedings in the present case. As a result, Respondent has not filed a separate Counter-Statement of case proceedings.

Oakley Dickson ("Dickson") contends that the description of the real property in the Will is fatally flawed and failed to specifically convey any asset to Beasley.

The testator, Herbert Dickson Sr. ("Herbert"), died on August 20, 2008, at the approximate age of 80. (Transcript of Hearing ["Tr."] p. 22, lines 16-17, July 21, 2010.) Earlier in life, while married to Dickson's mother, Herbert had four sons, one of whom was Dickson. (Pet'r's Ex. 1, Item III(1), (R. pp. 1-2); Tr. p. 21, lines 8-10, p. 22, lines 8-10. (R. p. 44; R. p. 45)

Herbert subsequently divorced Dickson's mother and later married Melba McSween Dickson ("Melba"). (Pet'r's Ex. 1, Item IV, (R. p. 123); Tr. p. 21, lines 20-25. Melba was the mother of Beasley and Linda B. Chaplin ("Chaplin"). (Tr. p. 21, lines 20-23, p. 22, lines 6-10. Thus, Beasley was Herbert's stepson.

Herbert and Melba were married for approximately 16 years prior to their deaths. (Tr. p. 22, lines 1-2.) During this period, Herbert developed a close relationship with Beasley. (Tr. p. 31, lines 11-14, p. 41, lines 16-18.) Melba passed away one month before Herbert died. (Tr. p. 22, lines 11-15.)

At the time of his death, Herbert owned three major assets: a shoe shop business and real property parcels in two separate locations. (Tr. p. 49, lines 18-23.) The first parcel of real property consisted of Herbert's major home residence located in Sumter, South Carolina. (Tr. p. 23, line 5, p. 49, lines 18-21.) The second parcel consisted of six lots located in a subdivision known as Goslin Pond in Clarendon

County, South Carolina. (Tr. p. 23, lines 9-25, p. 29, line 22 to p. 30, line 7, p. 36, lines 20-21, p. 42, lines 1-12, p. 44, lines 18-21.)

Herbert and Melba purchased the Goslin Pond lots during their marriage. (Tr. p. 66, line 21 to p. 67, line 7.) The couple resided at one of the Goslin Pond lots for a period of time. (Tr. p. 42, lines 13-15.) However, Herbert did not reside at that location at the time of his death. (Tr. p. 42, lines 16-17.)

The city of Santee, South Carolina, is located in Orangeburg County, South Carolina. (Tr. p. 17, lines 2-4, p. 44, lines 15-17.) Herbert's Goslin Pond lots are not located within the physical boundaries of the city of Santee. (Prob. Ct. Order, Sept. 21, 2011, p. 5, (R. p. 8.)

However, Herbert and his family colloquially referred to the Goslin Pond lots as the "Santee" property. For example, a financial statement that Herbert filed in 2001 referred to his "Santee home and two lots." (Tr. p. 51, lines 19-23, p. 67, lines 8-13.) Photographs taken of Herbert's Goslin Pond property in 1996 also contained handwritten labels describing the geographic location as "Santee." (Tr. p. 51, line 24 to p. 52, line 4.) During the hearing of July 21, 2010, Dickson conceded that even he "may have said Santee out of talking[.]" (Tr. p. 36, line 13.)

On March 9, 2007, Herbert executed the Last Will and Testament (the "Will") at issue in this case. (Pet'r's Ex. 1, R. pp. 121-129). Item III of the Will contains three specific devises and bequests. First, Herbert devised and bequeathed the sum of $1,000 to each of his four sons, including Dickson. (Pet'r's Ex. 1, Item III(1), R. pp.

122-123). The third specific devise and bequest states that in the event Melba predeceased Herbert, then Herbert devised and bequeathed his "homeplace and its contents" to Chaplin. (Pet'r's Ex. 1, Item III(3), (R. pp. 121-122).

The second specific devise and bequest of Item III of the Will provides:

> In the event my wife, Melba McSween Dickson, predeceases me, I will, give, devise and bequeath any property which I own at the time of my death in Santee, South Carolina and its contents to **Arthur B. Beasley, Jr.**, if he shall survive me. In the event he shall not survive me, then this bequest shall lapse and pass by the Residuary clause below.

(Pet'r's Ex. 1, Item III(2), (R. p. 121) (emphasis in original).)

The residuary clause of the Will devises and bequeaths the residue of Herbert's estate to Melba. (Pet'r's Ex. 1, Item IV, (R. p. 122). In the event that Melba should predecease Herbert, the residuary clause provides that the residue of the estate should be divided equally amongst six children: Herbert's four sons (including Dickson), Beasley, and Chaplin. (Pet'r's Ex. 1, Item IV, R. p. 122). The Will appointed Melba to serve as personal representative and directed that Beasley was to serve as successor personal representative. (Pet'r's Ex. 1, Item VI, R. pp. 122-123.)

Dickson contends that because Herbert never owned any real property located within the physical boundaries of the city of Santee, South Carolina, the second specific devise and bequest contained in Item III, No. 2 of Herbert's Will failed to convey any property to Beasley. In his Complaint, Dickson asked the court to issue a declaratory ruling that the specific devise and bequest to Beasley contained in Item

III, No. 2 of the Will be declared a nullity. (Summons and Petition dated September 19, 2008, (R. pp. 11-14).

A hearing on the matter was held on July 21, 2010. During that hearing, the parties discussed the geographic location of "Santee," South Carolina, as applied to the description of the "Santee" property that Herbert devised and bequeathed to Beasley. (Tr. p. 13, line 3 to p. 17, line 4.) The probate court judge then concluded:

> THE COURT: Thank you. Due to the fact that there is a geographical location called Santee, South Carolina and also there is a lake area that is called Santee, which there are thousands and thousands of people that will tell you they are going to Santee, and they're going to the lake. They're not crossing I-95 and going into the town of Santee. I think that there is some ambiguity because of the fact that they're—they can be talking about either location whenever you mention going to Santee or at Santee or in Santee.

(Tr. p. 17, lines 5-16.)

In the probate court's written Order dated September 21, 2011, the court found that it was "clear from the evidence presented that the Testator clearly intended to convey the property that he referred to as the 'Santee Property', the property in Clarendon County, to [Beasley] as evidenced by the language in his Will." (Prob. Ct. Order, Sept. 21, 2011, p. 5, (R. p. 8). Toward this end, the court took judicial notice of the fact that "all property bordering the Lake Moultrie and Lake Marion properties located in Clarendon County are commonly referred to as Santee Property by individuals from Sumter and Clarendon Counties." (Prob. Ct. Order, Sept. 21, 2011, pp. 5-6, (R. pp. 8-9).

Based on these findings, the probate court declared that the words "Santee Property," as used in the Will, referred to "the property owned by [Herbert] at the time of his death located in Clarendon County, South Carolina." (Prob. Ct. Order, Sept. 21, 2011, p. 6, (R. p. 9) . Thus, the court concluded that the Will validly bequeathed Herbert's Goslin Pond property to Beasley such that a Deed of Distribution should issue in Beasley's favor. (Prob. Ct. Order, Sept. 21, 2011, pp. 6-7, (R. pp. 9-10).

Dickson filed a motion for reconsideration. A hearing on this motion was held on July 3, 2012. In a letter opinion issued on October 17, 2012, the probate court denied Dickson's motion. (Prob. Ct. Order, Oct. 17, 2012, (R. p. 3). In so doing, the court ruled that it was still its opinion that the language of the Will was ambiguous and that Herbert "was referring to his property on Lake Marion when he mentioned his property in Santee, SC" in the Will. (Prob. Ct. Order, October 17, 2012, (R. p. 3).

Dickson appealed the probate court's decision to the Common Pleas Court for the Third Judicial Circuit. In an Order dated August 11, 2014, and entered on August 12, 2014, the circuit court affirmed the probate court's Order dated September 21, 2011. (Cir. Ct. Order, Aug. 11, 2014, p. 2, (R. p. 2). In so doing, the circuit court stated:

> The Sumter Probate Court properly found from the evidence presented that the Testator clearly intended to convey the property that he referred to as "Santee Property" to [Beasley] as evidenced by the language in his Last Will and Testament. This is obvious from the fact that he had never owned property in Santee, South Carolina, which was agreed to by all parties concerned. It would have been error to find otherwise.

(Cir. Ct. Order, Aug. 11, 2014, p. 2, (R. p. 2).

Dickson now appeals the decisions of the probate court and the circuit court in favor of Beasley to the Court of Appeals. As he did in the lower courts, Dickson contends that the language of the Will is unambiguous and that the purported conveyance of any real property to Beasley in Item III, No. 2 of that instrument is a nullity.

STANDARD OF REVIEW

"In an action at law, tried without a jury, the trial court's factual findings will not be disturbed on appeal unless found to be without evidence that reasonably supports the court's findings." *Alexander's Land Co. v. M&M&K Corp.*, 390 S.C. 582, 592, 703 S.E.2d 207, 212 (2010). The appellate court's standard of review "extends only to the correction of errors of law." *Electro Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter*, 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004); *see also Bob Jones Univ v Strandell*, 344 S.C. 224, 230, 543 S.E.2d 251, 253 (Ct. App. 2001).

A case involving the interpretation of a will is classified as an action at law. *Bob Jones Univ.*, 344 S.C. at 230, 543 S.E.2d at 253; *NationsBank of S C. v Greenwood*, 321 S.C. 386, 392, 468 S.E.2d 658, 662 (Ct. App. 1996). As a result, the factual findings of the probate court and the circuit court as to the present dispute

must be upheld so long as evidence exists that reasonably supports those findings. *Alexander's Land Co* , 390 S.C. at 592, 703 S.E.2d at 212. Appellate review is limited to the correction of an error of law. *Electro Lab of Aiken*, 357 S.C. at 367, 593 S.E.2d at 172; *Bob Jones Univ* , 344 S.C. at 230, 543 S.E.2d at 253.

ARGUMENT

I. THE LOWER COURTS CORRECTLY RULED THAT THE LANGUAGE OF HERBERT'S WILL WAS AMBIGUOUS AND WAS INTENDED TO DEVISE AND BEQUEATH HERBERT'S GOSLIN POND LOTS TO BEASLEY

In South Carolina, "[t]he cardinal rule of will construction is the determination of the testator's intent." *Bob Jones Univ* , 344 S.C. at 230, 543 S.E.2d at 254. In this regard, "every effort must be made to determine the intentions of the testator and carry out such intentions." *In re Estate of Prioleau*, 361 S.C. 627, 632, 606 S.E.2d 769, 772 (2004).

"In construing a will, a court's first reference is always to the will's language itself." *Bob Jones Univ.*, 344 S.C. at 230, 543 S.E.2d at 254. The court must determine "what the testator meant by the terms used in the written instrument itself[.]" *Allison v Wilson*, 306 S.C. 274, 278, 411 S.E.2d 433, 435 (1991).

Notably, the testator's intent "is to be ascertained upon construction of the entire will." *Prioleau*, 361 S.C. at 631, 606 S.E.2d at 772. "[E]ach item of [the] will must be considered in relation to the other portion." *Epworth Children's Home v Beasley*, 365 S.C. 157, 166, 616 S.E.2d 710, 715 (2005). In addition, the court is to

"give the words contained in the document their ordinary and plain meaning unless it is clear the testator intended a different sense or such meaning would lead to an inconsistency with the testator's declared intention." *Bob Jones Univ.*, 344 S.C. at 230, 543 S.E.2d at 254; *accord Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772.

If the terms or provisions of the will are clear and unambiguous, the will must be enforced as written. *Wise v. Poston*, 281 S.C. 574, 577, 316 S.E.2d 412, 414 (Ct. App. 1984). On the other hand, if an ambiguity exists, the court "may resort to extrinsic evidence to resolve the ambiguity." *Fenzel v. Floyd*, 289 S.C. 495, 498, 347 S.E.2d 105, 107 (Ct. App. 1986); *accord Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772.

In the present case, Dickson incorrectly argues that the language of Item III, No. 2 of Herbert's Will is clear and unambiguous and served to convey to Beasley only such property (if any) that Dickson owned within the geographic boundaries of the city of Santee at the time of his death. According to Dickson, the specific devise in Item III, No. 2 of the Will failed to convey any real property to Beasley because the Goslin Pond lots lie outside the boundaries of the city of Santee. This argument lacks legal merit and must be rejected.

Dickson's contentions fail to recognize the concept and meaning of a legal ambiguity. In contravention to Dickson's suggestions, ambiguities in a will may be either patent or latent in nature. *See Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772. A patent ambiguity arises from the words of the instrument in themselves, "before any

attempt is made to apply them to the object which they describe[.]" *In re Estate of Fabian*, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct. App. 1997); *accord Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772. A latent ambiguity, on the other hand, exists when an uncertainty arises, not based on the language of the will in itself, "but upon those words when applied to the object or subject which they describe." *Fabian*, 326 S.C. at 353, 483 S.E.2d at 476; *accord Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772. In other words, "[a] latent ambiguity exists when there is no defect arising from the face of the instrument, but arising when attempting to apply the words of the instrument to the object or subject described." *Beaufort County Sch Dist. v. United Nat'l Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95 (Ct. App. 2011).

A latent ambiguity arises, for example, where a will clearly names a beneficiary, but the evidence shows the existence of two potential beneficiaries with that name. *Smith v Coxe*, 183 S.C. 509, 191 S.E. 422, 425 (1937). "A latent ambiguity may also arise when a will contains a misdescription of the object or subject." *Id.* (internal quotation marks omitted); *see Fenzel*, 289 S.C. at 496-97, 347 S.E.2d at 106-07 (latent ambiguity existed where will bequeathed property on "Suber Street" to testator's four daughters, but evidence showed testator did not own any property on the named street, and testator owned other lots the family referred to as "Suber property").

In the present case, the probate court and the circuit court correctly found that a latent ambiguity arose from the language of the Will as applied to description of the

real property that Herbert specifically devised and bequeathed to Beasley. Item III, No. 2 of the Will states that Herbert devised and bequeathed to Beasley "any property which I own at the time of my death in Santee, South Carolina and its contents[.]" (Pl.'s Ex. 1, Item III(2), (R. p. 122). A latent ambiguity exists because the meaning of the phrase "in Santee" is unclear when applied to the real property that Herbert actually owned at the time of his death. *See Smith*, 183 S.C. 509, 191 S.E. at 425; *Fenzel*, 289 S.C. at 496-97, 347 S.E.2d at 106-07.

In this regard, the evidence shows it was well-known to all members of Herbert's family that Herbert owned two discrete parcels of real property during his lifetime. The first parcel was his major home residence in Sumter, South Carolina. (Tr. p. 23, line 5, p. 49, lines 18-21.) The second parcel consisted of six lots located in the Goslin Pond subdivision of Clarendon County, South Carolina. (Tr. p. 23, lines 9-25, p. 29, line 2 to p. 30, line 7, p. 36, lines 20-21, p. 42, lines 1-12, p. 44, lines 18-21.)

The city of Santee, South Carolina is located in Orangeburg County, South Carolina. (Tr. p. 17, lines 2-4, p. 44, lines 15-17.) However, the lower courts took judicial notice of the fact that "all property bordering the Lake Moultrie and Lake Marion properties located in Clarendon County are commonly referred to as Santee property by individuals from Sumter and Clarendon Counties." (Prob. Ct. Order, Sept. 21, 2011, pp. 5-6, (R. pp. 8-9). Herbert's Goslin Pond lots are located within this general area commonly referred to as "Santee." (Prob. Ct. Order, Oct. 17, 2012,

(R. p. 3) In addition, the record evidence showed that Herbert and his family, including Dickson, colloquially referred to Herbert's Goslin Pond lots as "Santee" property. (Tr. p. 36, line 13, p. 51, line 19 to p. 52, line 4, p. 67, lines 8-13.)

The lower courts correctly found that a latent ambiguity in the language of Item III, No. 2 of the Will existed in regard to the identification of the real property Herbert devised and bequeathed to Beasley, and that Herbert intended to bequeath his Goslin Pond lots to Beasley in that provision. Accordingly, Dickson's contention that the language of the Will is clear and unambiguous and failed to devise any real property to Beasley must be rejected.

This point is illustrated in the factually analogous case of *Fenzel*. In that case, three of the testator's four daughters filed a declaratory judgment action asking the court to interpret the will of their mother, Miriam Marshall. Item VII of the will devised to all four daughters "all the lots that I own on Suber Street, Columbia, South Carolina, except those hereinabove devised, under Item VI, share and share alike." 289 S.C. at 496, 347 S.E.2d at 106. At the time of her death, Mrs. Marshall did not own any lots on Suber Street except those devised under Item VI. However, Mrs. Marshall owned 17 other lots in the city of Columbia that were not named in any other section of her will. These lots were part of a large tract that the family referred to as the "Suber property." *Id.* at 497, 347 S.E.2d at 106-07. The evidence showed that Mrs. Marshall's mother was a Suber, and the "Suber property" was known as a large acreage of land that Mrs. Marshall had inherited from her mother. *Id*

The three plaintiff-daughters contended that the reference to "Suber Street" in Item VII of the will was a misdescription resulting from a scrivener's error, and that Mrs. Marshall's true intent was to devise and bequeath the 17 lots she owned in the city of Columbia to all four daughters. *Id* at 497, 347 S.E.2d at 107. The objecting daughter contended that the language of Item VII was unambiguous on its face and failed to convey to the beneficiaries any lots Mrs. Marshall owned that were not on Suber Street. *Id*

The court of appeals ruled that although the words "all the property I own on Suber Street" were unambiguous on their face, a latent ambiguity existed because Mrs. Marshall owned no lots on Suber Street. *Id.* at 498, 347 S.E.2d at 107. Thus, the trial court erred in refusing to look beyond the "four corners" of the will to identify the property that Mrs. Marshall intended to convey to her four daughters jointly. *Id.*

Fenzel is directly applicable to the present case. As occurred in that case, the Will at issue here contains a misdescription of the property that the testator intended to specifically devise and bequeath to the named beneficiary. *See id* As *Fenzel* demonstrates, a latent ambiguity arose from the fact that the testator, Herbert, did not own any property that fit the description set forth in the Will (i.e., property owned "in Santee"). Thus, the probate court and the circuit court correctly looked beyond the "four corners" of the Will to identity the real property that Herbert intended to specifically devise and bequeath to Beasley. *See id*

As also occurred in *Fenzel*, the testator (Herbert) owned real property that was located near the misdescribed location and was not specifically mentioned in any other section of the Will. Further, in both *Fenzel* and the present case, the testator's real property was commonly referred to by the family in a manner that at least partially accorded with the description set forth in the Will. *See id* Just as Mrs. Marshall's reference in her will to her "Suber" properties applied to the nearby lots that Mrs. Marshall acquired from her mother, Herbert's reference to his "Santee" property likewise should be applied to the lots he owned in Goslin Pond. *See id*

As the foregoing analysis reveals, the probate court and the circuit court correctly found that a latent ambiguity existed in Item III, No. 2 of Herbert's Will pertaining to the description of the real property that was specifically devised and bequeathed to Beasley. The courts properly interpreted this ambiguous language as conveying the lots Herbert owned in the Goslin Pond subdivision of Clarendon County to Beasley.

II. THE LOWER COURTS PROPERLY ADMITTED EXTRINSIC EVIDENCE TO AID IN INTERPRETING HERBERT'S WILL

Dickson's contention that the lower courts erred in admitting extrinsic evidence to aid in the interpretation of Herbert's Will must be rejected as contrary to established precepts of South Carolina law. As detailed in Argument Part I, *supra*, a latent ambiguity exists in the Will concerning the identification of the real property Herbert

intended to convey to Beasley through the specific devise and bequest set forth in Item III, No. 2.

"A court may admit extrinsic evidence to determine whether a latent ambiguity exists." *Bob Jones Univ* , 344 S.C. at 231, 543 S.E.2d at 254; *accord Fabian*, 326 S.C. at 353, 483 S.E.2d at 476. Indeed, the existence of a latent ambiguity is almost always revealed only upon the admission of extrinsic evidence. *Smith*, 183 S.C. 509, 191 S.E. at 422.

"Once the court finds a latent ambiguity, extrinsic evidence is . . . permitted to assist the court in determining the testator's intent." *Fabian*, 326 S.C. at 353, 483 S.E.2d at 476. It is error for the trial court to refuse to admit such evidence as an aid in resolving the ambiguity. *Fenzel*, 289 S.C. at 498-99, 347 S.E.2d at 107. In cases where a latent ambiguity exists, the court must look beyond the "four corners" of the will to determine the meaning of the language used. *Id*

In the present case, the probate court and the circuit court properly considered extrinsic evidence of Herbert's intent concerning the identity of the real property he desired to devise and bequeath to Beasley in Item III, No. 2 of the Will. The courts correctly utilized this evidence to interpret the reference to Herbert's real property located "in Santee" as conveying the lots Herbert owned in the Goslin Pond subdivision of Clarendon County to Beasley. *See Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772; *Smith*, 183 S.C. 509, 191 S.E. at 422; *Bob Jones Univ.*, 344 S.C. at 231,

543 S.E.2d at 254; *Fabian*, 326 S.C. at 353, 483 S.E.2d at 476; *Fenzel*, 289 S.C. at 498-99, 347 S.E.2d at 107.

III. THE LOWER COURTS CORRECTLY INTERPRETED ITEM III, NO. 2 OF HERBERT'S WILL AS VALIDLY BEQUEATHING HERBERT'S GOSLIN POND LOTS TO BEASLEY

Dickson incorrectly alleges that the record evidence does not support the lower courts' interpretation of Item III, No. 2 of Herbert's Will as devising and bequeathing Herbert's Goslin Pond lots to Beasley. Contrary to Dickson's contentions, the lower courts' interpretation of the Will is reasonable and accords with both the record evidence and with well-established precepts of South Carolina law.

A. Interpretation Of The Will As A Whole

As explained in Argument Part I, *supra*, the paramount consideration in interpreting a will is to ascertain and effectuate the intent of the testator. *Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772; *Bob Jones Univ.*, 344 S.C. at 231, 543 S.E.2d at 254. Dickson's interpretation of Item III, No. 2 of Herbert's Will is contrary to Herbert's evident intent to devise and bequeath his Goslin Pond lots to Beasley.

"Arriving at the intent of the testator requires that every item be considered in relation to the other portions of the will." *Holcombe-Burdette v. Bank of Am* , 371 S.C. 648, 657, 640 S.E.2d 480, 484 (Ct. App. 2006). In effect, the testator's intent can be ascertained only upon consideration of the will as a whole. *Epworth Children's*

Home, 365 S.C. at 165, 616 S.E.2d at 714; *Prioleau*, 361 S.C. at 632, 606 S.E.2d at 772.

Toward this end, "[a] court may not consider the will piecemeal, but must give due weight to all its language and provisions, giving effect to every part when, under a reasonable interpretation, all the provisions may be harmonized with each other and with the will as a whole." *Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715. If possible by any reasonable interpretation, "all clauses must be harmonized with each other and with the will as a whole." *McGirt v Nelson*, 360 S.C. 307, 311, 599 S.E.2d 620, 622 (Ct. App. 2004) (quoting *Shevlin v. Colony Lutheran Church*, 227 S.C. 598, 603, 88 S.E.2d 674, 677 (1955)).

According to Dickson, the phrase "any property which I own, at the time of my death in Santee, South Carolina" was intended to limit Herbert's specific devise and bequest to Beasley to real property located within the geographic boundaries of the city of Santee. (Pet'r's Ex. 1, Item III(2), (R. pp. 121-122). This interpretation, however, is piecemeal in nature and is not in harmony with the Will as a whole. Specifically, Dickson's construction of Herbert's second specific devise and bequest set forth in Item III, No. 2 completely ignores the language of the third specific devise and bequest set forth in Item III, No. 3 of the Will. (Pl.'s Ex. 1, Item III(3), (R. pp. 121-122).

Item III, No. 3 of the Will states that in the event Melba predeceased Herbert, then Herbert devised and bequeathed "my homeplace and its contents" to Chaplin.

(Pl.'s Ex. 1, Item III(3), (R. pp. 121-122). Reading the second and third specific bequests together, as the Court is required to do, it is clear that the reference to Herbert's "Santee" property in Item III, No. 2 of the Will was not intended to limit the bequest to Beasley to property located within the physical bounds of the city of Santee but rather was meant to distinguish Herbert's Goslin Pond lots from his "homeplace" in Sumter, South Carolina. *See Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715; *McGirt*, 360 S.C. at 311, 599 S.E.2d at 622.

Further, when the second and third specific bequests are considered in conjunction with the first specific bequest set forth in Item III, No. 1 of Herbert's Will, it is evident that Herbert intended to devise and bequeath the Goslin Pond lots to Beasley, the Sumter property to Chaplin, and to make specific bequests in cash to each of his four sons, including Dickson. *See Epworth Children's Home*, 365 S.C. at 165-66, 616 S.E.2d at 714-15; *Prioleau*, 361 S.C. at 631, 606 S.E.2d at 772; *Holcombe-Burdette*, 371 S.C. at 657, 640 S.E.2d at 484. This interpretation gives effect to and harmonizes all provisions of the Will and, therefore, must be preferred over Dickson's piecemeal and inharmonious construction. *See Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715; *McGirt*, 360 S.C. at 311, 599 S.E.2d at 622.

Accordingly, the Court should affirm the lower courts' ruling that the "Santee property" referred to in Item III, No. 2 of the Will consists of the six Goslin Pond lots that Herbert owned at the time of his death. This interpretation "fits into the whole

scheme or plan of the will" and, therefore, is "most likely to be the correct interpretation of the intent of the testator." *Epworth Children's Home*, 365 S.C. at 166, 616 S.E.2d at 715.

B. Taking Of Judicial Notice

Next, Dickson incorrectly argues that the probate court and circuit courts erred in taking judicial notice of the fact that "all property bordering the Lake Moultrie and Lake Marion properties located in Clarendon County are commonly referred to as Santee property by individuals from Sumter and Clarendon Counties." (Prob. Ct. Order, Sept. 21, 2011, pp. 5-6, (R. pp. 8-9). Again, Dickson misconstrues the law on this point.

A court may properly take judicial notice of a fact that is "of such common knowledge that it is accepted by the general public without qualification or contention[.]" *Eadie v H.A. Sack Co.*, 322 S.C. 164, 172, 470 S.E.2d 397, 401 (Ct. App. 1996). Further, a trial judge "is not prohibited in taking judicial notice of a collateral fact of which he has personal knowledge." *Gamble v. Price*, 289 S.C. 538, 541, 347 S.E.2d 131, 132 (Ct. App. 1986). Thus, judicial notice may be taken of the location or geographic bounds of a certain place. *People's Bank of Rock Hill v People's Bank of Anderson*, 122 S.C. 476, 115 S.E. 736, 737 (1923). Judicial notice may also be taken of local usages and customs. *Brookhart v. Langford*, 128 S.C. 350, 122 S.E. 866, 867 (1924).

During the hearing of July 21, 2010, the parties debated the meaning of the word "Santee" as applied to a given location in South Carolina. The probate court judge resolved this point by stating:

> Due to the fact that there is a geographical location called Santee, South Carolina and also there is a lake area that is called Santee, which there are thousands and thousands of people that will tell you they are going to Santee, and they're going to the lake. They're not crossing I-95 and going into the town of Santee. I think that there is some ambiguity because of the fact that they're—they can be talking about either location whenever you mention going to Santee or at Santee or in Santee.

(Tr. p. 17, lines 5-16.)

As this statement reflects, the probate court recognized the widespread and common custom of local residents to refer to the geographic location known as "Santee" in a manner that could include either the municipality or the lake area outside of the boundaries of the city of Santee. In its written Order, the probate court properly took judicial notice of the fact that properties located in Clarendon County that border Lake Moultrie and Lake Marion properties are within the geographic area commonly referred to as "Santee" by residents of Sumter and Clarendon Counties. *See Brookhart*, 128 S.C. 350, 122 S.E. at 867; *People's Bank of Rock Hill*, 122 S.C. 476, 115 S.E. at 737; *Gamble*, 289 S.C. at 541, 347 S.E.2d at 132; *Eadie*, 322 S.C. at 172, 470 S.E.2d at 401.

Herbert's Goslin Pond lots are located in the Lake Marion area. (Prob. Ct. Order, Oct. 17, 2012, (R. p. 3). Further, the record evidence showed that Herbert and his family, including Dickson, colloquially referred to those Goslin Pond lots as being

located in "Santee." (Tr. p. 36, p. line 13, p. 51, line 19 to p. 52, line 4, p. 67, lines 8-13.) Thus, the lower courts correctly recognized that Herbert's customary use of the word "Santee" in describing his Goslin Pond lots impacted the description of the real property he intended to bequeath to Beasley in Item III, No. 2 of the Will. *See Bob Jones Univ* , 344 S.C. at 231, 543 S.E.2d at 254.

C. Factual Findings Of Lower Courts

In contravention to Dickson's contentions, evidence in the record clearly exists to support the lower courts' factual finding that the phrase "in Santee," as applied to the description of the real property Herbert devised and bequeathed to Beasley in Item III, No. 2 of the Will, was ambiguous and was intended to describe the Goslin Pond lots that Herbert owned at the time of his death. This factual finding is not subject to review on appeal. *Alexander's Land Co.,* 390 S.C. at 592, 703 S.E.2d at 212. Hence, it must be concluded that the lower courts' interpretation of Herbert's Will was correct, and that Item III, No. 2 of the Will validly conveyed Herbert's Goslin Pond lots to Beasley. *See id.*

CONCLUSION

For the foregoing reasons, the Orders of the Sumter County Probate Court and the Circuit Court should be affirmed.

Respectfully submitted,

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Sumter, South Carolina
April 8, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
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.**

CERTIFICATE OF COUNSEL

I certify that this Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I hereby certify that a true and correct copy of the Brief of Respondent was served this day by depositing the same in the U.S. mail, in an envelope with sufficient postage affixed thereto, upon the following counsel of record:

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