

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

IN THE MATTER OF
WILMA MARIE NAVY,

HAROLD SCOTT BAUCUM

Appellant,

v.

SUE MORRIS

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-08-152

ORDER

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

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SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT following a Petition for Formal Testacy and Appointment held June 13, 2017, in the Probate Court of Berkeley County, where the Honorable Keith W. Kornahrens presided. An appeal was heard by this court on Monday, November 27, 2017. Present before this court were the counsel for the Appellant, Mike Ellis, Jr. and counsel for the Respondent, Ernie Mixon.

Factual Background

The decedent Ms. Wilma M. Navy, departed this life on February 13, 2017. On March 27th, 2017, the Respondent was appointed as Personal Representative and the Last Will and Testament of Navy dated March 29, 2004 ("Will 2004") was informally admitted to probate. On April 27, 2017, the Petitioner filed a Summons and Petition for the Last Will and Testament of Navy dated May 14, 2017 ("Will 2017") to be formally admitted to probate. Respondent filed an Answer and Counterclaim on May 15, 2017 and the petitioner filed a Reply on May 22, 2017. At the time of the initial hearing before the Probate Court, the Respondent contended that "Will 2017" is not a valid will because the Testator did not "sign" it and failed to mention her daughters therein. The Petitioner contends the will was signed by the Testator and meets the requirements of a will because it is in writing, signed by the Testator, and witnessed by four individuals. The will in question is a single page, completely handwritten document. At the top of the page it reads: "Last Will and Testament". The Appellant contends that the testator "signed" the will when she wrote

her name in the first sentence of the will in her own handwriting. Respondent argues that the insertion of her name is merely a recitation of who is writing the will or for whom the will is being written and not a signature. The Respondent further contends that the name being written in cursive does not make it a signature. The document contains the signatures of four witnesses at the bottom. The name of the testator does not appear anywhere on the document except as stated herein. The Probate Court found that "Will 2004" is valid and admitted to probate. The Probate Court also found that "Will 2017" does not meet the statutory requirements of a Will and therefore does not meet the statutory requirement to revoke a prior will.

The Appellant filed an appeal to this court arguing that the Probate Court erred on the following grounds:

- 1.) By finding that "the first paragraph of the will in question is a declaratory paragraph in which the testator was declaring that she was going to set forth her last will and testament in the paragraphs that followed."
- 2.) By finding that "Will 2017" was not signed, the Probate Court committed an abuse of discretion in interpreting S.C. Code § 62-2-502.

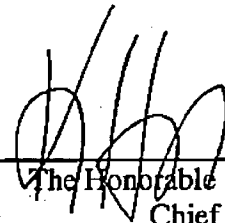
Law and Analysis

As to the second ground, by the Probate Court finding that "Will 2017" was not signed, the Probate Court committed an abuse of discretion in interpreting S.C. Code § 62-2-502. The Appellant is correct that the South Carolina Probate Code is silent to these issues. Therefore, this Court, just as the Appellant did, looked to the Corpus Juris Secundum (C.J.S.) for guidance., "The chief object and purpose of the construction of a will is to discover and carry out the intent of the testator as expressed in the will, and this is the prime duty of the court, and its sole purpose, function, or province"⁹⁶ C.J.S. Wills § 902. It is within the Court's authority to declare the testator's intent. Further, it is in the Court's authority to identify when a document does not follow the testator's intent as well as when it does not comply with the legislature's directives. Therefore, under this ground, there was no error of law by the Probate Court.

This court, having established that the Probate Court had the authority to interpret and declare, now moves to the first ground. As to the first ground, the Probate Court finding that the first paragraph of the will in question is a declaratory paragraph, "The cardinal rule in the construction of wills and codicils is that the intention of the testator must be ascertained if possible,

and, if it is not in contravention of some established rule of law or public policy, must be given effect". 96 C.J.S. Wills § 902. Further, "the chief object and purpose of the construction of a will is to discover and carry out the intent of the testator as expressed in the will, and this is the prime duty of the court, and its sole purpose, function, or province". *Id.* Looking to the decision of the Probate Court, the Court found that the first paragraph of the will is a declaratory paragraph in which the testator was declaring that she was going to set forth her last will and testament in the paragraphs that followed. This is in alignment with the C.J.S. that the first paragraph functions as notice to the reader that the testator's intentions will be listed after the paragraph. In the first paragraph, as the Probate Court noted, the testator was not "affixing" her signature by handwriting in cursive her name for any other purpose other than to identify who was writing or for whom the writing was being made. Therefore, there was no error of law in the Probate Court's decision.

It is hereby ORDERED, ADJUDGED, AND DECREED that the decision of the Probate Court of Berkeley County be AFFIRMED.



The Honorable Kristi Lea Harrington
Chief Administrative Judge
Berkeley County

December 1, 2017
Moncks Corner, South Carolina