THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY CIRCUIT COURT AND PROBATE COURT

Letitia H. Verdin, Circuit Court Judge
Debora A. Faulkner, Probate Judge

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SC Court of Appeals

Case No. 2016-CP-23-02045

Wilson Garner, Jr., Ruby Lee Douglas, and Hazel Hastings as statutory heirs of the Estate of Nell Gaines, and on behalf of all other remaining statutory heirs who may be determined hereafter, ...Appellants,

v.

The Estate of Nell Gaines and John Allen Head, individually and acting as Personal Representatives of the Estate of Nell Gaines,..... Respondents.

BRIEF OF RESPONDENTS

Marcus W. Meetze
S.C. Bar No. 77210
Post Office Box 81118
Simpsonville, South Carolina 29680
864-271-3555 (p)
864-757-8691 (t)
wes@meetzelaw.com
Attorney for Respondents

Richard L. Patton
819 East North Street
Greenville, South Carolina 29601
864-233-9797 (p)
864-233-9790 (f)
Attorney for Appellants

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CASE LAW

STATEMENT OF ISSUES ON APPEAL

Did the lower courts correctly find that S.C. Code § 62-2-504 did not bar the application of the common law doctrine of dependent relative revocation to the facts of the case below?

STATEMENT OF THE CASE

Nell C. Donnan Gaines, a life-long resident of Greenville County, died at the age of 96 on August 13, 2014. (R. p. 8). She was the widow of Gerald Gaines, her second husband. (R. p. 8) Also preceding her was her first husband, Robert Donnan, along with her parents and her siblings. (R. p. 8). She never had any children. (R. p. 8).

Jonathan Alexander Head (hereafter known as "Alex") was her nephew by marriage to Gerald Gaines. (R. p. 8). John and Debra Head are the parents of Alex. (R .p. 8).

Mrs. Gaines executed a will on January 9, 2008, prepared by attorney Leslie Moore of the Wyche Firm (hereinafter referred to as the "2008 Will"). (R. p. 8). It contains a revocation clause, gives jewelry and her real estate to Alex, a car to Tony Burrell, and the rest and residue to Alex. (R. p. 8). She nominates John and Debra Head as Co-Personal Representatives. (R. p. 8). The will was properly witnessed by two disinterested witnesses. (R. p. 8). The parties stipulated to the authenticity of the 2008 will, as well as to the fact that Mrs. Gaines had testamentary capacity at the time she executed the 2008 will. (R. p. 8). The will marked as Respondent's Exhibit #1 and entered into the record without objection. (R. p. 8).

On May 7, 2014, the decedent executed "Last Will and Testament of Nell C. Donnan Gaines", prepared by the Welch Law Firm (hereinafter referred to as the "2014 Will"). (R. p. 8). The will contains a revocation clause, it provides her funeral arrangements, and it conveys the rest and residue to Alex. (R. pp. 8-9). She nominates John Head as Personal Representative with Debra Head to act as successor personal representative. (R. p. 9). The will was witnessed by Debra A. Head, who is the mother of Alex, along with one other witness, Debbie Bowles. (R. p. 9). Also, a Memorandum was executed by Mrs. Gaines dated May 7, 2014, attempting to devise certain real and personal property one-half to Alex and one-half to John Head. (R. p. 9). This was entered into the record as Petitioner's Exhibit #1 without objection. (R. p. 10).

On July 13, 2015, Appellants filed a Petition to Set Aside Will in the Probate Court for Greenville County seeking to set aside the 2014 Will on the basis that Debra Head was an interested witness as defined by S.C. Code Ann. § 62-2-504. (R. pp. 16-23).[1]

On July 28, 2015, Respondents filed a reply and counterclaim to Appellants' Petition to Set Aside Will, asserting the common law doctrine of dependent relative revocation. (R. pp. 33-38).

On August 24, 2015, Appellants filed an answer to Respondents' counterclaims. (R. pp. 39-42),

A hearing was held on Appellants Petition to Set Aside Will on September 15, 2015. (R. p. 7). Present at the hearing were Appellant Ruby Lee Douglas and her attorney, Richard L. Patton. (R. p. 7). Also present were Respondent John Allen Head and his attorney, Marcus W. Meetze. (R. p. 7).

On October 26, 2015, the Honorable Debora A. Faulkner issued an Order ordering the following:

> 1. The testator intended her revocation to be conditional; conditional upon the disposition of her estate in accordance with the provisions of her 2014 will. However, because of the interested witness to the 2014 will, S.C. Code Ann. § 62-2-504 governs the distribution of her estate assets; the end result being that her estate assets would be distributed to her intestate heirs instead of to Alex, the object of her bounty. Therefore because the 2014 will provisions were in effect

[1] Appellants later amended their Complaint to set aside the devise to Alex Head, as opposed to the entire will. This is a distinction without a difference, the 2014 Will left all of Nell Gaines estate to Alex Head as the Memorandum executed by Mrs. Gaines dated May 7, 2014, attempting to devise certain real and personal property one-half to Alex and one-half to John Head has been previously invalidated by the Probate Court. Setting aside the devise would have essentially the same effect as setting aside the will.

nullified by the interested witness statute, the condition of her revocation was not fulfilled such that the 2008 will was not effectively revoked. (R. p. 13).

2. The 2008 will shall be admitted to probate and shall govern the administration of the estate in all respects. (R. p. 13).

On November 6, 2015, Appellants filed a motion to reconsider/ amend or alter a judgment pursuant to Rule 59(e), SCRCP. (R. pp. 43-55). On March 18, 2016, the Honorable Debora A. Faulkner issued an Order denying Appellants motion. (R. pp. 5-6).

On or about March 28, 2016, Appellants filed a Notice of Appeal with the Greenville County Circuit Court. (R. p. 60).

A hearing was held on Appellants appeal to the Greenville County Circuit Court on August 30, 2016. The Honorable Letitia H. Verdin presided.

On September 14, 2016, the Circuit Court issued an Order affirming the decision of the Greenville County Probate Court. (R. p. 2) This appeal follows.

ARGUMENT

STANDARD OF REVIEW

An action to contest a will is at law. *Weeks v. Drawdy*, 329 S.C. 251, 262, 495 S.E.2d 454, 460 (Ct. App. 1997)(citing *Martin v. Skinner*, 286 S.C. 527, 335 S.E.2d 252 (Ct. App. 1985). A petition to set aside a will is an action at law. *Golini v. Bolton*, 326 S.C. 333, 482 S.E.2d 784 (Ct. App. 1997).

If the proceeding in the probate court is in the nature of an action at law, the circuit court or appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them. *Weeks*, 329 S.C. at 262, 495 S.E.2d at 460.

Questions of law may be decided by the circuit court without deference to the lower court. *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000).

INTRODUCTION

It is a fundamental rule that in construing the provisions of a will, the intention of the testator at the time the will is executed, is the primary inquiry of the Court. *Rikard v. Miller*, 231 S.C. 98, 97 S.E.2d 257 (S.C., 1957) (citing *Roundtree v. Roundtree*, 26 S.C. 450, 2 S.E. 474). The same underlying principle was stated by Chief Justice Marshall in *Smith v. Bell*, 6 Pet. 68, 8 L.Ed. 322, as follows: 'The first and great rule in the exposition of wills (to which all other rules must bend) is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law". *Id.*

In this matter, the intent of the testator at the time both wills were executed could not be clearer; it was Mrs. Gaines intent that her estate assets would be delivered to Alex Head, the object of her bounty. It is also quite clear that Mrs. Gaines, if she had been informed that the 2014 will was ineffective, would not have intended that the property should pass by intestacy, but rather that the 2008 will should be restored, the condition on which it had been revoked having failed. To properly effectuate the intent of the testator, the lower courts correctly held S.C. Code Ann.§ 62-2-504 does not bar the application of dependent relative revocation in this matter.

I. The lower courts correctly ruled the common law doctrine of dependent relative revocation (DRR) is still recognized by the courts in South Carolina and is applicable and controlling in the case below.

Respondents asserted the common law doctrine of dependent relative revocation as a defense and counterclaim to Appellants' petition to set aside will. (R. pp._36-37). The South Carolina Supreme Court most recently recognized and applied the doctrine of dependent relative

revocation in *Charleston Library Soc. v. Citizens & Southern Nat. Bank*, 20 S.E.2d 623 (1942), which arose after the Court's decision in *Medical Soc. of South Carolina v. South Carolina Nat. Bank of Charleston*, 14 S.E.2d 577 (1941).

In *Medical Soc.*, the Court upheld the decision of the lower court which found a codicil to the will of Mary Jane Ross was void as a violation of the rule against perpetuities. The codicil directed the executor of the will to form a corporation to be known as the "Trustees of The Ross Memorial". *Id.* at 577. The codicil then bequeathed Nos. 1 and 3 Meeting Street to the corporation to "keep and preserve as a Public Museum to be known as the Ross Memorial" and left certain real estate to the executors, the income from which was directed to be used for the maintenance and support of the Ross Memorial, with the surplus of such income to the Medical Society of South Carolina for use at Roper Hospital. *Id.* at 578.

The Court found the codicil violated the rule against perpetuities because the corporation failed to come within the exception of a charitable trust. *Id.* at 581. As a result of the violation of the rule against perpetuities, the property involved had become part of the residuary estate. *Id.* at 578.

Following the Court's decision in *Medical Soc.*, the Charleston Library Society filed suit in the Court of Common Pleas for Charleston County. *Charleston Library Soc. v. Citizens & Southern Nat. Bank*, 20 S.E.2d 623 (1942). The Charleston Library Society did not argue against the Court's ruling in *Medical Soc.*, which found the codicil violated the rule against perpetuities; rather, the Charleston Library Society argued the revocation contained in the codicil of the eighth clause of Mary Jane Ross's will was a dependent or relative revocation.

Clause 8 of the original will left Number One Meeting Street to the Charleston Library Society to be kept as a library to be known as The Ross Memorial Branch of the Charleston

Library. *Id.* at 624. The codicil left Number One Meeting Street to Trustees of The Ross Memorial and revoked clause 8 of the original will. *Id.* at 625. The Charleston Library Society argued the revocation contained in the codicil was not an absolute revocation, but a dependent or relative revocation "only of the same solely for the purpose of substituting therefor the Museum provisions". *Id.* at 626. As the *Medical Soc.* decision had found the codicil void, the Charleston Library Society argued the condition upon which the revocation was conditioned upon had also failed and "the substituted provisions having failed, the original provisions are ipso faco restored and made effective". *Id.*

The Court examined the doctrine of dependent relative revocation and stated:

> While the intention to revoke maybe conditional, if the revocation is subject to a condition which is not fulfilled the revocation does not take effect. This doctrine is known as that of dependent relative revocation, and is usually applied where the testator cancels or destroys a will or executes an instrument intended to revoke a will with a present intention to make a new testamentary disposition as a substitute for the old, and the new disposition is not made, or, if made, fails of effect for some reason. *Id.* at 626 (citing 68 C.J. 799).

In discussing dependent relative revocation, the Court stated the doctrine is "on of presumed intention and the theory is that the original disposition would not have been revoked unless the new could be given effect." *Id.* at 627 (1942)(citing 28 R.C.L. at pages 182 and 183).

Agreeing with the arguments of the Charleston Library Society, the Court stated:

> I think it is quite clear that Miss Ross, if she had been informed that the Museum provisions of her codicil were ineffective, would not have intended that the property should go under the residuary clause which would thus defeat the purpose to provide a public charity for culture or education, together with a memorial to her deceased brothers, but rather that the Library provisions should be restored, the condition on which they had been revoked having failed. *Id.* at 633.

Applying the doctrine of dependent relative revocation, the Court concluded that the Charleston Library Society was entitled to the property referred to in article 8 of the original will. *Id.* at 634.

A. The lower courts correctly held that the common law doctrine of DRR is valid law in South Carolina.

In this matter, the Probate Court correctly held that "the common law doctrine of DRR is applicable in South Carolina." (R. p. 11). The Probate Court noted that *Charleston Library Soc. v. Citizens & Southern Nat. Bank*, 20 S.E.2d 623 (1942) had "never been overturned or modified by any S.C. appellate court." (R. p. 11).

B. The lower courts correctly applied the common law doctrine of DRR to the case below.

After finding the common law doctrine of DRR is applicable in S.C., the Probate Court correctly applied the doctrine to the case below. The Probate Court found as persuasive authority the case of *La Croix v. Senecal*, 99 A.2d 114, 140 Conn. 311. In *La Croix*, the court faced a set of facts similar to those in this matter. The plaintiff, the niece of the testatrix who was left nothing in her aunt's will, sought a declaration that one-half of the residuary estate was intestate and she was entitled to that half. *Id.* at 116, 313. The basis of the niece's claim was that one of the subscribing witnesses to a codicil of the aunt's will was an interested witness and he was the husband of one of the Defendants who took half of the aunt's estate pursuant to the will and codicil.[2]

As stated above, the facts of *La Croix* are similar to the facts in this matter. In *La Croix*, the testatrix left a will dated March 26, 1951. Item five of the will read as follows:

> All the rest, residue and remainder of property of whatsoever the same may consist and wheresoever the same may be situated, both real and personal I give, devise and bequeath one-half to my nephew, Nelson Lamoth of Taftville, Connecticut, to

[2] Section 6952 of the General Statutes of Connecticut provided the following: "Every devise or bequest given in any will or codicil to a subscribing witness, or to the husband or wife of such subscribing witness, shall be void unless such will or codicil shall be legally attested without the signature of such witness".

be his absolutely; the other one-half to Aurea Senecal of 200 Providence Street, Putnam, Connecticut, to be hers absolutely.

Id.

The testatrix also left a codicil dated April 10, 1951. The codicil read as follows:

I hereby revoke Item Five of said will and substitute for said Item Five the following: Item Five: All the rest, residue and remainder of property of whatsoever the same may consist and wheresoever the same may be situated, both real and personal, I give devise and bequeath one-half to my nephew, Marcisse Lamoth of Taftville, Connecticut, also known as Nelson Lamoth, to be his absolutely; the other one-half to Aurea Senecal of 200 Providence Street, Putnam, Connecticut to be hers absolutely.

Id. at 116, 313-14.

One of the subscribing witnesses to the codicil was the husband of Aurea Senecal. *Id.* The niece argued that the devise to Aurea Senecal failed because of the interested witness and that one-half of the residuary estate was intestate. The court applied the doctrine of dependent relative revocation to save the devise to Aurea Senecal and held that the devise or bequest to Aurea Senecal under item five of the original will stands. *Id.* at 118, 318.

In this matter, the 2008 Will was properly executed, as was the will that was the subject of *La Croix*. Mrs. Gaines executed the 2008 Will on January 9, 2008. (R. p. 8). The 2008 Will was prepared by attorney Leslie Moore of the Wyche Firm and was properly witnessed by two disinterested witnesses. (R. p. 8). The parties stipulated to the authenticity of the 2008 Will, as well as to the fact that Mrs. Gaines had testamentary capacity at the time she executed the 2008 will. (R. p. 8).

The codicil in *LaCroix* failed because of an interested witness, as did the 2014 Will that is the subject of this action. On May 7, 2014, the decedent, Nell Gaines, executed the 2014 Will, which prepared by the Welch Law Firm (R. p. 8). The will was witnessed by Debra A. Head, who is the mother of Alex, along with one other witness, Debbie Bowles. (R. p. 9).

The Probate Court noted that the 2008 Will and the 2014 Will were very similar in their provisions, as were the will and codicil that were the subject of *La Croix*. (R. p. 12). The 2008 contains a revocation clause, gives jewelry and her real estate to Alex Head, a car to Tony Burrell, and the rest and residue to Alex. (R. p. 8). She nominates John and Debra Head as Co-Personal Representatives. (R. p. 8). The 2014 Will contains a revocation clause, it provides Nell Gaines' funeral arrangements, and it conveys the rest and residue to Alex Head. (R. pp. 8-9). She nominates John Head as Personal Representative with Debra Head to act as successor personal representative.

The Appellants argue that by admitting the 2008 Will to probate and allowing it to govern the administration of the estate in all respects, the intent of the testator is defeated. This argument is premised on the personal property memorandum dated May 7, 2014, attempting to devise anything she inherited from the Estate of Herman Tony Burrell one-half to Alex and one-half to John Head. (R. p. 9. The Estate of Herman Tony Burrell became a part of the Estate of Nell Donnan Gaines when Mr. Burrell passed away on March 26, 2014.

The doctrine of dependent relative revocation does not require the two documents be exactly the same, but rather essentially the same. As stated above, the Probate Court made such a finding when it found the provisions of the 2008 Will and 2014 Will were very similar; the only significant difference being how the Estate of Herman Tony Burrell was to be distributed. The lower courts correctly concluded the 2008 Will and the 2014 Will were essentially the same.

Rather than have this Court apply the sound logic and holding as did the court in *La Croix*, the Respondents urge the Court to find as persuasive authority *In re Estate of Lubbe*, 142 So.2d 130 (Fla. 2d DCA 1962), overruled on other grounds, *In re Estate of Johnson*, 359 So.2d 425 (Fla. 1978). The facts presented in *Lubbe* are clearly distinguishable from the facts of this case.

In *Lubbe*, Brantley Burcham was named sole beneficiary of the decedent's residuary estate and challenged a probate order declaring the residuary bequest void on the ground that Burcham was an interested subscribing witness to the will. *Id.* at 131. The two wills at issue in *Lubbe* were both drafted by Burcham, and Burcham was the sole beneficiary of the residuary estate. *Id.* In addition, the court noted that the record before the probate judge disclosed appreciable differences between the two wills and found that the "evidence was not sufficient to justify a conclusion that the testatrix would have preferred her previous will had she known that the residuary bequest in her last will would be inoperative". *Id.* at 136-37.

Unlike the appellant in *Lubbe*, Alex Head did not draft either of the wills at issue in this case, nor was he a subscribing witness. The lower courts did find the evidence was sufficient to justify a conclusion Mrs. Gaines would have preferred her 2008 Will over intestacy. The probate court noted that the 2008 Will and the 2014 Will at issue in this case were very similar in their provisions and that "Mrs. Gaines revocation of her first will was a conditional revocation, the condition being that the dispositive provisions of the new 2014 will would replace the 2008 will." (R. p. 12). The Probate Court went on to find the condition had not been met and the 2008 Will was not effectively revoked. (R. p. 12).

In faced with similar facts as presented in *La Croix*, and a statutory violation like the one presented to the court in *Charleston Library*, the lower courts correctly applied the doctrine of dependent relative revocation to the case before it. The lower courts correctly concluded that it is quite clear that Mrs. Gaines, if she had been informed that the 2014 will was ineffective, would not have intended that the property should pass by intestacy, but rather that the 2008 will should be restored, the condition on which it had been revoked having failed.

II. The Probate Court correctly found that S.C. Code 62-2-504 does not bar the application of the common law doctrine of dependent relative revocation (DRR).

It is important to note that Appellants originally challenged the viability of DRR under South Carolina law based on a perceived conflict with S.C. Code Ann.§ 62-2-508. It appears Appellants have since abandoned this argument. (Brief of Appellants, fn. 4). Perhaps Appellants abandoned the argument due to the large body of law holding that anti-revival statutes should not be interpreted to preclude the doctrine of dependent relative revocation. In *The Estate of Melton*, 272 P.3d 668 (Nev. 2012), the Nevada Supreme Court held:

> Therefore, anti-revival statutes restrict the fundamentally distinct doctrine of revival, they should not be interpreted to preclude the doctrine of dependent relative revocation. See *In re Nutting's Estate*, 82 F.Supp. 689, 691 (D.D.C.1949) (explaining that a statute relating to revival "has no bearing" on the issue of whether dependent relative revocation applies); *Larrick v. Larrick*, 271 Ark. 120, 607 S.W.2d 92, 96 (Ark.Ct.App.1980) (Newbern J., concurring) (explaining that an anti-revival statute does not preclude the doctrine of dependent relatives revocation because "the [anti-viral] statute only comes into effect if there has been a 'revocation' [and] [i]t is to determine precisely that question, i.e., whether there has been a revocation, that the doctrine is applied'); see also Restatement (Third) of Prop.: Wills and Other Donative Transfers 4.3 reporter's note 1 (1999) (criticizing courts that have interpreted anti-revival statutes as precluding the doctrine of dependent relative revocation). We therefore conclude that NRS 133.130 does not preclude the doctrine of dependent relative revocation

Having failed to prove a conflict between the common law doctrine of DRR and S.C. Code Ann.§ 62-2-508, Appellants now allege a conflict between S.C. Code Ann.§ 62-2-504 and the common law doctrine of DRR. This argument fails as well.

The appellants in *La Croix* made a very similar argument to the appellants in the above-captioned matter. The appellants in *La Croix* argued "since the history of [Section 6952 of the General Statutes of Connecticut] shows that from the beginning its purpose was to prevent the subversion of wills, [dependent relative revocation] cannot be utilized as a means of defeating the very purpose of the express statutory provision." *Id.* at 118, 318. The court disagreed stating the

subversion of wills the statute was designed to prevent was "that which results from the scheming activities of persons in a position to utilize the capacity of attesting witnesses to take advantage of testators by over persuading them to make wills in favor of the scheming persons." The court found no evidence of any such improper attempt and stated:

> The sole motivating cause of its execution was an attempt by the testatrix to confirm and make more certain the gift to her nephew, which she had already expressly provided for in the will. Under these circumstances, the purpose of §6952 is neither challenged nor thwarted by applying the doctrine of dependent relative revocation in order to realize the obvious testamentary intent of this testatrix.

Id. at 118, 319.

Respondents again urge this Court to find *La Croix* as persuasive authority as the facts presented to both courts are so similar. In this matter, there is no evidence in the record below of scheming activities of anyone in a position to utilize the capacity of attesting witnesses to take advantage of Mrs. Gaines by over persuading her to make wills in their favor. As stated above, the Probate Court noted that the 2008 Will and the 2014 will were very similar in their provisions. (R. p. 12).

By finding the common law doctrine of dependent relative revocation (DRR) controlling and dispositive in the case below, the lower courts found that S.C. Code § 62-2-504 and the common law doctrine of dependent relative revocation (DRR) are not in conflict. In fact, the Probate Court found that the common law doctrine of DRR and S.C. Code § 62-2-504 work together in the case below as the Court found that because of the interested witness statute, DRR was applicable to the case below. (R. p. 13). Under the facts of this case, the purpose of S.C. Code § 62-2-504 is neither challenged nor thwarted by applying the doctrine of dependent relative revocation in order to realize the obvious testamentary intent of this testatrix.

It appears that Appellants would urge this Court to adopt a rule that DRR only applies when a will fails for non-statutory reasons (i.e. undue influence, duress, lack of testamentary capacity),

or rather that DRR does not apply when a statute provides a "bright line rule" but Appellants cite no case or statute which limits the application of DRR in such a way. If Appellants' argument is correct, than the *Charleston Library* decision was in error. A violation of the rule against perpetuities contains a "bright line rule" in that the transfer is deemed void. Despite this "bright line penalty" the Court applied the doctrine of dependent relative revocation. The fact that S.C. Code § 26-2-504 codified what happens to a devise that fails because of an interested subscribing witness is a distinction without a difference. In *Charleston Library* and *La Croix*, the end result was the same as a violation of S.C. Code § 26-2-504, the devise passes by intestacy.

Appellants argue that the lower courts erred by failing to find *Davis v. Davis*, 37 S.E.2d 530 (S.C. 1946) dispositive of the case below. As Judge Faulkner correctly noted, *Davis* does not address the common law doctrine of dependent relative revocation. The issue before the *Davis* court was whether a void devise and legacy, which is part of a residuary clause of a will, pass under the remaining portion of the same residuary clause or whether it becomes intestate property and distributable to heirs at law of the testator. *Id.* at 532. The Court held that the void portion of the will is intestate property. *Id.*

Nowhere in *Davis* does the Court address or apply the common law doctrine of DRR and as the *Davis* case in no way addresses or disposes of the issues in the case below, the Probate Court correctly found the *Davis* case was not dispositive of the case below.

CONCLUSION

It is a fundamental rule that in construing the provisions of a will, the intention of the testator at the time the will is executed, is the primary inquiry of the Court. *Rikard v. Miller*, 231 S.C. 98, 97 S.E.2d 257 (S.C., 1957) (citing *Roundtree v. Roundtree*, 26 S.C. 450, 2 S.E. 474). The same underlying principle was stated by Chief Justice Marshall in *Smith v. Bell*, 6 Pet. 68, 8 L.Ed.

322, as follows: 'The first and great rule in the exposition of wills (to which all other rules must bend) is that the intention of the testator expressed in his will shall prevail, provided it be consistent with the rules of law". *Id.*

In this matter, the intent of the testator at the time both wills were executed could not be clearer; it was Mrs. Gaines intent that her estate assets would be delivered to Alex Head, the object of her bounty. It is also quite clear that Mrs. Gaines, if she had been informed that the 2014 will was ineffective, would not have intended that the property should pass by intestacy, but rather that the 2008 will should be restored, the condition on which it had been revoked having failed.

The circuit court and probate court correctly applied the common law doctrine of dependent relative revocation to effectuate the intent of the testator. The circuit court and probate court also correctly held that S.C. Code Ann.§ 62-2-504 does not bar the application of the doctrine of dependent relative revocation. For the foregoing reasons, the decisions of the circuit court and probate Court should be AFFIRMED.

Marcus W. Meetze
S.C. Bar No. 77210
Law Office of Marcus W. Meetze, LLC
Post Office Box 81118
Simpsonville, South Carolina 29680
864-271-3555 (p)
864-757-8691 (t)
wes@meetzelaw.com
Attorney for Respondents

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SCACR 211(b) Certification

The undersigned certifies that the within BRIEF OF RESPONDENTS is identical to Respondents' Initial Brief filed pursuant to SCACR 208, except as permitted under SCACR 211(B)(1) & (2).

THIS 24th day of April, 2017

Marcus W. Meetze
S.C. Bar No. 77210
Post Office Box 81118
Simpsonville, South Carolina 29680
864-271-3555 (p)
864-757-8691 (t)
wes@meetzelaw.com
Attorney for Respondents