STATE OF SOUTH CAROLINA
In the Circuit Court

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SC Court of Appeals

Appeal from Richland County
Probate Court

The Honorable Amy W. McCulloch, Probate Judge

Case No. 2016-ES-40-0215

Georganna Paradeses, as Personal Representative of the Estate of William D. Paradeses,..... Petitioner,

v.

Georganna Paradeses, Eleanor Glisson (Faye) (a.k.a. Faye Greeson, Pam Paradeses, Stephanie Starr, Robin Pace, Mary Paradeses and Jim Paradeses,.....Respondents.

OF WHOM

Georganna Paradeses, individually, Pam Paradeses, Stephanie Star, Robin Pace, Mary Paradeses and Jim Paradeses are.....Appellants,

AND

Eleanor Glisson (Faye) (a.k.a. Faye Greeson) is.....Respondent.

BRIEF OF APPELLANTS

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Statement of the Case

On February 18, 2016, Georganna Paradeses, as Personal Representative of the Estate of William D. Paradeses, filed a Summons and Petition for Declaratory Judgment, seeking construction of Decedent's Last Will and Testament in light of certain markings made on the original Will.

Respondent filed an Answer asking that the Probate Court find that the devise to her under Item IV(2) of the Will was not revoked.

Appellants other than Jim Paradeses filed Answers asking the Court to find that Item 2 had been revoked.

A hearing was held on July 27, 2016 on the Petition for Declaratory Judgment.

The Probate Court issued its Order on August 23, 2016, finding that Item IV(2) of the Will was not effectively revoked.

On September 2, 2016, Appellants timely moved for reconsideration of the August 23, 2016 Order.

By Order dated September 13, 2016, the Probate Court denied the motion for reconsideration. This appeal followed.

Statement of Facts

This case presents the novel question of whether a testator is free to revoke a provision in his Last Will and Testament without either revoking the entire document or recruiting two witnesses to attest to his revocation.

William D. Paradeses ("Decedent") died testate on January 9, 2016 a resident of Richland County. (R. 6) His Last Will and Testament, dated October 29, 2008, was informally admitted to probate in the Richland County Probate Court on February 11, 2016. (R. 6).

The original Last Will and Testament contained a strikeout over the entirety of Item IV(2), which originally provided for a $50,000 bequest to Respondent Eleanor Glisson (a.k.a. Faye Greeson) ("Faye"). Appellants are the residuary beneficiaries under the Will, and they will inherit the money devised to Faye if the revocation of the devise is found to be effective.

According to the testimony presented by Georganna Paradeses ("Georganna"), the Will was discovered among Decedent's belongings in his home. (R. 3) No testimony or other evidence was presented to dispute Georganna's testimony.

The Inventory and Appraisement on file in the Probate Court shows that the Estate of William D. Paradeses had a value exceeding $1 million, rendering the devise to Faye modest in comparison to the total assets disposed of under the Will. (R. 31)

Certain handwritten additions were made to the Will, which do not affect Faye or the potential devise to her, and the agreement of all affected beneficiaries to honor the handwritten changes regardless of validity negated the need for the Probate Court to decide the validity of such additions.

Argument

I. The Court Erred in Finding that Decedent Could not Partially Revoke His Last Will and Testament Without The Formalities Required for a Codicil.

S.C. Code Ann. § 62-2-506(a) provides that "a will or any part thereof is revoked" by, among other things, being canceled or obliterated.

In this case, Item IV(2) has been completely stricken from the Will. Although certain written additions were made, they do not bear on the disposition of the funds originally devised to Faye, nor would they affect the nature and extent of her devise if it is found to be revoked.

In *Goriczynski v. Poston*, 248 Va. 271, 448 S.E.2d 423 (Va. 1994), the Supreme Court of Virginia held that the striking out of language in a will is cancelation within the meaning of the applicable statute, which is similar to the above-cited South Carolina Probate Code section. The Virginia Court also found that there is a rebuttable presumption that the changes were made with the intent to revoke where the will is discovered among the decedent's personal effects after his death with the strikeouts already made. *Id.* at 275, 448 S.E.2d at 425 (citing *Franklin v. McLean*, 192 Va. 684, 689, 66 S.E.2d 504, 506 (Va. 1951)).[1]

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[1] *See also Etgen v. Corboy*, 230 Va. 413, 337 S.E.2d 286 (Va. 1985) (*pro tanto* revocation was permissible where a statute provided for that, but only *in toto* revocation by destruction or cancelation was effective where the statute did not specify that less than an entire will could be revoked without formalities of execution) and *In re Estate of Carpenter*, 34 So.3d 1230 (Miss.App. 2010) (the drawing of lines through text in a Will is an effective revocation, although the form of the lines is unimportant to confirm the Decedent's intent. Also confirms that such a partial revocation causes the property devised in the revoked provision to pass under the residuary clause of the Will where such a clause is included.)

Long before the Probate Code became effective in 1987, our Courts had also acknowledged partial revocation by cancelation of certain provisions. *See Brown v. Brown*, 91 S.C. 101, 74 S.E. 135 (1912). Faye has previously argued that case to be distinguishable as a result of an agreement among the parties thereto that the changes were in fact made by the testatrix and that she intended revocation by her act. In this case, however, Appellants would note that no evidence has been presented to suggest that the Decedent did not himself revoke Item IV(2), and the presumption observed in *Goriczynki* has not been overcome – or even challenged.

The Court found in its Order that "the attempted changes to the Will are consistent with an attempted codicil and would require proper execution." (Order dtd. 8/23/16, p. 3) In denying Appellants' motion for reconsideration, the Court further observed that, although the validity of the additions to the Will were not in controversy, those "must be analyzed together" with the deletions. (R. 4-5)

Appellants submit that it was error for the Probate Court to consider both the deletion of Faye's bequest and the added language in determining whether Faye's bequest has been revoked. A series of cases from Washington are instructive on this point. First, in *In re Estate of Appleton*, 163 Wash. 632, 2 P.2d 71 (Wa. 1931), the Supreme Court of Washington found that certain attempted partial revocations in a Will were valid, while others were not. Specifically, that Court analyzed whether any of the attempted revocations changed the dispositive scheme of the Will and, upon determining that a change to the residuary devise did so, the Court held the attempted revocation of that devise invalid.

Later, the Court of Appeals of Washington would revisit that subject, holding

that the attempted revocation of the residuary devise to one of two original beneficiaries altered the dispository scheme to an extent that would have required a codicil. *In re Estate of Eastman*, 61 Wn.App. 907, 812 P.2d 521 (Div. 2 1991). That Court noted, however, that an increase in the residuary beneficiaries' share as a result of partial revocation was permissible, so long as it "does not constitute a new dispository scheme." *Id.* at 910, 812 P.2d at 521.

Appellants note that the handwritten additions to the Will relate entirely to management of real estate which is devised to individuals other than Faye. The management of these properties has no cognizable effect on the amount, timing or form of the potential devise to Faye, and no handwritten addition to the Will appears to attempt any redirection of the revoked devise to Faye.

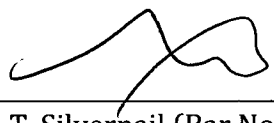
Appellants also note that the revocation of the devise to Faye would not alter the dispository scheme set out in the Will. Whether Faye's devise is paid or not, Appellants remain the residuary beneficiaries of the Estate. Deletion of the devise to Faye will serve only to modestly increase the residuary devise to each of Appellants.

In sum, the Probate Court found that the Decedent could not revoke this modest gift to a non-family-member potential beneficiary. The language of S.C. Code Ann. § 62-2-506(a) makes clear that our legislature intended for testators in South Carolina to be empowered to partially revoke a Will if they so desire. The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the Legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Here, the Probate Court was bound to give effect to the plain wording of the statute, which allows explicitly for partial revocation without witnesses or other formalities.

Conclusion

Respectfully, Appellants submit that the Probate Court's finding that revocation of the devise to Faye could not be accomplished without the formalities of a codicil was in error and must be reversed. They therefore ask that this Court reverse the August 23, 2016 and September 12, 2016 Orders of the Probate Court and find that the devise was effectively revoked.

Respectfully submitted,



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March 27, 2017

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CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants hereby certifies that the foregoing brief complies with Rule 211(b).

Adam T. Silvernail

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In the Supreme Court

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The Honorable Amy W. McCulloch, Probate Judge

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Certificate of Counsel

The undersigned counsel for Appellants hereby certifies that the final Brief and Reply Brief filed herewith comply with Rule 211(b).

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Counsel for Appellants

April 4, 2017

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PROOF OF SERVICE

The undersigned counsel for Appellants hereby certifies that he has served three copies of the Initial Brief and Reply Brief of Appellants herein on all counsel who have filed a brief by depositing a copy of same in the United States Mail, First-class postage prepaid, on April 4, 2017, addressed as follows:

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April 4, 2017

Law Office of
ADAM T. SILVERNAIL
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April 4, 2017

By U.S. Mail:
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Paradeses v. Paradeses, et al*
Appellate Case No. 2016-001960

Dear Ms. Kitchings:

In connection with the above-referenced appeal, I enclose the following:

1. Original and fifteen (15) copies of the final Brief of Appellants;
2. Original and fifteen (15) copies of the final Reply Brief of Appellants;
3. Fifteen copies of the Record on Appeal;
4. Original and one copy of the Proof of Service for the briefs; and
5. Original and one copy of the Certificate of Counsel.

The Record was previously served pursuant to Rule 210(a), and the Proof of Service is on file with this Court.

I would appreciate your filing the originals and returning a file-stamped copy of each (other than the Record) to me.

Kind thanks for your assistance with this matter.

Sincerely,

Adam T. Silvernail

Enclosures

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