

THE STATE OF SOUTH CAROLINA
In The Supreme Court

(Appellate Case No. 2017-000733)

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S.C. SUPREME COURT

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Honorable R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-21-1334 and Case No. 2013-ES-21-190

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith,.....Petitioner,

v.

Judy Smith Jones, Jacqueline Brown, James Ervin Smith
Timothy David Smith, Jamie Smith and Mikie Smith, Defendants

Of whom Judy Smith Jones is the.....Respondent.

RETURN TO PETITION FOR CERTIORARI

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CERTIFICATE OF COUNSEL

A certificate of appellate exhaustion under SCACR 242(d)(1) is not required of Counsel for Respondents.

QUESTIONS PRESENTED

1. Does the routine decision of the Court of Appeals warrant this Court's discretionary review under the considerations of SCACR 242(b)?
2. Did the Court of Appeals err in affirming the trial court's summary judgment order?

Pursuant to Rule 242(f), SCACR, Respondent submits this Return in opposition to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

This case involves a routine challenge to a decedent's will – specifically, the October 18, 2011 will of the decedent Eris Singletary Smith (the “decedent”). Following the decedent's death on March 11, 2013, the will was submitted to the Probate Court by Respondent Judy Jones, daughter of the decedent and will-designated personal representative of the Estate. The challenge, based upon allegations of undue influence and fraudulent inducement, was made by the Petitioner Eris Gail Smith, another daughter of the decedent.

The Petitioner's challenge to the will was filed in Probate Court on April 1, 2013. The Respondent answered the Petition on April 19, 2013. On May 14, 2013, the claim was removed from the Probate Court to the Circuit Court. Seeking not to belabor estate administration, the Respondent filed for summary judgment with regard to the Petitioner's challenge *after an initial round of depositions was concluded* on May 31, 2013. Argument on the summary judgment motion was heard on August 7, 2013. At this August 7th hearing, the Circuit Court announced its decision to grant summary judgment and expressly rejected the Petitioner's unexcused request for additional time.¹ The trial court signed its written order of summary judgment on October 22, 2013 and it was filed two days later.

On November 11, 2013, the Petitioner filed her motion for reconsideration of the summary judgment order and that motion was denied by the Court on December 4, 2013. Petitioner filed her notice of appeal from the summary judgment on December 30, 2013. The

¹ After proffering, over objection, what other witnesses might say, the Petitioner conceded at the hearing itself that “*there is no doubt I could have probably done affidavits. There is nothing physically preventing me from that....*” R. p. 55 lines 1-3.

Court of Appeals affirmed the trial Judge by an opinion issued December 21, 2016. The Court of Appeals further denied rehearing in an Order filed February 24, 2017.

STATEMENT OF FACTS

Evidence of The Decedent's Intent Was Direct & Abundant

The Decedent signed the will on October 18, 2011 in Marion, South Carolina at the law office of Robert Lee. On that day the Decedent travelled to Marion to meet with attorneys to discuss her will. Ultimately, she met that day with two attorneys, Robert Lee and Cyrus "Russ" Sloan. *During an initial conference with attorney Robert Lee, the Decedent, in her own handwriting, wrote down exactly who she wanted to inherit her assets and that she wanted Judy Jones to serve as the personal representative of her estate.* R.pp. 80 (Lee affidavit ¶ 2). She dated and signed *her* written instructions and gave them to Robert Lee.² R.pp. 83 (Exhibit A to Lee affidavit).

After Robert Lee drafted the will,³ he provided it to attorney Russ Sloan who then met with the decedent. Mr. Sloan then carefully reviewed the new will with the Decedent. R.p. 210 (Sloan Deposition R.p. 6 line 9 to p.8 line 15). Attorney Sloan prepared notes of his meeting

² While Petitioner has not challenged the will based upon forgery, she was reluctant to recognize or acknowledge her own mother's handwriting on the will and related documents of October 18, 2011. R.p. 261 (Petitioner deposition p. 74 line 7 to p.75 line 16 ("I'm not a hand[writing] expert.)); R.p. 270 (Petitioner deposition p.112 line 22 –p.113 line 19; R.p. 273 (Petitioner deposition p. 124 line 23 – p.125 line 1). At the same time, however, Petitioner adamantly declared "I know my mother" (R.p. 274 (Petitioner deposition p. 129 line 19) and testified that checks signed *to her* during the same time frame did have her mother's signature. R.pp. 250-251 (Petitioner deposition p. 31 line 3 to p.37 line 24).

³ The present Petition (footnote 14) misleadingly suggests that decedent's granddaughter drafted the will. Actually, Mr. Lee took the decedent's 2001 will (prepared by him), which was saved on his office computer system and printed it out (R.p. 198 (Jordan deposition p.6 lines 6-19)), and made notations thereon based upon the decedent's new handwritten instructions; then, Mr. Lee had Pam Jordan of his staff (the decedent's granddaughter) type up the revisions and return the revised document to him. R.p. 81 (Lee affidavit¶ 4).

with the decedent. R.p. 84 (Exhibit B to Lee affidavit and Sloan Deposition Exhibit 1). Thereafter, the decedent executed the new will.

In addition to executing her new will, the Decedent also reviewed and updated a personal memorandum on October 18, 2011. R.p. 81 (Lee affidavit ¶ 7). This act also serves to demonstrate the decedent's competence at the time of executing these testamentary documents. This personal memorandum listed numerous items of tangible personal property and identified a recipient for the disposition of each such item. Article II of the will incorporated such memorandum and directed that the personal representative of the decedent's estate abide by that memorandum. While this memorandum only made minor adjustments in the intended distribution of personal effects, particularly as they related to previous designations for the decedent's pre-deceased son, R.p. 206 (Jordan deposition p. 40 line 21 to p.41 line 21), these minor adjustments appear to be one of the primary factors in the Petitioner's discontent. R.pp. 276 - 277 (Petitioner's deposition 135 line 7 –p. 138 line 3).

Decedent Was Independent And Free From Any Duress

Petitioner's challenge did not challenge the competence of the decedent to make and execute the will. But more than that, not only is there the absence of a legal challenge to the decedent's competence, the facts in the record overwhelmingly demonstrate the decedent's independence as well -- a point sometimes conceded by the Petitioner.

In her deposition, the Petitioner acknowledged that, when the new will was executed, the decedent was "predominantly" independent, R.p. 245 (Petitioner deposition p.12 lines 9-16), and competent to manage her own affairs, R.p. 250 (Petitioner deposition p.31 lines 16-21), *including authorizing and signing checks to Petitioner* to reimburse her for requested shopping items. R.pp. 246-247, pp.250-251 (Petitioner deposition p. 17 line 12 -- p. 21 line 6 and p. 30 line 10 --

p. 37 line 24).⁴ The decedent's granddaughter described the decedent as mentally alert until the end of her life.⁵ R.p. 206 (Jordan deposition p. 39 line 18 – p.40 line 20).

Attorney Russ Sloan of Marion, who witnessed the execution of the will, testified that the decedent was “affable,” “easy to talk to,” and under no coercion to stay. R.p. 215 (Sloan Deposition p.26 line 19 – p. 27 line 5). He specifically testified that he found her to be competent and not under any undue influence. R.p. 215 (Sloan Deposition p. 28 line 18 – p. 29 line 2). While discussing her will with Russ Sloan, the decedent named each of her children and she listed her major assets for him. R.pp. 209-210 (Sloan Deposition p. 5 line 2 – p.6 line 23). She knew her devisees and understood her intended division of her property. R.p. 215 (Sloan Deposition p. 29 lines 3-14). She even corrected attorney Sloan's mistaken assumption about the lineage of the grandchildren she sought to address in her new will. R.p. 215 (Sloan Deposition p. 27 line 23 – p.28 line 17).

Attorney Sloan testified that during his meeting with the Decedent, she was relaxed and under no duress or stress. R.p. 215 (Sloan Deposition p. 26 line 19- p.27 line 14). Russ Sloan further testified, that no one was threatening her and she was under no undue influence that affected her ability to sign the Will. R.p. 215 (Sloan Deposition p. 28 line 21-p. 29 line 2). Russ Sloan's testimony is consistent with that of attorney Robert Lee who also stated that the Decedent was under no undue influence that would have affected her ability to freely sign the Will. R.p. 81 (Affidavit of Robert Lee ¶ 9). Likewise, Brittany Hooks, an employee of Robert

⁴ In addition, Petitioner testified that she told her mother to drive up to an attorney's office rather than rely on a free Healthcare Power Of Attorney offered by another law office. R. p. 261 (Petitioner's Deposition p. 76 lines 1-20) (“You got a car. Sharon's there. Go get it done.”). See also Petitioner's Deposition p. 122 lines 5-20 (Petitioner's deposition) (“I don't have a problem with that, Granny. It's your money. You do what you want with it.”).

⁵ The decedent died on March 11, 2013 – approximately 17 months after execution of the will. There is no evidence in the record that the decedent sought to alter or change her will although the record from Petitioner and others confirms that she remained competent to do so.

Lee's testified that when she met with the Decedent on October 11, 2011 that the Decedent was very relaxed and that she was under no stress at all. R. p. 220-221 (Brittany Hooks Deposition p. 9 lines 22- p. 10 line 4).

The Will Met All Statutory Requirements

The will met all the statutory formality requirements necessary for a self-proving will entitled to the corresponding presumptions of validity.⁶ Specifically, wills must be signed by two witnesses to the testator's execution of the document. S.C. Code § 62-2-502. In this case, both attorney Russ Sloan and Brittany Hooks executed the will as witnesses. In fact, the decedent and each of these two witnesses executed every page of the will. R.pp. 85- 89 or pp.180-184 (will). In addition, wills become self-proved when attested to by one of the witnesses before a person authorized to administer oaths. S.C. Code § 62-2-503. Again, in this case, the decedent and two witnesses also executed an attestation before notary public Sarah Carlson. R.pp. 85- 89 or pp.180-184 (will).

The Challenged Will Bequeaths Less to Petitioner And Respondent

Ironically, the will that Respondent seeks to uphold and enforce (as the Personal Representative designated therein) actually bequeaths less property to her than the previous will – hardly a motive to assert undue influence. However, it also bequeaths less to Petitioner –

⁶ “It is the established law that when the formal execution of a will is admitted -- or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. The contestants continue to bear the burden of proof throughout the will contest.” Byrd, v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983) (citing Calhoun v. Calhoun, 277 S.C. 527, 290 S.E. (2d) 415 (1982); Havird v. Schissell, 252 S.C. 404, 166 S.E. (2d) 801 (1969); Smith v. Whetstone, 209 S.C. 78, 39 S.E. (2d) 127 (1946)).

perhaps a motive for her legal pursuits although she professes that she is “not fighting for material things.”⁷ R.p. 275 (Petitioner’s deposition p. 132 lines 20-21).

The Store Entry

Petitioner’s statement of facts (Petition p. 8) includes a recitation of her version of events surrounding the Respondent’s entry into the decedent’s closed store to properly inventory and secure the personal property therein. While the robbery-like description may serve to illustrate the Petitioner’s unfortunate mental misperceptions and sibling distrust, it hardly seems relevant to any issue in the case. *Moreover, the accuracy of Petitioner’s sinister description is belied by the Respondent’s decision to notify law enforcement and have the store entry immediately video-taped, photographed, and witnessed by non-family. The Respondent also provided that photographic documentation and an inventory to the court-appointed estate administrator, attorney Mike Abbott, for his confirmation.*⁸ R.pp. 232-236 (Respondent’s Deposition p.61 line 15 –p.75 line 25); R.pp. 204-205 (Jordan deposition p. 30 line 10 – p. 34 line 3).

Inexplicably, while in one breath suggesting the boarding up of the store was to stop the Respondent from “hauling off” decedent’s property, in a subsequent breath the Petitioner suggests Respondent was also involved in boarding up the store. R. p. 262 (Petitioner’s Deposition p. 78 lines 4-24). Ultimately, other than vague assertions that inventory was taken from the store, the Petitioner could not point to any specific missing item. R. p. 267 (Petitioner’s Deposition p. 99 line 4 -- p. 100 line 3).

⁷ In both wills, the 5 living children of the decedent receive equal shares. In the challenged Will, however, the Estate is divided in 6 parts instead of 5 with 2 grandchildren sharing a 1/6th share in addition to the 1/6th given to each of the decedent’s living children. In addition to providing for these grandchildren, the newer will replaced Petitioner as personal representative with the Respondent – not really a benefit, but a burdensome privilege she accepts.

⁸ Notably, the Respondent’s disclosed inventory includes cash found in the store.

ARGUMENT

*Three out of four Judges agree – this is simply a case of too little, too late.*⁹ Summary Judgment was granted in this simple will challenge matter because Petitioner failed to create an issue of material fact in need of trial disposition; despite tardy submissions of questionable evidentiary value, that did not change. Thus, this matter presents no great novel issue of constitutional import worthy of this Court’s consideration. Indeed, of the factors listed in SCACR 242 (b), none are present here except the existence of a dissent.

Petitioner suggests that concurring Judge (now Justice) few misapprehended Rule 56 and related case law by requiring too much of a party seeking delay of a Summary Judgment hearing. First, the issue was entirely mooted by the majority’s consideration of all the evidence submitted by Petitioner including the numerous untested, unilateral, and self-serving statements presented after the hearing and the trial court’s pronounced decision from the bench. Despite Respondent’s motion to exclude these tardy submissions from the record on appeal, they were considered by the Court of Appeals looking at the matter de novo – and they found these submissions insufficient.

I. The Decision By The Court Of Appeals Does Not Warrant Further Review Pursuant To SCACR 242(b).

The South Carolina Appellate Court Rules provide that a “writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. Typically, the grant of certiorari is limited to cases wherein: (1) there are novel questions of law; (2) there is a dissent in the decision of the court of appeals; (3) the decision by the court of appeals is in conflict with a prior decision of this Court; (4) substantial constitutional issues are directly involved; or (5) a federal question is

⁹ The three judges would include the trial judge and the two judges joining in the majority opinion of the Court of Appeals.

included, and the decision by the court of appeals conflicts with a decision of the Supreme Court of the United States. Rule 242(b), SCACR; *see also* Toal, Walker & Baker, Appellate Practice in South Carolina (3d Ed.) at p. 308.

Contrary to the substantive issues outlined in Rule 242(b) of the South Carolina Appellate Court Rules, this case involves *no novel question of law* (SCACR 242(b)(1)), *no conflict with decisions of this Court* (SCACR 242(b)(3)), *no constitutional issues* (SCACR 242(b)(4)), and *no federal questions* (SCACR 242(b)(5) (where Court of Appeal’s decision on federal question is in conflict with the United States Supreme Court). While the Court of Appeals decision did have a dissent, *the dissenting opinion merely disagreed with the trial court’s exercise of acknowledged discretion not to continue the summary judgment hearing.*¹⁰ When the Court of Appeals denied rehearing, the dissent again identified nothing “special and important” and only issued a single line opinion stating, *in toto*: “I would grant the petition for rehearing.” The present case simply does not fit within any of these categories, and no “special and important” reason exists to merit further review.

While the elements enumerated in Rule 242(b) are not the exclusive bases upon which this Court may decide to grant or deny certiorari, no other reason exists for this Court to grant Petitioner’s Petition. The ruling of the Court of Appeals does not present the significant or far-reaching issues contemplated by Rule 242(b). Moreover, the analysis by the Court of Appeals is straight-forward and does not involve new or emerging legal doctrines or issues of

¹⁰ “Although I recognize the circuit court had discretion to grant or deny the motion for a continuance, I believe the court should have given Smith time to conduct the depositions scheduled the month after the date of the hearing.” Smith v. Jones (In re Estate of Smith), Opinion No. 5462 (Ct. App. 2016) (C.J. Lockemy dissenting). Of course, the record and the majority opinion from the Court of Appeals confirm that numerous depositions were timely taken and considered – including those of counsel who witnessed the will’s final preparation and execution. Id. at pages 6-7 (majority opinion).

general public importance sufficient to justify certiorari review. Accordingly, this case is not appropriate for review by this Court, and the Petition should be denied.

II. The Court Of Appeals Was Correct – No Genuine Issues of Fact Were Presented.

The direct testimony of the those involved with the will's execution and the decedent's own admitted handwriting provide a backdrop of legitimacy that is not contradicted by Petitioner's mere suggestions that the matter is suspicious or that a pre-existing fiduciary relationship exists.

Petitioner's Steep Burden Correctly Recognized and Applied

The burden in a case of undue influence with a person of unchallenged capacity¹¹ is steep. "The influence must be of such a degree that it dominated the testator's will, took away his free agency, and prevented the exercise of judgment and choice by him. *If the testator had the testamentary capacity to dispose of his property and was free and unrestrained in his volition at the time of making the will, the influence that may have inspired it or some provision of it will not be 'undue influence.'*" In re Last Will and Testament of Smoak, 286 S.C. at 424, 334 S.E.2d at 809 (emphasis added).

Petitioner suggests that the Majority misapprehended or overlooked the law – either by not equating Petitioner's self-serving allegations into material evidence or by not finding a confidential or fiduciary relationship. The Majority's opinion, however, is clear. "No evidence in the record, *including the information contained in the EUOs*, indicate that the Testator was the victim of threats, force, or restricted visitation." Opinion at 4 (emphasis added). Despite her submission of hollow statements suggestive of her own isolated suspicions, "Smith failed to produce contrary evidence beyond *mere* allegations." Id. (emphasis added).

¹¹ As previously noted, the decedent's capacity has not been challenged and Petitioner admitted that decedent was free to just say no and not execute any new testamentary documents. She was also free and healthy enough to change them again if that was her true intent – and not something she simply hinted to pacify the demands of Petitioner and others.

Tardy Submissions Considered But Too Hollow, Not Improperly Weighed.

Petitioner suggests the concurring opinion, of now Supreme Court Justice Few, misapprehends the applicable law and rules related to a request for more discovery time. Both Justice Few and the dissent, however, recognize that *continuing a summary judgment hearing to allow for additional discovery is in the sound discretion of the trial court.* In addition, both Justice Few and the dissent recognized the possible role of a Rule 56(f) affidavit in supporting a request for a hearing continuance. But as Justice Few notes (footnote 3 in his concurring opinion), the affidavit here was submitted more than three weeks *after* the summary judgment hearing.¹² As Justice Few explains, the mechanism provided by the SCRCP allows for the submission of such an affidavit “in advance of a scheduled hearing.” The majority was appropriately “hesitant to say the trial court abused its discretion”¹³ when the Petitioner failed to provide a timely Rule 56(f) affidavit at or before the hearing.

Moreover, the Majority’s opinion actually considered the Petitioner’s late evidence – non-procedural and unilateral Examinations Under Oath submitted after the summary judgment hearing and ruling from the bench but before the issuance of the written order. This consideration by the Court of Appeals was done over the Respondent’s objection in the trial court and the subsequent Motion to Strike filed with the Court of Appeals. This consideration of the tardy submissions provided the Petitioner far more benefit than a continuance; it provided the Petitioner the evidentiary benefit of unilateral statements gathered from persons of unknown and untested backgrounds, unknown and untested motivations, and unknown and untested biases. Despite this benefit, and the consideration of these statements, this Court properly concluded

¹² Petitioner chose to not even argue for the protections of Rule 56(f) in her prior briefings.

¹³ Concurring Opinion of Justice Few (last sentence, second paragraph).

there was an absence of material fact needed to defeat summary judgment. *Thus, the failure of the trial court to continue the summary judgment hearing is of no consequence – it is a moot point.*

Petitioner suggests that the Majority improperly weighed the evidence because it concluded the conflicting evidence was unreasonable and illogical. Petitioner would prefer a summary judgment standard that requires a court to accept any response as valid and relevant evidence -- no matter how far-fetched or internally inconsistent – but this is not the applicable standard.

Contrary to the Petitioner’s desire that any submissions *alleging a disputed fact be considered as creating a disputed fact*, the Court is not required to single out some small piece of evidence and attach to it a great significance when that evidence is introduced solely to create an issue of fact that is not genuine. Englert, Inc. v. Netherlands Ins. Co., 315 S.C. 300, 302, 433 S.E.2d 871, 873 (Ct. App. 1993) (quoting Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984)(Court is not “required to single out some one morsel of evidence . . . to create an issue of fact that is not genuine.”). A party must present more than a mere scintilla of evidence to overcome a Defendant’s Motion for Summary Judgment. Thomas v. Waters, 315 S.C. 524, 445 S.E.2d 659 (Ct. App. 1994). Where a defendant establishes an entitlement to judgment as a matter of law, the court *must* grant summary judgment. Humana Hospital-Bayside v. Lightle, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991); Dyer v. Moss, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). *The purpose of summary judgment is to expedite the disposition of cases not requiring the services of a fact finder.* George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

In the instant case, the Petitioner has provided no evidence of any acts of undue influence exerted upon the decedent. That is because there were no such acts. There were no acts that

destroyed the decedent's free agency or that amounted to force and coercion upon her. In contrast, the Respondent has offered the testimony of the two attorneys who meticulously reviewed with the decedent, her estate plan and her will. Respondent has also offered the testimony of the employees who met with the decedent when she came to their office to sign the will. All of the attorneys have testified that no such undue influence existed, and the other parties who observed and spoke with the decedent on October 18, 2011 testified that the decedent was relaxed and under no duress to sign the challenged will.

As thoroughly briefed in the Court of Appeals, without proof of any *actual* undue influence, Petitioner seeks to somehow create a presumption of undue influence so that Petitioner may avoid facing her burden of proof. Again, no such facts exist in this case and the present petition *still* identifies no such facts. There is no evidence in the record that either the Respondent or Respondent's daughters served as any kind of general fiduciary or attorney-in-fact for the decedent prior to the execution of the will; to the contrary, it was Petitioner getting reimbursed from decedent's checking account for beneficial assistance. And none of these alleged wrongdoers benefitted from the updated will. Moreover, the new will here was not significantly different from the prior wills – the most significant change – the addition of two specific grandchildren – was something that Petitioner knew her mother had considered and Petitioner had expressed no objection to such change. R. p. 273 (Petitioner's Deposition p. 122 lines 5-20 (Petitioner's deposition) ("I don't have a problem with that, Granny. It's your money. You do what you want with it.")).

Although the present petition *again* submits that the scintillas suggest that the decedent was infirmed and dependent upon others, but the Petitioner's own testimony belies these disingenuous suggestions. Petitioner testified that she told her mother to drive up to Mr. Hoefler's office rather than rely on attorney Lee for a free Healthcare Power Of Attorney. R. p.

261 (Petitioner's Deposition p. 76 lines 1-20) ("You got a car. Sharon's there. Go get it done."). Moreover, the Petitioner's belated evidence suggest that she – the Petitioner, not the Respondent – had the most contact with the decedent (perhaps explaining the decedent's desire for confidentiality and choice of a different personal representative).

The suspicions suggested by Petitioner are not unusual at all. First, the Petitioner suggests that the decedent was "lured" away to Mr. Lee's office and then abandoned there. *Not one of the actual participants in the trip and visit to Mr. Lee's office describe the events so diabolically.* Moreover, it simply isn't accurate to say that decedent had no plan to visit an attorney's office – not only did Pam Jordan testify that her grandmother requested the opportunity to update her will with Mr. Lee (R.pp. 197-198 (Jordan deposition p. 4 line 13 to p. 6 line 2)), *but the Petitioner herself admitted knowing of a plan to visit Mr. Lee's office.* R.p. 261 (Petitioner's deposition p. 76 lines 1-20). Whether the decedent chose to withhold the true purpose (or full purpose) of the meeting from her ever-present daughter (the Petitioner) is of no moment, the point is that she wasn't "lured" away – *and Petitioner knew it.*

Petitioner also confirmed she had no evidence that the decedent was forced. R.p. 278 (Petitioner's deposition p. 142 lines 12 – 17). Furthermore, the decedent was not abandoned or forced to participate in the will update when she arrived at Mr. Lee's office – she freely chose to participate – even writing out detailed instructions in her own handwriting; not only did the witnesses advise that decedent was under no coercion, the Petitioner admitted that decedent was capable of saying "no" or refusing to even go. R.p. 278 (Petitioner's deposition 142 line 12 to p. 145 line 5).

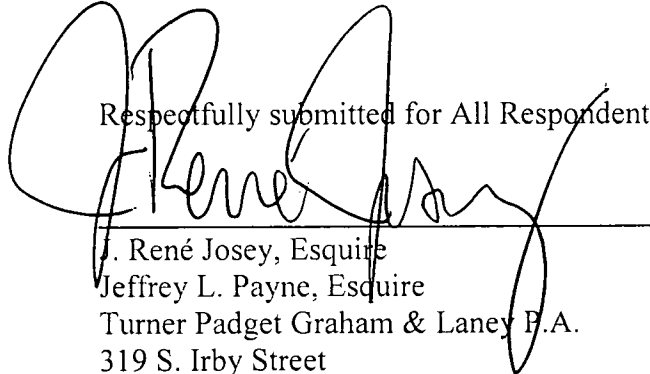
CONCLUSION

This case represents an unfortunate but common – indeed routine – control effort by one sibling against others in the aftermath of a parent’s death. This case does not present any of the special circumstances worthy of additional, discretionary review.

All of the parties admit that the Decedent had the capacity to make the challenged will. The uncontroverted evidence before the court is that the Decedent was under no undue influence when she signed the will. The Petitioner has failed to submit any timely or credible evidence of undue influence or fraud to support her claims. Based on the foregoing, Respondents respectfully urge the Court to deny Petitioners’ Petition for a Writ of Certiorari.

April 26, 2017

Respectfully submitted for All Respondents,



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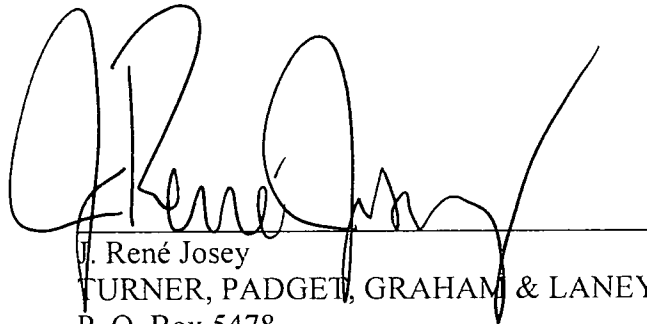
PROOF OF SERVICE

On behalf of all Respondents, the undersigned certifies that he has mailed a copy of the Consolidated Return to Petition for Certiorari and this Proof of Service to all counsel listed below this 26th day of April 2017, with proper postage attached thereto:

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A handwritten signature in black ink, appearing to read "J. René Josey", is written over a horizontal line. The signature is stylized with large loops and a long, sweeping tail.

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