

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM WILLIAMSBURG COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

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APPELLATE CASE NO. 2016-000332

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**RECEIVED**

SEP 14 2016

SC Court of Appeals

GWENDOLYN LEVERITT ..... Respondent,

VS

LORINE C. PRESSLEY AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF ERVIN CHRISTOPHER PRESSLEY ..... Appellant.

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**INITIAL REPLY BRIEF OF APPELLANT**

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**TABLE OF AUTHORITIES**

*Bob Jones University V. Strandell*, 344 S.C. 224, 543 S.E.2d 251(Ct. App., 2001) ..... 8

*Grier V. Amisub of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693(2012) ..... 4, 5, 8

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*Fenzel v. Floyd*, 289 S.C. 495, 347 S.E.2d 105 (Ct.App.1986) ..... 8

*Cornelson v. Vance*, 220 S.C. 47, 54, 66 S.E.2d 421, 424 (1951) , 220 S.C. at 58, 66 S.E.2d at 426 ..... 8

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**OTHER AUTHORITIES**

*Act 100, 2013 S.C. Acts 46* ..... 2, 3, 6

*Act 538, 1986 S.C. Acts 0565* ..... 6

*S.C. Code Ann. §62-1-103* ..... 5

*S.C. Code Ann. §62-2-802* ..... 4, 5, 6, 7, 8, 9, 11

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**QUESTION PRESENTED**

**I. Did the Circuit Court err in failing to find that intestacy was the result when the applicable law is applied to the clear and plain meaning of the unambiguous language of the Last Will and Testament of the decedent, Ervin Christopher Pressley?**

### ***SUPPLEMENTAL STATEMENT OF FACTS***

The Decedent, Ervin Christopher Pressley, specifically identified Erica Danielle Bledsoe-Pressley, by name, as the primary taker under his Will, and he required that she survive him to be the primary taker under his Will. Likewise, the Decedent, used a specific reference to Erica Danielle Bledsoe-Pressley by the words “my said spouse”, and the requirement that, for anyone else to take under his will, Erica Danielle Bledsoe-Pressley “shall not survive” him. (Last Will and Testament of Ervin Christopher Pressley, p. 1).

The Decedent’s Will stated:

“All the rest, residue and remainder of the property both real, personal and mixed and wheresoever situate which I may own or be entitled to at the time of my death, I give, devise and bequeath to my spouse, ERICA DANELLE BLEDSOE-PRESSLEY, if my said spouse shall survive me. If my said spouse shall not survive me, then I give, devise and bequeath my residuary estate to my issue, per stirpes, and if there be no surviving issue, then to GWENDOLYN LEVERETT and LORINE PRESSLEY, equally, or all to the survivor between them. If there be no survivor between them, then to JAKOYA GRISSETT and JAHEEN PRESSLEY, equally, or all to the survivor between them.” (Last Will and Testament of Ervin Christopher Pressley, p. 1)

Ervin Christopher Pressley did not use the word surviving spouse or use the word spouse in a generic manner, but made specific reference to Erica Danielle Bledsoe-Pressley in his will. (Last Will and Testament of Ervin Christopher Pressley, p. 1)

Extensive amendments by the Legislature in 2013 to the Probate Code of this state took effect and applied to any estate of a decedent dying after January 1, 2014. *Act 100, 2013 S.C. Acts 46* The Decedent became a resident of the County of Williamsburg,

State of South Carolina prior to his death on January 25, 2014 and the 2013 amendments apply in this matter. *S.C. Code Ann. §62-2-507* was changed substantially by the 2013 amendments. *Act 100, 2013 S.C. Acts 46*

### **ARGUMENT**

***The Circuit Court erred in failing to find that intestacy was the result when the applicable law is applied to the clear and plain meaning of the unambiguous language of the Last Will and Testament of the decedent, Ervin Christopher Pressley.***

The Respondent's Argument, as set forth her brief, is based on errors. One is as to the facts and the second is as to the law. The Decision of the Circuit Court is also based on these errors and should be reversed.

As to the facts, the Will of Ervin Christopher Pressley makes clear reference to his wife at that time, Erica Danielle Bledsoe-Pressley, and requires that a specific person, Erica Danielle Bledsoe-Pressley, not survive him for any contingent taker to receive property under his Will. The Last Will and Testament of Ervin Christopher Pressley was written when Erica and Ervin were husband and wife. (Last Will and Testament of Ervin Christopher Pressley, p. 2)

Ervin Christopher Pressley devises all of this property to his wife and names her specifically. He does not use the term "surviving spouse" and, in setting forth the devise to any contingent beneficiaries Ervin Christopher Pressley required that a specific person,

his "said spouse", not survive him for any contingent taker to be entitled to property under his Last Will and Testament. (Last Will and Testament of Ervin Christopher Pressley, p. 2) The Respondent uses the word "surviving spouse" as if Ervin Christopher Pressley used those words to refer to Erica Danielle Bledsoe-Pressley. Likewise, the Respondent uses the phrase "-in the event of his wife predeceasing him-". Both are incorrect since the decedent specifically referred to a named person, Erica Danielle Bledsoe-Pressley, and required that Erica not survive him for anyone else to take as a contingent devisee. (Last Will and Testament of Ervin Christopher Pressley, p. 2)

The failure of the Circuit Court to apply this condition precedent warrants reversal of the decision.

The second major flaw is as to the law. The Circuit Court erred in not properly applying the rules of statutory construction to *S. C. Code Ann. §62-2-802* and *S. C. Code Ann. §62-2-507*. The Respondent, in her Brief, and the decision of the Circuit Court, both failed to apply the long-standing rule that statutes should be strictly construed. Statutes in derogation of the common law are to be strictly construed, and a statute restricting the common law will not be extended beyond the clear intent of the legislature. *Grier V. Amisub of South Carolina, Inc., 397 S.C. 532, 725 S.E.2d 693(2012)* Extending that line a statutory construction our courts have found that what a legislature says in the text of a statute is considered the best evidence of the legislative intent, and when engaging in statutory construction, courts are bound to give effect to the expressed intent of the legislature; thus the court must follow the plain and unambiguous language in a statute when construing a statute. The Courts have no right to impose another

meaning. *Grier V. Amisub of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693(2012)

The strict construction of our Probate Code is confirmed by *S.C. Code § 62-1-103*.

“Supplementary general principles of law applicable” which states:

Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions. *S.C. Code § 62-1-103*.

Nothing in the applicable statutes of *S. C. Code Ann. §62-2-802* or *S. C. Code Ann. §62-2-507* states that a divorced spouse is considered as predeceased for all provisions in a decedent’s will. Furthermore, *S. C. Code Ann. §62-2-802(a)* does not state that a former spouse is civilly dead. However, the Respondent, on Page 9 of her Brief, attributes that statement to *S. C. Code Ann. §62-2-802(a)*. (Respondent’s Brief, Page 9, L 1-5)

*S. C. Code Ann. §62-2-507(c)* specifically states what provisions of a Will are revoked. It states:

(c) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce or annulment, the divorce or annulment of a marriage:

(1) revokes any revocable:

(i) disposition or appointment of property or beneficiary designation made by a divorced individual to the divorced individual's former spouse in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse; or

(iii) nomination in a governing instrument, nominating a divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, trustee, conservator, agent, attorney in fact or guardian; *S. C. Code Ann. §62-2-507 (c)(1)*

There is no reference or statement to a presumption that all provisions concerning the former spouse are read as if the former spouse has predeceased the testator. *S. C. Code Ann. §62-2-507*. The Reporter's Comments to *S. C. Code Ann. §62-2-507* enunciate the limitation upon the presumed intent under the law:

“This section effectuates a decedent's presumed intent: without a contrary indication by the decedent, a former spouse will not receive any probate or nonprobate transfer as a result of the decedent's death.” Reporter's Comments *S. C. Code Ann. §62-2-507*

Our legislature revised our probate codes substantially in 1986 and again in 2013, with the 2013 amendments to take affect on January 1, 2014. *Act 539, 1986 S.C. Acts 0565 and Act 100, 2013 S.C. Acts 46*.

Since Ervin Christopher Pressley died on January 25, 2014, the most recent amendments to our probate code apply to his Will and this matter. Our legislature has had ample opportunity to extend any presumption as to the surviving spouse and even to declare that the spouse is civilly dead for all purposes and in provisions of a Will. However, our legislature chose not to do so and has limited the application of the revocation and the presumed intent to only those instances as set forth in *S.C. Code Ann. §62-2-507(c)(1)*. The Circuit Court failed to recognize these limitations.

The Circuit Court's ruling is to the effect that the divorced spouse, Erica Danielle Bledsoe-Pressley is presumed, as a matter of law, to have predeceased Ervin Christopher Pressley in construing every provision of his Will. Nothing in *S.C. Code Ann. §62-2-802* or *S.C. Code Ann. §62-2-507* states that the divorced spouse is presumed to have predeceased the testator for all purposes. Rather, both statutes confirm that the

presumption is limited to the purposes of preventing the divorced spouse from receiving property from any provision that benefits the spouse in any way or appoints the spouse to a fiduciary position. *S.C. Code Ann. 62-2-802; S.C. Code Ann. 62-2-507*

The Circuit Court failed to follow the clear, unambiguous and plain meaning of the language in the Will of Ervin Christopher Pressley. Mr. Pressley's Will clearly required that a named person, Erica Danielle Bledsoe-Pressley, who he identified as his "said wife", "shall" not survive him in order for the contingent takers under the Will to receive the property. Mr. Pressley named a specific person and placed a mandatory condition precedent in his will by the use of the word "shall".

The law in this state does not state or imply that a divorced spouse is presumed to have predeceased the testator for all purposes. The Will of Ervin Christopher Pressley is clear and unambiguous in stating a condition precedent that must occur for any contingent devisee to take under his Will. The Will of Ervin Christopher Pressley and the law are not in conflict. The Will of Ervin Christopher Pressley required that a gift over to the contingent beneficiaries would only be allowed if Erica Danielle Bledsoe-Pressley did not survive him. Because the contingency of Erica Danielle Bledsoe-Pressley's death did not occur, the condition precedent was not fulfilled and the gift over failed. As such, the property must pass according to the laws of intestacy.

The Respondent would have the presumption against an intestacy take priority over the clear intent of the testator in this case, as set forth in the plain, unequivocal language of the Will of Ervin Christopher Pressley. Our cases state otherwise. The cardinal rule of will construction is the determination of the testator's intent. *Matter of*

*Clark*, 308 S.C. 328, 417 S.E. 2d 856 (1992) In construing the language of a will, the reviewing tribunal must 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. *In re Estate of Fabian*, 326 S.C. 349, 483 S.E.2d 474 (Ct.App.1997) In construing a will, a court's first reference is always to the will's language itself. *Fenzel v. Floyd*, 289 S.C. 495, 347 S.E.2d 105 (Ct.App.1986) Courts cannot make wills, nor can they conjecture as to the intention of the testator. *Cornelson v. Vance*, 220 S.C. 47, 54, 66 S.E.2d 421, 424 (1951), 220 S.C. at 58, 66 S.E.2d at 426. *Bob Jones University V. Strandell*, 344 S.C. 224, 543 S.E.2d 251(Ct. App., 2001)

The Respondent, in her brief to the Circuit Court, complained that the Probate Judge engaged in judicial activism. (*Appellant's Brief to the Circuit Court*, pp. 8-9) However, the Circuit Court's decision, in effect, established a rule of statutory construction that a divorced spouse, whose devise was revoked by S.C. Code Ann. §62-2-802 and S.C. Code Ann. §62-2-507, is presumed to have predeceased the testator for all purposes.) This is error and warrants reversal.

There is no basis for rewriting the applicable code sections for the legislature as the Circuit Court's Order has done. In fact, the Circuit court's decision violates the well-settled rules for statutory construction as set forth above. *Grier V. Amisub of South Carolina, Inc.*, 397 S.C. 532, 725 S.E.2d 693(2012)

The intention of Ervin Christopher Pressley, as set forth in his Will, is abundantly clear by the language, which states that if Erica Danielle Bledsoe-Pressley shall not

survive me then the contingent takers are not entitled to his property. Since Erica Danielle Bledsoe-Pressley survived him, no other person was named in his Will to take the property and the result was an intestacy. The ruling by the Circuit Court frustrates and is completely in opposition to the clear language of Ervin Christopher Pressley.

There is no justification for the proposition that Ervin Christopher Pressley was obligated to change his Will after his divorce to prevent an intestacy. Since the only remaining provision in his Will, that disposed of property, required that Erica Danielle Bledsoe-Pressley not survive him before anyone else could take, he could rely on the fact that there would be an intestacy if Erica Danielle Bledsoe-Pressley survived him. With an intestacy, he only had one heir-at-law, which was his mother.

The Probate Court did not improperly consider extrinsic evidence to determine the intent of Ervin Christopher Pressley. The only evidence was the Will and the divorce and marital settlement documents from New York. The Probate Court of Williamsburg County was required by law to consider the Divorce Decree and the stipulation concerning property settlement by the applicable South Carolina statutes. *S.C. Code Ann. §62-2-802(b)* and *S.C. Code Ann. §62-2-507* Since this was a requirement of the applicable law, the Probate Court was bound to consider those documents and statutes affecting the testator's intention. *S.C. Code Ann. §62-2-802* and *S.C. Code Ann. §62-2-507* The basis for the enactment of the foregoing statutes is the "presumed intent" of the testator that he would not provide for a divorced spouse or under specific circumstances where there has been a property settlement and/or divorce.

The Probate Court properly construed the Decedent's will and held that since the

Decedent's spouse survived him, his clear intention of a required mandatory condition precedent that did not occur and that resulted in an intestacy. It would have been an error of law not to consider and give effect to the marital litigation and stipulation under the applicable law of this State.

The case of *Re Will of Lampshire*, (1968) 57 Misc 2d 332, 292 NYS2d 578 is applicable in this matter. The Respondent fails to recognize that the court in *Lampshire* had language that had the same effect as *S.C. Code Ann. §62-2-507*. If after executing a will, a testator was divorced, such divorce revoked any disposition or appointment of property made by the will to the former spouse unless the will expressly provided otherwise. (*Re Will of Lampshire*, (1968) 57 Misc 2d 332, 292 NYS2d 578)

Citing the applicable law, the Court in *Lampshire* stated:

“Effective September 1, 1967 the legislature of this State promulgated section 5—1.4 EPTL:

‘(a) If, after executing a will, the testator is divorced, his marriage is annulled or its nullity declared or such marriage is dissolved on the ground of absence, the divorce, annulment, declaration of nullity or dissolution revokes any disposition or appointment of property made by the will to the former spouse and any provision therein naming the former spouse as executor or trustee, unless the will expressly provides otherwise.’” *Re Will of Lampshire*, (1968) 57 Misc 2d 332, 292 NYS2d 578)

In 1969, *Lampshire*, the legislature of the State of New York changed the law to add the following: "and the provisions, dispositions and appointments made in such will shall take effect as if such former spouse had died immediately before such testator." *Estates, Powers and Trusts Laws § 5-1.4* The Legislature of the State of South Carolina

has not made any such addition or change to extend the revocation based upon divorce or separation. Accordingly, the limitation of the revocation of provisions of a Will, based upon a divorce or other property settlement actions, is limited solely to those provisions that benefit, empower, or nominate the putative spouse.

The Appellant reiterates her position that the effect of the South Carolina Probate Code on the Will of Ervin Christopher Pressley is limited. The effect of the termination of the marital relationship under the South Carolina Probate Code (SCPC) on a Will has been succinctly stated by Professor S. Alan Medlin of the University of South Carolina School of Law, as follows:

The SCPC provides that, unless a will expressly indicates otherwise, the termination of a marriage subsequent to the execution of the testator's will partially revokes the will to the extent of devises to the ex-spouse or appointments of the ex-spouse to an office. For these purposes, the Code treats the spouse as having predeceased the testator. Any invalidated devise would pass to other devisees or by partial intestacy, depending on the terms of the will." Page 3-32, Section 310.2(b), Divorce, S. Alan Medlin, *The Law of Wills and Trusts, Vol. I, Estate Planning in South Carolina (2002)*

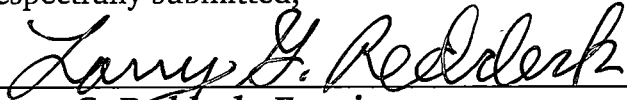
The 2013 amendments to the Probate Code by our Legislature did not change the limited purposes of the statutory revocation of the provisions of *S.C. Code Ann. §62-2-802 and S.C. Code Ann. §62-2-507*.

### **CONCLUSION**

For reasons stated, the Appellant requests the decision of the Circuit Court be reversed and the decision of the Probate Court be affirmed.

**September 12, 2016**  
**Lake City, SC**

Respectfully submitted,



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LORINE C. PRESSLEY AS PERSONAL REPRESENTATIVE  
OF THE ESTATE OF ERVIN CHRISTOPHER PRESSLEY ..... Appellant.

PROOF OF SERVICE

I certify that I have served the **Initial Reply Brief of Appellant**, by depositing copies of it in the United States Mail, postage prepaid on September 12, 2016, on the following persons:

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September 12, 2016

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IN RE: Gwendolyn Leveritt vs. Lorine C. Pressley, as Personal Representative of the  
Estate of Ervin Christopher Pressley  
Appellate Case No. 2016-000332

Dear Ms. Kitchings:

Enclosed herein, please find the following documents for filing in the above-referenced matter:

1. Initial Reply Brief of Appellant;
2. Proof of Service.

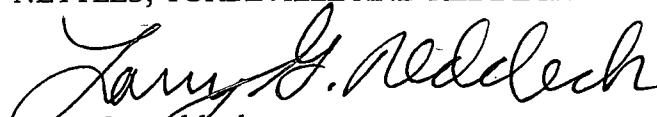
I have also enclosed copies of the above-referenced documents, which I would appreciate your stamping and returning to me in the self-addressed, stamped envelope that has been provided.

Under cover of a separate copy of this letter, I am serving these documents upon opposing counsel as indicated by our Proof of Service.

With kind regards, I am,

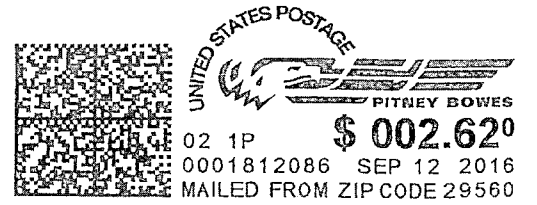
Very truly yours,

NETTLES, TURBEVILLE AND REDDECK

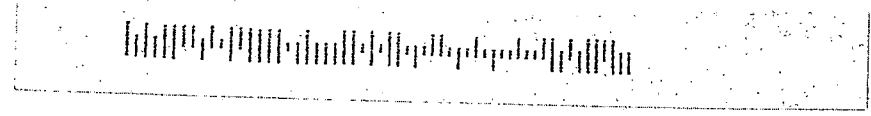
  
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