

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAY 08 2017

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

S.C. SUPREME COURT

Appellate Case No. 2017-000733

In the Matter of the Estate of Eris Singletary Smith

In re:

Eris Gail Smith, ..... Petitioner,

v.

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

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

**REPLY IN SUPPORT OF THE  
PETITION FOR A WRIT OF CERTIORARI**

Pursuant to Rule 242(g), SCACR, Eris Gail Smith (“Ms. Smith”) files this Reply in support of her Petition for a Writ of Certiorari to review the Court of Appeals’ opinion in *In the Matter of the Estate of Eris Singletary Smith*, Op. No. 5462 (S.C. Ct. App. filed Dec. 21, 2016) (Shearouse Adv. Sh. No. 48 at 74). Most of the arguments raised in Ms. Jones’ Return were preemptively addressed and rebutted in Ms. Smith’s Petition, and thus no further rebuttal is required here. As discussed below, however, several of her arguments warrant a brief reply.

First, the Return’s Statement of Facts perhaps unwittingly illustrates the sharp disagreements between the various witnesses’ testimony regarding nearly every material fact at issue. The Return relies on evidence and testimony that support Ms. Jones’ argument that the

October 18, 2011 will was a product of the decedent's unhindered choice, free from any undue influence or fraudulent inducement. *See* Return at 3–6. In contrast, Ms. Smith's Petition for Certiorari relies on evidence and testimony leading to the opposite conclusion, namely that the decedent had no intent to visit an attorney that day, did not desire to create another will, did not realize she had done so, and the October 18 will was the product of undue influence or was fraudulently induced. *See* Pet. for Cert. at 5–7. These genuine disputes of material fact should be resolved by a fact-finder, not by the court on a motion for summary judgment.

Second, the Return fails to substantively respond to Ms. Smith's argument that the Court of Appeals' majority diverged from this Court's precedent by applying only half of the legal test used to evaluate a claim of undue influence. *See* Pet. for Cert. at 10–13. When the proper legal test is applied, the facts of the case at bar establish at minimum a genuine issue of material fact regarding the presence of a confidential or fiduciary relationship giving rise to a presumption of undue influence. *See id.*

Third, the Return erroneously asserts that Ms. Smith knew the decedent intended to visit the law office of Robert E. Lee to obtain a healthcare power of attorney on October 18, 2011:

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*.

*See* Return at 14 (emphasis in original).<sup>1</sup> According to Ms. Jones, this fact—assuming it were true—undercuts Ms. Smith’s Petition for Certiorari. The evidence relied on by Ms. Jones, however, hardly stands for the propositions that Ms. Smith knew the decedent planned to visit Mr. Lee’s office at all (much less on the day in question) or that the decedent herself knew or wished for her trip to town on the day in question to include a stop at Mr. Lee’s office. Rather, Ms. Smith’s deposition testimony merely states she was aware (1) that Pam Jordan (Ms. Jones’ daughter) had *offered* to prepare a free healthcare power of attorney for the decedent at Lee’s office, (2) that Ms. Smith had discouraged the decedent from taking advantage of that offer, (3) that the decedent went into town that day believing she was headed only to a brunch, and (4) that when the decedent returned from town she was confused, upset, and unsure what she had signed. *See* R. 261 (Ms. Smith’s deposition page 76). This evidence, when rightly understood, demonstrates the inappropriateness of summary judgment and thus the need for certiorari.

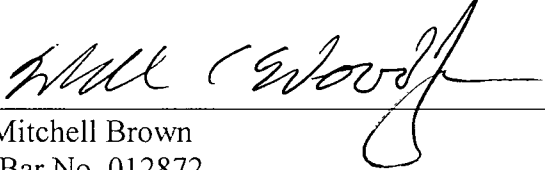
In short, Ms. Jones’ Return does not justify the trial court’s erroneous grant of summary judgment or the Court of Appeals’ erroneous affirmance of that judgment. Accordingly, Ms. Smith respectfully requests this Court grant certiorari, correct the points of fact and law set forth in her Petition, and adopt the cogent and correct reasoning and holding espoused by the Chief Judge’s dissent at the Court of Appeals.

***Signature Page Attached***

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<sup>1</sup> The Court of Appeals’ similarly misapprehended the evidence. *See* Op. at 6 (“Smith stated the Testator thought she was going to Lee’s office to execute a healthcare power of attorney . . .”).

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

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins  
Riley & Scarborough LLP, attorneys for Appellant, do hereby certify that I have served  
all counsel in this action with a copy of the pleading(s) hereinbelow specified by  
mailing a copy of the same by United States Mail, postage prepaid, to the following  
address(es):

Pleadings: Reply in Support of the Petition for Writ of Certiorari

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*May 8*, 2017