

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

The Honorable Perry M. Buckner, III  
Circuit Court Judge

RECEIVED

FEB 16 2016

SC Court of Appeals

---

Case No. 2015-CP-25-0065

---

Estate of Willie G. Weekley, Deceased, By Its Personal  
Representative Betty W. Denney.....Respondent

v.

L.C. Weekley, Laura Weekley Segel, Individually and as  
Personal Representative of the Estate of William James Weekley,  
Deceased, Peter Saad as Personal Representative of Mary Elizabeth  
Weekley Saad, Deceased, and as Trustee of the Mary Elizabeth  
Saad Trust,

Of Whom Laura Weekley Segel, Individually And As Personal  
Representative Of The Estate of William James Weekley, Deceased  
is the.....Appellant.

---

RESPONDENT'S FINAL BRIEF

---

G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Hamlin.okelley@buistbyars.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iii

STATEMENT OF ISSUES ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS.....8

STANDARD OF REVIEW.....17

ARGUMENT .....18

I. THE CIRCUIT COURT FOR HAMPTON COUNTY AND THE HAMPTON COUNTY PROBATE COURT PROPERLY RELIED UPON THE EVIDENCE PRESENTED TO IT IN THE RECORD IN THIS CASE WHERE THERE WAS NO EVIDENCE OF ANY KIND PRODUCED BY THE APPELLANT TO INDICATE COMPLIANCE WITH HER GRANDFATHER’S WILL AND THE MECHANISMS FOR TRANSFERREING PROPERTY UNDER THE WILL SO THAT IT WOULD BE ERROR TO ALLOW THE PROPERTY TRANSFERRED IN VIOLATION OF THAT WILL TO REMAIN IN THE ESTATE OF THE APPELLANT’S DECEDANT WILLIAM JAMES WEEKLEY .....18

II. THE CIRCUIT COURT AND THE PROBATE COURT APPLIED THE APPROPRIATE STANDARD OF REVIEW IN A MOTION FOR SUMMARY JUDGMENT AND SHIFTED NO BURDENS TO THE APPELLANT WHERE THERE ARE NO ISSUES OF MATERIAL FACT PRESENTED TO THE PROBATE COURT BY THE APPELLANT’S AFFIDAVIT WHICH MAKES NO MENTION OF COMPLIANCE WITH HER GRANDFATHER’S WILL .....21

III. THE CIRCUIT COURT AND PROBATE COURT CONSIDERED THE APPELLANT’S AFFIRMATIVE DEFENSES AND OTHER MATTERS RAISED AND PROPERLY RULED THAT THESE AFFIRMATIVE DEFENSES CREATED NO ISSUE OF MATERIAL FACT SHOWING COMPLIANCE WITH THE APPELLANT’S GRANDFATHER’S WILL WHERE THE PROBATE COURT HAD BEEN ACTIVELY REVIEWING THE MATTERS CONTAINED IN ITS FINAL ORDER SINCE THE ORIGINAL MOTION FOR SUMMARY JUDGMENT WAS HEARD IN OCTOBER, 2010.....22

IV. THE CIRCUIT COURT PROPERTY AFFIRMED THE PROBATE COURT’S RULING THAT THE REAL PROPERTY AT ISSUE IN THIS CASE SHOULD BE TRANSFERRED BACK TO THE ETSTATE OF WILLIE G. WEEKELEY BASED UPUPON THE LACK OF COMPLIANCE WITH THE WILL OF WILLIE G. WEEKLEY.....25

V. THE PROBATE COURT PROPERLY RETAINED JURISDICTION OVER THE MATTERS PENDING BEFORE IT WHERE NO PETITION TO REMOVE THE CASE TO CIRCUIT COURT WAS FILED OVER FOUR YEARS AFTER THE LAST RESPONSIVE PLEADING WAS FILED AND NOT WITHIN TEN (10) DAYS AS REQUIRED BY S.C. CODE ANN. §62-1-302 SO THAT THE PROBATE COURT HAD TO RULE UPON THE MATTERS BEFORE IT WHICH RULE WAS UPHELD BY THE CIRCUIT COURT.....28

CONCLUSION .....29

## TABLE OF AUTHORITIES

### CASES

<i>Allison v. Wilson</i> , 306 S.C. 274, 411 S.E.2d 433 (1991) .....	20
<i>Bank v. N.Y. v. Sumter County</i> , 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010) .....	2
<i>Dean v. Kilgore</i> , 313 S.C. 247, 259-260, 437 S.E.2d 154, 155 (Ct. App. 1993) .....	17, 20
<i>In re Estate of Fabian</i> , 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997) .....	20, 23
<i>In re Will of Hall</i> , 318 S.C. 188, 456 S.E.2d 439 (Ct. App. 1995) .....	17
<i>King v. South Carolina Tax Comm'n</i> , 253 S.C. 64, 173 S.E.2d 92 (1970) .....	20, 23
<i>May v. Riley</i> , 279 S.C. 248, 305 S.E.2d 77 (1983) .....	20, 23
<i>Mille v. Rogers</i> , 246 S.C. 438, 144 S.E.2d (1965) .....	20
<i>Strickland v. Madden</i> , 323 S.C. 63, 448 S.E.2d 584 (Ct. App. 1994).....	21
<i>Townes Assoc. Ltd. v. City of Greenville</i> , 266 S.C. 81, 221 S.E.2d 773 (1976) .....	17
<i>Williams v. Williams</i> , 329 S.C. 569, 469 S.E.2d 23 (Ct. App. 1998) .....	17
<i>Woodson v. DLI Properties, LLC</i> , 406 S.C. 517, 753 S.E.2d 428 (2014).....	21, 22

### STATUTES

S.C. Code Ann. §62-1-302(a)(1)(1976, as amended) .....	28
S.C. Code Ann. § 62-1-302(1)(d)(1976, as amended) .....	6, 28
S.C. Code Ann. § 62-3-715 (1976, as amended) .....	6

### RULES

Rule 56(c) SCRCP .....	19, 22
Rule 56(e) SCRCP .....	21, 22

STATEMENT OF ISSUES ON APPEAL

- I. THE CIRCUIT COURT FOR HAMPTON COUNTY AND THE HAMPTON COUNTY PROBATE COURT PROPERLY RELIED UPON EVIDENCE PRESENTED IN THE RECORD IN THIS CASE WHERE THERE WAS NO EVIDENCE OF ANY KIND PRODUCED BY THE APPELLANT BEFORE EITHER COURT TO INDICATE COMPLIANCE WITH HER GRANDFATHER'S WILL AND THE MECHANISMS FOR TRANSFERRING PROPERTY UNDER THE WILL SO THAT IT WOULD BE ERROR TO ALLOW THE PROPERTY TRANSFERRED IN VIOLATION OF THAT WILL TO REMAIN IN THE ESTATE OF THE APPELLANT'S DECEDANT WILLIAM JAMES WEEKLEY
- II. THE CIRCUIT COURT AND THE PROBATE COURT APPLIED THE APPROPRIATE STANDARD OF REVIEW IN A MOTION FOR SUMMARY JUDGMENT AND SHIFTED NO BURDENS TO THE APPELLANT WHERE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT PRESENTED TO THE PROBATE COURT BY THE APPELLANT'S AFFIDAVIT WHICH MAKES NO REFERENCE TO COMPLIANCE WITH HER GRANDFATHER'S WILL
- III. THE CIRCUIT COURT AND PROBATE COURT CONSIDERED THE APPELLANT'S AFFIRMATIVE DEFENSES AND OTHER MATTERS RAISED AND PROPERLY RULED THAT THESE AFFIRMATIVE DEFENSES CREATED NO GENUINE ISSUE OF MATERIAL FACT SHOWING COMPLIANCE WITH THE APPELLANT'S GRANDFATHER'S WILL WHERE THE PROBATE COURT HAD BEEN ACTIVELY REVIEWING THE MATTERS CONTAINED IN ITS FINAL ORDER SINCE THE ORIGINAL MOTION FOR SUMMARY JUDGMENT WAS HEARD IN OCTOBER, 2010.
- IV. THE CIRCUIT COURT PROPERLY AFFIRMED THE PROBATE COURT'S RULING THAT THE REAL PROPERTY AT ISSUE IN THIS CASE SHOULD BE TRANSFERRED BACK TO THE ESTATE OF WILLIE G. WEEKLEY BASED UPON THE LACK OF COMPLIANCE WITH THE WILL OF WILLIE G. WEEKELY
- V. THE PROBATE COURT PROPERLY RETAINED JURISDICTION OVER THE MATTERS PENDING BEFORE IT WHERE NO PETITION TO REMOVE THE CASE TO CIRCUIT COURT WAS FILED OVER FOUR YEARS AFTER THE LAST RESPONSIVE PLEADING WAS FILED AND NOT WITHIN TEN (10) DAYS AS REQUIRED BY S.C. CODE ANN. §62-1-302 SO THAT THE PROBATE COURT HAD TO RULE UPON THE MATTERS BEFORE IT WHICH RULING WAS UPHeld BY THE CIRCUIT COURT

## STATEMENT OF THE CASE

This matter is before this Court appealing the Order of the Honorable Perry M. Buckner, III, dated June 30, 2015, which affirmed the Order of the Honorable Shelia B. Odom dated February 6, 2015, ordering certain property to be transferred back into the Estate of Willie G. Weekley (R. pp. 28-31; R. pp. 16-27). In the his Order, Judge Buckner upheld the ruling of Judge Odom granting summary judgment to Betty W. Denney, the Personal Representative of the Estate of Willie G. Weekley, Mrs. Denney's father. (R. pp. 28-31). In his Order, Judge Buckner wrote:

Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law. *Bank v. N.Y. v. Sumter County*, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010). "On review of an order granting summary judgment, the appellate court applies the same standard as that used by the trial court." *Id.* at 155, 691 S.E.2d at 477.

In construing a will, the court should strive to determine and give effect to the testator's intent. *May v. Riley*, 279 S.C. 248, 305 S.E.2d 77 (1983); *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997).

The Probate Court looked at the testator's intent and spent close to five years examining the evidence in this case before issuing its ruling. In granting the Motion for Summary Judgment to the Respondent [Mrs. Denney] the Probate Court filed on the affidavit of the Appellant, Laura W. Segal, ruling that "she cannot demonstrate compliance with the intent of her grandfather's will in that no offer of first refusal was provided to the devisees as described in Sections IV and II of the Will. Had there been compliance with the Will, then Ms. Segal's affidavits should have stated the compliance." (Order, February 6, 2015, p. 10). Additionally, the Probate Court denied the Appellant's equitable defenses, stating that it "would be inequitable for the Estate to be deprived of these properties. (Order, February 6, 2015, p. 10).

After considering the arguments at the hearing, the Probate Court's Order of February 6, 2015, and the submissions of the Appellant and Respondent; this Court finds that the Appellant cannot produce any evidence of compliance with the testator's intent, namely that the right of first refusal provision in Section VII of the Will was complied with.

In addition, in response to the Appellant's affirmative defenses of laches, waiver, and estoppel, this Court notes that Ms. Denney was appointed Personal Representative on July 14, 2006, and the Complaint was filed on November 14, 2007. Therefore, this Court finds that the time which passed before filing did not invoke the equitable remedies of laches, waiver, and estoppel

For these reasons, the decision of the Hampton County Probate Court is affirmed, and

IT IS SO ORDERED!

(*Id.* at pp. 28-31).

The case came to Judge Buckner for an appeal of the February 6, 2015, Order of Judge Odom granting summary judgment to Mrs. Denney requiring that certain property be returned to her father's estate where the transfers were not made in compliance with Willie G. Weekley's Will. (R. pp. 16-27).

This case that has been pending in Hampton County Probate Court for the Estate of Willie Gelzer Weekley since 2006. (R. p. 3). The Estate of Willie G. Weekley was opened February 28, 1983, and remains open to this day. (R. pp. 16-27).

Betty Weekley Denney is the Personal Representative of the Estate of her father, Willie Gelzer Weekley. The Hampton County Probate Court appointed her as Personal Representative on July 14, 2006. (R. p. 3). Mrs. Denney's father died testate in 1977 leaving his Last Will and Testament dated May 10, 1973 (the "Will"). Mr. Weekley's Estate was opened on February 28, 1983, and remains open to this day. It has yet to be fully administered.

Upon her appointment as Personal Representative, and while marshalling the assets of her father's Estate, Mrs. Denney commissioned a title search that revealed, and which she confirmed and determined, that certain real estate assets of her father's Estate had been conveyed or sold in violation of her father's Will. (R. pp. 36-39; R. pp. 16-27).

These inappropriate transactions include the following:

- (a) Conveyances from L.C. Weekley to William J. Weekley the Appellant's decedent (conveying L.C. Weekley's interest in Tact 2<sup>1</sup> under (1) the Will of Willie Gelzer Weekley and/or; (2) the death of Jasper J. Weekley by Deed filed on 12/20/1999 in Hampton County Deed Book 236 at Page 283.
- (b) Mortgage from William James Weekley to Lucas Carroll Weekley dated 12/20/1999 and filed in Hampton County Mortgage Book 260 at Page 271.
- (c) Deed from Mary Elizabeth Weekley Saad to Mary Elizabeth Weekley Saad Trust dated 10/7/1997 (conveying her interest in Tract 2 originally the property of her father Willie Gelzer Weekley) being dated 5/8/2000 and filed in Hampton County Public Records in Deed Book 242 at Page 112.
- (d) Deed from Mary Elizabeth Weekley Saad as Trustee of the Mary Elizabeth Weekley Saad Trust dated 10/7/1997 to Laura W. Segal (conveying all the Trust interest in Tract 2 received from her father W.G. Weekley) which deed is filed in Hampton County Public Records in Deed Book 246 at Page 225.

(R. pp. 36-39).

As a result of the discovery of these improper transfers, Mrs. Denney filed her Complaint on July 14, 2007, asking the Court to place these properties back into her father's Estate. (*Id.*)

The Defendants L.C. Weekley and Patrick Saad did not answer, move, or otherwise plead in the case. (R. pp. 40-43). These Defendants are in default and consent to the relief requested by Mrs. Denney.

The Appellant Laura W. Segal is the granddaughter of Willie Gelzer Weekley and the daughter of William James Weekley, deceased, as well as her father's Personal Representative. Ms. Segal filed her Answer and Counterclaim in this case on February 13, 2008. (R. pp. 44-50). Mrs. Denney filed her Reply to the Answer and Counterclaim on February 25, 2008. (R. pp. 51-

---

<sup>1</sup> This 'Tract 2' is reference to Tact 2 on plat by W.A. Miley dated December 17, 1938 filed in Plat Book 3, Page 135 in Hampton County Records. This plat was agreed upon division regarding Estate of J.J. Weekley, deceased. See also Deed Book 31 at Page 120(the "Plat").

54). Additionally, Mrs. Denney moved to dismiss the Answer and Counterclaim on the same date. (R. pp. 55-57).

On September 30, 2009, Ms. Denney filed a motion for summary judgment asking the Probate Court to determine that there were no issues of material fact that could demonstrate any compliance with the will of Willie Gelzer Weekley so that the transfers described in the Plaintiff's Complaint could be set aside. (R. pp. 59-61).

On October 9, 2009, Ms. Segal filed a motion to compel discovery responses. (R. pp. 62-64)

The Probate Court set a date for the hearing of the Motion for Summary Judgment and Notice of Hearing was filed sent to all parties on September 23, 2010, advising that the Probate Court would hear the Motion on October 15, 2010. (R. pp. 65-66)

On September 28, 2010, Mrs. Denney executed and delivered a Deed of Distribution transferring the "Homeplace" portion of her father's real property to herself and to her sister, Margaret Weekley Shinar, the only other remaining living child of Willie G. Weekley in compliance with her father's Will. (R. pp. 203-205).

On October 14, 2010, Mrs. Denney provided discovery responses to Ms. Segal. (R. pp. 67-72)

Also, on the same date, October 14, 2010, Ms. Denney provided the Probate Court a Memorandum in Support of her Motion for Summary Judgment. (R. pp. 108-138).

On October 15, 2010, the Probate Court heard the Plaintiff's Motion for Summary Judgment. In her Affidavit responding to the Motion for Summary Judgment, Ms. Segal presented no facts that would show any compliance with the Will of her grandfather as relates to the transfers complained of by Mrs. Denney. (R. pp. 77-107)

The parties waited for the Probate Court to issue its Order. While the Order remained under advisement with the Probate Court, Ms. Segal filed a Petition to have Mrs. Denney removed as the Personal Representative of the Estate of Willie Gelzer Weekley, a Petition to set aside the Deed of Distribution from Mrs. Denney to herself and her sister, Margaret Weekley Shinar, and a Motion to remove the case to the Circuit Court for Hampton County. (R. pp. 154-163). The motion to remove the case to Circuit Court was made over four (4) years and four (4) months after the all responsive pleadings in the case were filed and not within ten (10) days following the date on which all responsive pleadings must be filed. (*Id.*) See S.C. Code Ann. § 62-1-302(1)(d)(party or Probate Court may remove matter to Circuit Court if motion to remove made not later than ten days following the date on which all responsive pleadings must be filed).

Also, while the underlying summary judgment motion remained under advisement, Ms. Segal filed a motion for a temporary restraining order attempting to have Mrs. Denney enjoined from entering into a lease for the real property owned by the Estate of Willie G. Weekley with Kuzzens, Inc., a large tomato farming company based in Florida. (R. pp. 165-167). As Mrs. Denney was the authorized and duly appointed Personal Representative of her father's Estate with all powers under the Will and as given by the South Carolina Probate Code, the Probate Court denied the Motion at a hearing on February 13, 2013. See S.C. Code Ann. §62-3-715 (1976, as amended).

On August 29, 2013, the Probate Court issued its Order partially granting Ms. Denney's Motion for Summary Judgment and granting Ms. Segal's motion to transfer the case to the Circuit Court. (R. pp. 5-17).

Due to some confusion with the Order, Ms. Denney filed a Motion to Reconsider on September 13, 2013. (R. pp. 168-170). The Court took the Motion under advisement and finally scheduled a hearing for January, 2015.

On January 5, 2015, the Probate Court held a hearing of the Motion to Reconsider and issued its final Order on February 6, 2015, by way of that Order Granting the Plaintiff's Motion for Summary Judgment upon the Motion to Reconsider and upon a Motion Hearing on January 5, 2015. (R. pp. 174-185; R. pp. 16-27).

The Appellant filed a notice of appeal on February 12, 2015. No copy of the notice of appeal was served upon Mrs. Denney through her counsel or otherwise by the Appellant. The Appellant's former counsel was suspended from the practice of law around the same time as the notice of appeal was allegedly filed and served.

Mrs. Denney filed a Motion to Dismiss the Appeal due to non-service and the failure to comply with the statute for appeals from Probate Court. (R. pp. 171-173).

On June 15, 2015, Judge Buckner heard the Appeal in Hampton, South Carolina. (R. pp. 186-201) During that hearing, Judge Buckner asked counsel for the Appellant if there was a right first of first refusal in the Will. (*Id.*) Counsel admitted that there was a right of first refusal and that the testator created conditions precedent to the transfer of property. (R. pp. 189-190). Counsel also conceded that there "is no evidence in the record that the transfer was made in compliance." (R. p. 191). As Judge Buckner asked

THE COURT: But she [the Probate Judge] found that the transfers were null and void and that the properties should be returned to the Estate of W.G. Weekley for distribution pursuant to the terms of the Will because there was no evidence of compliance, isn't that correct?

MS. JOLLEY: Yes, Your Honor.

THE COURT: All right. So I'm asking you now, because you're appealing to me, what evidence do I have before me in the record that there was compliance with the terms of the testator's wishes?

MS. JOLLEY: There is no evidence in the record that the transfer was made in compliance. There is also no evidence in the record that they were not.

(R. p. 191).

#### STATEMENT OF FACTS

This is appeal of the Order Denying the Appeal of Laura Weekley Segal of Honorable Perry M. Buckner (R. pp. 28-31). Judge Buckner heard this appeal in Hampton, South Carolina, on June 15, 2015, of that Order of the Probate Court for Hampton County dated February 6, 2015. (R. pp. 186-201. This case has been pending before the Probate Court for Hampton County since 2006. (R. p. 3; R. p. 32).

On January 5, 2015, this matter came before the Probate Court for Hampton County for a hearing of the Plaintiff's Motion to Reconsider the Probate Court's Order filed August 29, 2013 (the "Order"). The hearing followed a May 15, 2014, status conference in the case called by the Probate Court to discuss with counsel the outstanding Motion to Reconsider the Probate Court's Order filed August 29, 2013 (the "Order"). The August 29, 2013, Order ruled upon the October 15, 2010, hearing of the Plaintiff's Motion for Summary Judgment dated September 24, 2009. (R. pp. 5-15).

At the hearing on January 5, 2015, counsel for Mrs. Denney and for Laura Weekley Segal, individually, and as Personal Representative of the Estate of William James Weekley, deceased, argued their respective positions. Also present at the hearing Thomas C. Davis, counsel for Chris Crosby, who claims to be the beneficiary of L.C. Weekley, deceased, a Defendant in default in this case.

At the time of the January 5, 2015, hearing the Probate Court for Hampton County granted the Motion to Reconsider and the Motion for Summary Judgment. (R. ppp. 16-27).

The February 6, 2015, Order clarified the Probate Court's Order of August 29, 2013, in which the Probate Court ruled that the Plaintiff's Motion for Summary Judgment should be granted in part.

At the January 5, 2015, hearing, the Probate Court made the following observation on the record about the case and the Motion for Summary Judgment:

And there have been several ways that it's been put before this Court to decide this way or that way, but the bottom line that this Court has to make sure and adhere to is the testator's intent. What did this gentleman want as a result to happen from his last will and testament.

He took the time, he took the initiative to prepare a will. He wrote out in his last will and testament, which albeit it took [the Court] about 13 hours of [its] personal time away from my office, away from the phones, to go through and decipher over and over again once both the councilmen put before this Court their independent positions for their clients behalfs [sic] to look at it from the ground up in – in both spectrums. Not an easy task. Whether it be that [the Court] independently had been in this court or any other probate judge.

So therefore, taking a step back from all those other smoking guns and mirrors, this Court has to go back to the original question what was the testator's intent. This Court finds in ruling the way that the Court did in August and presenting the order that the Court presented and in the middle of this order that the Court felt had equitably tried to entertain the position from both parties here, that this order couldn't really go as it was so the Court does take a step back and look at the issues again regarding the order and the way it was – was presented. Couldn't make a ruling part. It's one way or the other.

The Court does offer the apologies. [The Court] tried to do what [it] felt like from the Court's perspective that would be in the best interest of all parties. There again, it brings me back to square one and the point again of was the testator's will carried out.

This – this Court is ruling from this bench today because, again, I do in agreement with both attorneys feel that this Court – this case has gone on for too many years. Unfortunately, [the Court] feel[s] like it's – it's not a quick fix, it's

going to continue to go on; however, you will have a point that you can derive and go from this date forward.

This Court is rendering an order for motion of summary judgment and the Court is going to release the case to the circuit court for the properties that are going back into the estate for the circuit court to rule on how those properties should be distributed or whether or not those contracts for deeds are going to be affirmed or not, but from this day forward the probate court summary judgment stands as ordered.

(R. p. 184-184).

At the same hearing the Court further ruled from the bench as follows:

MR. O'KELLEY: And, Your Honor, just as a point of clarification, it's – the order from 2013 stands as the order saying that the properties were – should go back to the estate.

THE COURT: That is correct

MR. O'KELLEY: And, Your Honor, those properties being the four that are complained of in Paragraph 9 – the transfers in Paragraph 9 of the complaint are now back into the estate.

THE COURT: That's correct.

(R. p. 184).

By its ruling from the bench on January 5, 2015, the Hampton County Probate Court once again ruled, and continued to rule, that the conveyances described in Paragraph 9 of the Plaintiff's Complaint violate the Will of Willie G. Weekley dated May 10, 1973 (the "Will"). As stated on January 5, 2015, the Court further ruled that these conveyances were and are improper under the terms of the Will, that the conveyances must be voided, and that the properties must be placed back into the Estate of Willie G. Weekley for proper distribution according to the Will and which distribution would then be supervised by the Circuit Court for the Fourteenth Judicial Circuit. (R. pp. 16-27). The Court also clarified that the conveyance of the forty (40) acre Homesite as described in the Will was proper under the terms of the Will and clarified that ruling by the February 6, 2015, Order. (*Id.*) The Hampton County Probate Court further ruled that the

Circuit Court was to be the proper venue to handle the final issues with the Estate, including the distribution of the remaining acreage owned by the Estate of Willie G. Weekley according to the intent of the Will. (*Id.*) This Court found that there was no evidence of compliance with what are essentially conditions precedent to a transfer as contained in the Will. (*Id.*)

Mrs. Denney and her sister Margaret Weekley Shinar are the only living children of Willie Gelzer Weekley. Willie Gelzer Weekley died testate in on November 6, 1977, leaving that Last Will and Testament dated May 10, 1973 (the "Will). Mr. Weekley's Estate was opened on February 28, 1983, and remains open to this day. It has yet to be fully administered. (*Id.*) In his Will, Mr. Weekley left his property to his eight children. (R. pp. 116-121).

The Will set forth specific mechanisms for the disposal of the real property owned Mr. Weekley at the time of his death to his heirs. (R. pp. 116-121). In the Will, Mr. Weekley determined that to be "fair and equitable, I hereby, for the purpose of this instrument, divide my lands into Thirty-three (33) shares of Ten (10) acres each." (R. p. 117). Those shares were then to have been distributed to the eight children of Willie Gelzer Weekley as follows:

I hereby give, devise and bequeath the shares above referred to under the terms and conditions hereinafter set forth, to my children in the following proportions: William J. Weekley, eight and one-half (8½) shares; Doris Weekley Zahler, five (5) shares; Lucas Carroll Weekley, eight and one-half (8½) shares; Jasper Josiah Weekley, Two and one-half (2½) shares; Margaret Weekley Shinar, one (1) share; Elizabeth Weekley Saad, one (1) share; Ruth Weekley Chakides, One and one-half (1½) shares; and Betty Weekley Denney, one (1) share.

(R. p. 117).

The remaining four (4) shares were to be divided as follows:

V

I hereby further devise and bequeath four (4) shares equally to all of my surviving children located immediately east and west of Salkehatchie Road at the northern extremity of my land, including my home and home site. I further direct that no party of this forty (40) acres can be sold or divided without the unanimous consent of all surviving heirs. Taxes shall be shared equally by all surviving heirs. Maintenance, use of, and physical developments that occur on this forty (40) acres must have majority agreement of all surviving heirs. In this instance, each vote shall be by surviving heirs, rather than by shares owned. Upon the death of my last surviving child, provided this forty (40) acres has not been disposed of prior to that time by unanimous agreement of all surviving heirs, then I further direct that this forty (40) acres be divided equally among all of my surviving grandchildren or sale at auction to the highest bidder, and the proceeds of same be distributed among all of my surviving grandchildren. Regarding of the time of sale, prior to the death of my surviving children or after, the proceeds of the sale of this forty (40) acres, or any part thereof, shall be divided equally among my then surviving grandchildren.

(R. pp. 117-118).

Mrs. Denney deeded these 40 acres, also known as the "Homesite" acreage, to herself and her sister by way of a Deed of Distribution dated September 28, 2010. (R. pp. 203-205)

The Will goes on to set forth the further disposition of the property as follows:

VI

The location of each devisees portion of land is to be determined by majority vote of the devisees. The vote of each devisee will be in proportion to their shares. It is my desire and intention that Jasper Josiah Weekley's portion be in the "Pine Thicket." His portion will be on Salkehatchie Road joining the J.F. Weekley property and going back to the swamp.

(R. p. 118).

The next Section of the Will is the key to the current dispute before the Court. It states as follows:

## VII

I hereby direct that any time after Two (2) years of my death, that the devisees agree on the location of their portion, that the property can be divided. **I further direct that any time one of the devisees desires to sell his portion of the property, that he first offer it to the remaining devisees.** Should they not be able to agree on a price for the property to be sold, then the seller would choose one appraiser and the remaining devisees another appraiser and the third appraiser [sic] would be the Bank of Hampton, South Carolina. The average of the three appraisals would be the selling price. The devisees purchasing the property would contribute to the purchase price according to the proportions they received in Paragraph IV, and the portion so purchased would likewise be divided.

(R. p. 119)(emphasis added).

There is NO evidence that the transfers complained of by the Plaintiff in Paragraph 9 of her Complaint in this matter complied with this Section VII of the Will in that there is no evidence that there was a right of first refusal given to remaining devisees as required. (See R. pp. 178-179; R. pp. 190-191) Counsel for the Appellant, both present and past, have conceded this before both the Probate Court and the Circuit Court.

Section VIII of the Will established that until such time as the entire Estate had been distributed, then all decisions regarding the management of the Estate shall be by vote of the devisees in proportion to their share, and all profits and losses shall be by proportion, too. (R. p. 119). Section XI of the Will states that if a devisee shall predecease W.G. Weekley, then issue of the devisee shall take their parent's share *per stirpes*. (R. p. 119).

The Will named William J. Weekley, Doris Weekley Zahler, and Lucas Carroll Weekley as the executors. (R. p. 119) All three of these former executors are deceased. In order to continue to administer her father's Estate, Betty W. Denney became the Personal Representative accordingly by petition to the Hampton County Probate Court. (R. pp. 32-35)

Prior to her appointment as Personal Representative, Mrs. Denney determined that since April 2, 1983, there had been no activity with her father's Estate. (R. pp. 32-35) After her appointment as the Personal Representative, Mrs. Denney then undertook the marshalling of the assets of the Estate in an attempt to finally close it. In doing so, Mrs. Denney hired a title abstractor to determine the status of the 330 acres owned by the Estate. (Complaint) As a result of that abstract, Mrs. Denney discovered that there were several transfers from devisees to her brother W. J. Weekley, the father and decedent of the appellant, Laura W. Segal. These are the transfers that the Probate Court voided and put back in to the Estate of Willie Gelzer Weekley by its Order on February 6, 2015. (R. pp. 16-27).

These transfers were as follows:

1. Conveyances from L.C. Weekley to W.J. Weekley (conveying L.C. Weekley's interest in Tact 2<sup>2</sup> under (1) Will of Willie Gelzer Weekley and/or; (2) Death of Jasper J. Weekley by Deed filed on 12/20/1999 in Hampton County Deed Book 236 at Page 293;
2. Mortgage from William James Weekley to Lucas Carroll Weekley dated 12/20/1999 and filed in Hampton County Mortgage Book 260 at Page 271;
3. Deed from Mary Elizabeth Weekley Saad to Mary Elizabeth Weekley Saad Trust dated 10/7/1997 (conveying her interest in Tract 2 originally the property of her father Willie Gelzer Weekley) being dated 5/8/2000 and filed in Hampton County Public Records in Deed Book 242 at Page 112;
4. Deed from Mary Elizabeth Weekley Saad as Trustee of the Mary Elizabeth Weekley Saad Trust dated 10/7/1997 to Laura W. Segal (conveying all the Trust interest in

---

<sup>2</sup> This 'Tract 2' is reference to Tact 2 on plat by W.A. Miley dated December 17, 1938 filed in Plat Book 3, Page 135 in Hampton County Records. This plat was agreed upon division regarding Estate of J.J. Weekley, deceased. See also Deed Book 31 at Page 120.(R. p. 202)

Tract 2 received from her father W.G. Weekley) which deed is filed in Hampton County Public Records in Deed Book 246 at Page 225.

Mrs. Denney brought this action seeking to have the Probate Court declare the transfers invalid, to ensure compliance with the mechanisms in the Will, and, ultimately, to close her father's Estate. (R. pp. 36-39); *See* S.C. Code Ann. §62-1-302(1)(Probate Court granted jurisdiction of cases for the determination of property in which the estate of a decedent has an interest). Mrs. Denney has alleged, and the Probate Court and Circuit Court have agreed, that these transfers did not comply with the intent of Willie Gelzer Weekley's Will (R. pp. 16-27; R. pp. 28-31). These transfers were conducted by Laura Segal's decedent, Mrs. Denney's brother, in direct violation of the Will. (*Id.*) There was NO evidence presented by Ms. Segal at any time that the transfers complained of complied with the Will. (*Id.*) The Hampton County Probate Court has studied these matters for over five (5) years and could not find even the "mere scintilla" of material fact that would any way allow that Court to deny Ms. Denney's Motion for Summary Judgment. (*Id.*) Ms. Segal presented NO information in her lengthy Affidavit in opposition to the Motion for Summary Judgment that could show any compliance with her grandfather's Will. (R. pp. 77-107). Accordingly, the Hampton County Probate Court granted summary judgment to Mrs. Denney. (R. pp. 16-27).

At the final hearing of this matter on January 5, 2015, Ms. Segal's then-counsel agreed that there was no compliance with the Will and stated as follows:

MR. CARTER:

....

So as Your Honor well recognized, okay, maybe the original transfers **were not in technical compliance with the – with the will**, but very often wills can't be followed.

(R. pp. 178-179)(emphasis added).

At the hearing before Judge Buckner on June 15, 2015, Ms. Segal's then-counsel also agreed there was no compliance with the Will and stated as follows:

MS. JOLLEY            There is no evidence in the record that the transfer was made in compliance. ....

(R. p. 191).

Ms. Segal's own counsel conceded the very matter she is appealing today both in Probate Court and in Circuit Court: there was no compliance with the Will. (*Id.*; R. p. 179) (“Well, Your Honor, I almost fell out of my chair a minute ago, because Mr. Carter just stated there was no compliance with the will and that was Your Honor's ruling on Page 9....) There was nothing presented in the form of any evidence that could lead to a mere scintilla of material fact being in dispute, either at the original hearing date of October 15, 2010, or at the final hearing date of January 5, 2015, that could in any way show compliance. As the Probate Court properly stated, “...the bottom line [is] that this Court has to make sure and adhere to the testator's intent.” (R. p. 17). By ruling as it did, the Hampton County Probate Court finally insured compliance with the intent of Willie Gelzer Weekley and the Circuit Court agreed. And Judge Buckner confirmed by his Order, the Appellant before him, and, now before this Court “cannot produce any evidence of compliance with the testator's intent, namely that the right of first refusal provision in Section VII of the Will was complied with.” (R. p. 30).

## STANDARD OF REVIEW

This case was heard by the Probate Court sitting in equity and affirmed by the Circuit Court meaning that the two-judge rule applies. Under the two-judge rule, the standard of review in equity cases in which probate and circuit courts concur is whether there is any evidence to support findings of the court below. *Williams v. Williams*, 329 S.C. 569, 496 S.E.2d 23 (Ct. App. 1998); *Dean v. Kilgore*, 313 S.C. 247, 259-260; 437 S.E.2d 154, 155 (Ct. App. 1993). Under the two-judge rule, the review court must affirm if there is evidence reasonably supporting the lower court's findings. *In re Will of Hall*, 318 S.C. 188, 456 S.E.2d 439 (Ct. App. 1995). *Townes Assoc. Ltd v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). The standard of review is whether there is any evidence to support the Circuit Court's findings. *Dean v. Kilgore*, 313 S.C. 247, 259-260; 437 S.E.2d 154, 155 (Ct. App. 1993).

## ARGUMENT

Both the Circuit Court and the Probate Court for Hampton County correctly ruled on the Motion for Summary Judgment where there was NO evidence presented of any nature that the transfers complained of complied with the Will of Willie Gelzer Weekley, where counsel for the Appellant conceded there was no compliance with the Will, and where the on-moving party offered NO evidence of compliance with her grandfather's Will.

I. THE CIRCUIT COURT FOR HAMPTON COUNTY AND THE HAMPTON COUNTY PROBATE COURT PROPERLY RELIED UPON EVIDENCE PRESENTED IN THE RECORD IN THIS CASE WHERE THERE WAS NO EVIDENCE OF ANY KIND PRODUCED BY THE APPELLANT BEFORE EITHER COURT TO INDICATE COMPLIANCE WITH HER GRANDFATHER'S WILL AND THE MECHANISMS FOR TRANSFERRING PROPERTY UNDER THE WILL SO THAT IT WOULD BE ERROR TO ALLOW THE PROEPRTY TRANSFERRED IN VIOLATION OF THAT WILL TO REMIAN IN THE ESTATE OF THE APPELLANT'S DECEDANT WILLIAM JAMES WEEKLEY

Judge Buckner properly affirmed Judge Odom relying upon the record presented to them including the evidence presented at the original hearing of the motion on October 15, 2010, the second hearing on January 5, 2015, and the appellate hearing on June 15, 2015. At no time did Ms. Segal come forward with any evidence to show compliance with the Will of Willie Gelzer Weekley.

As conceded by the Appellant's own counsel at the January 5, 2015, "...the original transfers **were not in technical compliance with the – with the will.**"

(R. pp. 178-179)(emphasis added).

At the both hearings, Ms. Denney presented the Will and the Deeds. (R. pp. 174-185). At both hearings, and prior to by Affidavit, Ms. Segal could not present a mere scintilla of evidence of any material or genuine fact that would tend to show that the transfers encouraged

and conducted by her father complied with her grandfather's Will. Without such evidence, moving for summary judgment was appropriate as was the ruling where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c) SCRPC. No one involved in this case has produced one shred of evidence to show that Ms. Segal's father complied with her grandfather's Will in having the complained of documents transferred to him. Not one document. Not one note. Not one scrap of paper. No such documents or evidence exists, and accordingly, the intent of Willie Gelzer Weekley cannot be deemed to have been complied with as relates to these transfers. There is no testimony creating any issue of fact because, again, as conceded by counsel for the Appellant, there was no compliance. (R. pp. 178-179)

The Court properly found that at no time did the complained of conveyances comply with the Will. Specifically, at no time did any of the parties to these transactions conduct a vote to authorize the transactions, make any offer to the remaining devisees as required, or follow the pricing of the transfers by proportionate amounts received. (R. pp. 16-27; R. pp. 118-119). The Will established that Mr. Weekley's intent was to devise the property to his children. (R. pp. 16-27; R. p. 117). Relying on the Will and the Deeds and the lack of any evidence to show compliance, the Court properly ruled that the transactions went against the clear intent of the Will. (R. pp. 16-27). None of the remaining devisees were advised of the transactions nor were they offered the chance to purchase the shares of L.C. Weekley and Mary Elizabeth Weekley Saad as required by the Will. (R. pp. 16-27; R. pp. 118-119). There was no evidence presented that shows the Will was complied with as required. Interestingly, only Ms. Segal is even attempting to disagree about the transfers as all the other Defendants in this case defaulted. (R. pp. 40-43).

The Circuit Court and the Probate Court properly relied upon the clear language of the Will, as it is required to do, and properly found that the testators' intent was not complied with regarding the complained of transfers. Both Courts had evidentiary support for their rulings, so that their rulings should not be disturbed. *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d. 154 (Ct. App. 1993). In construing a will, the court should strive to determine and give effect to the testator's intent. *May v. Riley*, 279 S.C. 248, 305 S.E.2d 77 (1983); *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997). Intent must be gathered from the instrument as a whole, giving consideration to the words the testator used and reading them according to established principles of law. *King v. South Carolina Tax Comm'n*, 253 S.C. 64, 173 S.E.2d 92 (1970). The court should read the testator's language to effectuate the testator's intent, unless that intent contravenes some well settled rule of law or public policy. *Mille v. Rogers*, 246 S.C. 438, 144 S.E.2d 485 (1965) Moreover, the rules of construction are of secondary importance to the need to ascertain what the testator meant by the terms used in the written instrument itself, and each provision of the will must be considered in relation to the other provisions. *Allison v. Wilson*, 306 S.C. 274, 411 S.E.2d 433 (1991). The Circuit Court properly upheld the Probate Court's ruling that there was no compliance with the Will and a clear violation of the intent requiring that the property had to be placed back into the Estate of Willie Gelzer Weekley.

The Court also properly ruled that the Homeplace site was properly transferred by Mrs. Denney in accordance with her father's Will. (R. pp. 16-27) The Appellant moved to have that transfer voided and the matter had been pending before the Hampton County Probate Court. (R. pp. 158-161). The Court disagreed with that motion that had been pending since June 4, 2012. (*Id.*) The Court did not abuse its authority in ruling upon a motion that had been pending before it for over two years.

II. THE CIRCUIT COURT AND THE PROBATE COURT APPLIED THE APPROPRIATE STANDARD OF REVIEW IN A MOTION FOR SUMMARY JUDGMENT AND SHIFTED NO BURDENS TO THE APPELLANT WHERE THERE ARE NO GENUINE ISSUES OF MATERIAL FACT PRESENTED TO THE PROBATE COURT BY THE APPELLANT'S AFFIDAVIT WHICH MAKES NO REFERENCE TO COMPLIANCE WITH HER GRANDFATHER'S WILL

The Circuit Court and the Hampton County Probate Court applied the proper standard of review in reviewing the motion for summary judgment and shifted no burdens to the Appellant where the Appellant could produce no evidence of compliance with her grandfather's Will. In responding to motion for summary judgment, it is well settled that in South Carolina a party may not rest upon the mere allegations or denials in her pleadings to defeat a motion for summary judgment. Rule 56(e) SCRPC; *Strickland v. Madden*, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994); *see also Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014)(an adverse party may not rest upon the mere allegations or denials of her pleadings but must set forth specific facts showing a showing a genuine issue exists for trial). The Court properly relied upon the Affidavit of Ms. Segal which presented no evidence of compliance with the Will. Judge Buckner reviewed that Affidavit and asked counsel about it during the appellate arguments on June 15, 2015 (R. pp. 191-192; R. pp. 193-194).. Ms. Segal presented a lengthy Affidavit with a long recitation of facts, description of her grandfather's Will, and other matters. However, there was absolutely nothing in that Affidavit showing compliance with the mechanisms in her grandfather's Will. The Hampton County Probate Court correctly ruled that Ms. Segal

does not, and cannot, claim that the transfers are in compliance with the Will....

(R. pp. 16-27). Judge Buckner also ruled that the Appellant here could not produce any evidence of compliance with the testator's intent, namely the right of first refusal provisions in Section VII of the Will. (R. pp. 28-31).

Both the Circuit Court and the Probate Court applied the proper standard as there were no specific facts set forth in Ms. Segal's Affidavit to demonstrate any form of notice or other compliance with her grandfather's Will. Ms. Segal was required to set forth specific facts showing an issue for trial existed as to that issue, or summary judgment would then be granted pursuant to Rule 56(c) SCRPC. *Woodson v. DLI Properties, LLC*, 406 S.C. 517, 753 S.E.2d 428 (2014). As her own attorney conceded at the hearing on January 5, 2015, and at the June 15, 2015, hearing, she could not do so as no such compliance exists. No burdens were shifted onto Ms. Segal; instead, the Courts reviewed and applied the proper standard that has long been well-settled under South Carolina law: a party opposing summary judgment must show that there are facts at issue to survive such a motion. Rule 56(e) SCRPC. Without any showing of compliance with the Will, the Court had to rule in Mrs. Denney's favor. That this matter has been ongoing since 2007 and not a shred of evidence proving compliance has been brought forth by Ms. Segal is more than telling. It is conclusive and Judge Buckner agreed with the Probate Court's ruling on the issue.

III THE CIRCUIT COURT AND PROBATE COURT CONSIDERED THE APPELLANT'S AFFIRMATIVE DEFENSES AND OTHER MATTERS RAISED AND PROPERLY RULED THAT THESE AFFIRMATIVE DEFENSES CREATED NO GENUINE ISSUE OF MATERIAL FACT SHOWING COMPLIANCE WITH THE APPELLANT'S GRANDFATHER'S WILL WHERE THE PROBATE COURT HAD BEEN ACTIVELY REVIEWING THE MATTERS CONTAINED IN ITS FINAL ORDER SINCE THE ORIGINAL MOTION FOR SUMMARY JUDGMENT WAS HEARD IN OCTOBER, 2010

From the time of the original hearing date in October, 2010, through the issuance of the final order on February 6, 2015, the Hampton County Probate Court contemplated, reviewed, and considered all matters before it in this case, including the affirmative defenses of Ms. Segal

that created no genuine issues of material fact regarding compliance with the Will of Willie Gelzer Weekley. The Circuit Court also took those matters into consideration as Court noted:

THE COURT: All right. Ms. Jolley, my law clerk and I have read your brief, even though y'all think lawyers and judges don't read anything outside of Court. We've read your briefs and my law clerk has actually written me a summary; so I'm somewhat familiar with it.

(R. p. 189).

At its heart, this matter is a will dispute with the ultimate goal of any will dispute to give effect to the intent of the testator. *May v. Riley*, 279 S.C. 248, 305 S.E.2d 77 (1983); *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct. App. 1997). Intent must be gathered from the instrument as a whole, giving consideration to the words the testator used and reading them according to established principles of law. *King v. South Carolina Tax Comm'n*, 253 S.C. 64, 173 S.E.2d 92 (1970). The affirmative defenses pled, are just those, affirmative defenses, and not counterclaims or motions that bear upon the ultimate goal of the Hampton County Probate Court to give effect to the testator's intent. These affirmative defenses were not enough to cause Judge Buckner to overturn the Probate Court's ruling. (R. pp. 28-31).

As both Court determined and as both of Ms. Segal's counsels have admitted in Court, there was no compliance with the Will for the transfers of L.C. Weekley's and Mary Elizabeth Weekley Saad's interests. That there are affirmative defenses does not change the fact that there is not one scintilla of evidence brought forward since the case began proving compliance. (R. p. 181).

Judge Buckner realized that the Probate Court reviewed this matter in great depth and in great detail over a long period of time. (R. pp. 28-31). The Hampton County Probate Court took the responsibility seriously. As stated by Judge Odom at the hearing:

This is not something that the Court has held lightly. This is not something this Court has been able to set on a shelf and just hold you off on an

answer. This is something this Court has contended with time after time after time, but in – when it all comes down to the bottom line, the duty of this Court is to determine whether or not the intent of the testator was carried out.

And there have been several ways that it's been put before this Court to decide this way or that way, but the bottom line that this Court has to make sure and adhere to is the testator's intent. What did this gentleman want as a result to happen from his last will and testament.

He took the time, he took the initiative to prepare a will. He wrote out his last will and testament, which albeit it took me about 13 hours of my personal time away from my office, away from the phones, to go through and decipher over and over again once both the councilmen [sic] put before this Court their independent positions for their clients' behalfs to look at it from the ground up in – in both spectrums. Not an easy task. Whether it be that I myself independently had been in this court or any other probate judge.

**So therefore taking a step back from all of those other smoking guns and mirrors, this Court has had to go back to the original question what was the testator's intent.**

(R. p. 183)(emphasis added). In addition to the hours spent on the matter while the Court was operating, the Court spent an additional thirteen (13) hours of personal time to ascertain the intent of Willie Gelzer Weekley as set forth in his Will. (*Id.*) The Court looked at “other smoking guns and mirrors” and saw through them. (*Id.*) The issue of affirmative defenses does not change the Hampton Probate Court delving into and determining the testator's intent and ruling that the Hampton County Probate Court had to get back to square one to determine if the testator's Will was carried out. (R. p. 183). The Hampton County Probate Court properly determined that it was not carried out, regardless of any affirmative defenses raised. The affirmative defenses were not enough to warrant the Probate Court's decision being overturned by the Circuit Court.

IV. THE CIRCUIT COURT PROPERLY AFFIRMED THE PROBATE COURT'S RULING THAT THE REAL PROPERTY AT ISSUE IN THIS CASE SHOULD BE TRANSFERRED BACK TO THE ESTATE OF WILLIE G. WEEKLEY BASED UPON THE LACK OF COMPLIANCE WITH THE WILL OF WILLIE G. WEEKELY

In determining that there was no compliance with the Will of Willie Gelzer Weekley, the Circuit Court upheld the Hampton County Probate Court's determination that it had no choice but to order the transfers voided and the property placed back into the Estate for ultimate distribution according to the Will. (R. p. 16-27). The transfers resulting in the two deeds complained of do not comply with the intent of Mr. Weekley as the testator as both the Circuit Court and Probate Court have ruled. Pursuant to Section III of the Will, it is clear that Mr. Weekley intended to distribute his real property "among my sons and daughters." (R. p. 117). Section IV of the Will demonstrated again that Mr. Weekley would "devise and bequeath to my children..." (R. p. 117). The shares set forth in Section IV were for the children of Mr. Weekley in the proportionate amounts set forth. Section V of the Will leaves the remaining four (4) shares of the real property to his "surviving children" and then to his grandchildren (R. p. 117-118). Currently, there are two (2) surviving children, Mrs. Denney, and her sister, Mrs. Margaret Weekley Shinar. Pursuant to that Section, the forty (40) acres Homeplace site was distributed to them and ruled to be a correct distribution by the Hampton County Probate Court. (R. p. 117-118; R. pp. 16-27). The Court once again confirmed that the transfer of the forty (40) acres was appropriate under the Will. (R. p. 203). The language of the Will proves that Mr. Weekley intended his children to be the beneficiaries thereunder as to the forty (40) acres and the Court upholds its earlier ruling that the transfer to Mrs. Denney and Mrs. Shinar was indeed proper.

The Will also clearly provided that all of his children had to be given a right of first refusal should any of the other devisees, his children, wish to sell his portion of the property. (R. p. 119). The transfers to W.J. Weekley, the father and decedent of Laura W. Segal, described above failed to comply with this portion of the Will and flaunted the intent of the testator as ruled by the Hampton County Probate Court. (R. pp. 16-27). Mr. Weekley devised and bequeathed the property to his children in an elaborate manner with specific provisions for dividing his property. (R. pp. 117-118). W.J. Weekley and his daughter Laura W. Segal received their extra shares from L.C. Weekley and Elizabeth Weekley Saad in clear contravention of the intent of the Will. As demonstrated, there was no offer of these shares to the remaining devisees contemporaneous with the deeds. There was no proportionate contribution to the purchase price according to the proportions received as required by the Will. (R. p. 118). Without such compliance, the Will has been violated and the property must come back into the Estate. The Hampton County Probate Court had no choice but to put these properties back into the Estate for a distribution according to the Will. The Circuit Court agreed.

As upheld by Judge Buckner and ruled upon by Judge Odom, as Laura W. Segal cannot demonstrate compliance with the Will by any mere scintilla of evidence, the Court then had to place the property back into her grandfather's Estate. The validity of the deeds transferring the property is irrelevant; the deeds do not comply with the Will. Ms. Segal's Affidavit did not claim compliance with the Will and her then attorney conceded as such. (R. pp. 77-107; R. pp. 178-179). In her Affidavit dated October 13, 2010, Ms. Segal engages in a lengthy recitation of her grandfather's Will. She does not, and cannot, claim that the transfers are in compliance with the Will. Her lawyer agreed. (*Id.*) In her Affidavit, she states that she received the interest of her father, her uncle L.C. Weekley and her aunt Mary Elizabeth Weekley Saad. She cannot

demonstrate compliance with the intent of her grandfather's Will in that no offer of first refusal was provided to the devisees as described in Sections IV and VII of the Will. Had there been one in compliance with the Will, then Ms. Segal's affidavit should have stated the compliance. A lengthy discussion of the Estate's lease to Paragon Produce does not negate the violation of the intent of W.G. Weekley's Will. That the Will has been violated warrants this Court voiding those transfers so that the property may be returned to the Estate. The validity of the deeds themselves is not an issue. The failure to abide by the testator's intent is the ultimate issue.

Additionally, it would be inequitable for the Estate to be deprived of these Properties and shares when the Will sets forth a method for transferring them so that Ms. Segal will eventually receive the proper distribution under her grandfather's Will. W.J. Weekley and Ms. Segal received these shares in violation of the Will. These transfers are voided and the properties complained of in Paragraph 9 of the Complaint are returned to the Estate for their appropriate distribution. This entire process has resulted in the Estate remaining open un-necessarily to the extent that there are only a few acres difference in what Ms. Segal would receive had the Will been complied with and what she is claiming at the present due to these improper transfers. The Will's clear intent was that all the property should be distributed per the instructions in Sections IV, V, and VII. That has not been done.

V. THE PROBATE COURT PROPERLY RETAINED JURISDICTION OVER THE MATTERS PENDING BEFORE IT WHERE NO PETITION TO REMOVE THE CASE TO CIRCUIT COURT WAS FILED OVER FOUR YEARS AFTER THE LAST RESPONSIVE PLEADING WAS FILED AND NOT WITHIN TEN (10) DAYS AS REQUIRED BY S.C. CODE ANN. §62-1-302 SO THAT THE PROBATE COURT HAD TO RULE UPON THE MATTERS BEFORE IT WHICH RULING WAS UPHELD BY THE CIRCUIT COURT

The Probate Court had jurisdiction to hear the matters before it. Pursuant to the South Carolina Probate Code, the Probate Court has the jurisdiction to make determinations of property in which the estate of a decedent or a protected person has an interest. S.C. Code Ann. §62-1-302(a)(1) (1976, as amended). That is the exact matter that was before the Probate Court: a determination of property in which the Estate of Willie G. Weekley has an interest. This case remained before the Probate Court properly where there was no petition or motion to remove the case to Circuit Court filed within ten (10) days following the date on which all responsive pleadings were to have been filed. S.C. Code Ann. §62-1-302(d). The motion to remove this matter to Circuit Court was filed on June 4, 2012, some four years after a responsive pleading to the Complaint was required to be filed by the Appellant and not within the ten (10) days required by S.C. Code Ann. §62-1-302(d). The Probate Court retained jurisdiction and only ruled on the petition to remove the case as part of its August 29, 2013 Order which was stayed for reconsideration until the Probate Court's ruling in January of this year. The Probate Court properly retained jurisdiction where not timely motion to remove the case was filed.

CONCLUSION

The Circuit Court properly affirmed the Probate Court's granting of summary judgment where there was not even a mere scintilla of material fact at issue in this case showing compliance with the Will of Willie Gelzer Weekley so that the Hampton County Probate Court had no choice but to rule as it did after a five (5) year review of the Will at issue and the lack of evidence presented to show any compliance with the intent of the testator.

For these reasons, the decision of the Circuit Court for Fourteenth Circuit should be AFFIRMED.

Respectfully submitted:

Mt. Pleasant, South Carolina  
Feb 9, 2016

  
\_\_\_\_\_  
G. Hamlin O'Kelley, III  
S.C. Bar No. 15491  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Hamlin.okelley@buistbyars.com

THE STATE OF SOUTH CAROLINA  
In the Circuit Court for Hampton County

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

**RECEIVED**

The Honorable Perry M. Buckner, III  
Circuit Court Judge

FEB 16 2016  
SC Court of Appeals

Case No. 2015-CP-25-00065

Estate of Willie G. Weekley, Deceased By  
Its Personal Representative, Betty W. Denney.....Respondent

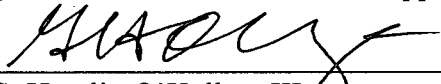
vs.

L. C. Weekley, Laura Weekley Segel, Individually,  
and as Personal Representative of the Estate of William  
James Weekley, Deceased, Peter Saad as Personal  
Representative of Mary Elizabeth Weekley Saad,  
Deceased, and as Trustee of the Mary Elizabeth Saad Trust

Of Whom Laura Weekley, Segel, Individually, and As Personal  
Representative of the Estate of William James Weekley, Deceased  
is the.....Appellant.

**CERTIFICATION OF COUNSEL  
PURSUANT TO RULE 211(b) SCACR**

I certify that I have served the Respondent's Final Brief and that it is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

  
G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Attorneys for the Respondent

Mt. Pleasant, SC  
Feb. 10, 2016

THE STATE OF SOUTH CAROLINA  
In the Circuit Court for Hampton County

---

APPEAL FROM HAMPTON COUNTY  
Court of Common Pleas

The Honorable Perry M. Buckner, III  
Circuit Court Judge

**RECEIVED**  
FEB 16 2016  
SC Court of Appeals

---

Case No. 2015-CP-25-00065

---

Estate of Willie G. Weekley, Deceased By  
Its Personal Representative, Betty W. Denney.....Respondent

vs.

L. C. Weekley, Laura Weekley Segel, Individually,  
and as Personal Representative of the Estate of William  
James Weekley, Deceased, Peter Saad as Personal  
Representative of Mary Elizabeth Weekley Saad,  
Deceased, and as Trustee of the Mary Elizabeth Saad Trust

Of Whom Laura Weekley, Segel, Individually, and As Personal  
Representative of the Estate of William James Weekley, Deceased  
is the.....Appellant.

---

**PROOF OF SERVICE**

---

I certify that I have served the RESPONDENT'S FINAL BRIEF and RULE 211(b)  
CERTIFICATE by depositing copies of same in the U.S. mail, postage prepaid, on this 10<sup>th</sup>  
Day of February, 2016, addressed to all counsel of record as follows: Kelly M. Jolley, Esq.,  
Michael C. Cerrati, Esq., P.O. Box 22230, Hilton Head Island, SC 29925, Amanda A. Bailey,  
Esq., P.O. Box 336, Myrtle Beach, SC 29578, Thomas C. Davis, P.O. Box 1107, Beaufort, SC  
29901.



G. Hamlin O'Kelley, III  
Buist, Byars & Taylor, LLC  
652 Coleman Blvd., Suite 200  
Mt. Pleasant, SC 29464  
(843) 856-4488  
Attorneys for the Respondent

Mt. Pleasant, SC  
Feb. 10, 2016