



## ANALYSIS

### **I. The Probate Court properly assigned the burden of proof to the Appellants, as the Contestants of a will bear the burden of proof regarding allegations of Undue Influence.**

The procedure outlining the burden of proof in contested will cases are governed by Section 62-3-407 of the South Carolina Code of Laws, (Supp. 2004). This section provides in pertinent part:

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. S.C. Code Ann. 62-3-407 (Supp.2004).

The Court in *Howard v. Nasser*, emphasized that although the proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead, the contestants of the will still retain the ultimate burden of proof to invalidate the will. *See Howard v. Nasser*, 364 S.C. 279, 285, 291, 613 S.E.2d 64, 67-68, 70 (Ct. App. 2005); *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 ("The contestants continue to bear the burden of proof throughout the will contest"); *Smith v. Whetstone*, 209 S.C. 78, 84, 39 S.E.2d 127, 129 (1946) (stating in case where will is formally executed the burden of proof is on the contestant to prove undue influence "and this burden remains on him to the end"). Because the contestants of the will have the ultimate burden of proof, evidence must be viewed in a light most favorable to those contesting the will. *Byrd v. Byrd*, 279 S.C. 425, 427, 308 S.E.2d 788, 789 (1983).

This court finds that there was no error in the Probate Court's application of the burden of proof in this case against the contestant of the will.

### **II. The Probate Court's judgment was reasonably supported by adequate evidence in the record.**

An action to contest a will is an action at law, and in such cases reviewing courts will not disturb the probate court's findings of fact unless a review of the record discloses no evidence to support them. *See In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009); *Golini v. Bolton*, 326 S.C. 333, 338-39, 482 S.E.2d 784, 787 (Ct. App. 1997), *Hairston v. McMillan*, 387 S.C.439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010). Conversely, "[o]n appeal, [the appellate] court will review the record to see if there is *any evidence* to

reasonably support the factual findings of the probate court.” *Golini v. Bolton*, 326 S.C. 333, 339, 482 S.E.2d 784, 787 (Ct. App. 1997) (emphasis added). In a case involving the validity of a Will, [the appellate court] cannot weigh the evidence but may only determine whether there is *any evidence which reasonably supports the judgment* of the Court [below]. *Smith v. Smith*, 288 S.C. 258, 341 S.E.2d 804 (Ct. App. 1986). Thus, the dispositive issue on appeal is whether there is any evidence which reasonably supports the finding [appealed]. *Finley v. Gravely*, 302 S.C. 220, 221, 394 S.E.2d 847, 848 (Ct. App. 1990).

An appellate court is not permitted to reweigh the evidence developed below in order to reach a different factfinding, as the trial court can best determine the relative credibility of the evidence and testimony. The Probate Court adequately supported its factfindings with evidence in the record. The applicable standard of review on appeal in a will contest action dictates that an appellate court, upon review, cannot reweigh the evidence examined by the factfinder below.

Respondent argues that the Probate Court committed error in holding that Appellants presented insufficient evidence to establish that Respondent exercised undue influence over the Decedent. In the Probate Court's December 15, 2016 Order, it held that "[d]espite the fiduciary relationship between Mr. Campbell and Respondent, and arguably, Respondent's motive and opportunity, there is simply not adequate evidence to find that the Will was the product of undue influence." The Probate Court tediously analyzed the evidence presented during the trial of the case, and found that evidence presented at trial did not show undue influence. This Court finds that the Probate Court did not commit error in holding that Appellants presented insufficient evidence to establish that Respondent exercised undue influence over the Decedent.

### **III. The Probate Court did not commit error on the issue of mistake in this case.**

As stated above, an action to contest a will is an action at law, and in such cases reviewing courts will not disturb the probate court's findings of fact unless a review of the record discloses no evidence to support them. *See In re Estate of Anderson*, 381 S.C. 568, 573, 674 S.E.2d 176, 179 (Ct. App. 2009); *Golini v. Bolton*, 326 S.C. 333, 338-39, 482 S.E.2d 784, 787 (Ct. App. 1997). *Hairston v. McMillan*, 387 S.C.439, 445, 692 S.E.2d 549, 552 (Ct. App. 2010). "On appeal, [the appellate] court will review the record to see if there is *any evidence* to reasonably support the factual findings of the probate court." *Golini v. Bolton*, 326 S.C. 333, 339, 482 S.E.2d 784, 787 (Ct. App. 1997) (emphasis added).

Appellants claim that the trial court erred in not finding the will invalid due to mistake. In support of this argument, Appellants presented undisputed evidence that Mr. Campbell had only a first-grade education and that he could not read and would therefore have to rely on the Will being read and explained to him. Further, Appellant's argue that the Will is contrary to handwritten instructions contained in Mr. Sapp's will and to Mr. Campbell's stated intentions.

The Probate Court adequately and tediously analyzed all of the evidence presented during the trial, including but not limited to: Mr. Campbell's lack of education and the discrepancy between his expressed wishes to his family and the terms of the Will. The Probate Court came to the conclusion that the evidence presented on the issue of mistake did not rise to the clear and convincing standard necessary to invalidate the Will on that basis. This Court finds that the Probate Court did not commit error on the issue of mistake in this case.

### CONCLUSION

This Court **AFFIRMS** the Probate Court's assignment of the burden of proof to Appellants to establish undue influence where Respondent held a fiduciary relationship with the Decedent. Further, this Court **AFFIRMS** the Probate Court in finding the Will of Willie Campbell, Jr. dated November 3, 2008 is valid and not a product of undue influence or mistake.

**NOW THEREFORE, IT IS ORDERED** all assignments of error asserted by the Appellants are denied and the Orders of the Colleton County Probate Court are hereby **AFFIRMED**.

**IT IS SO ORDERED.**

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Honorable Perry M. Buckner, III  
Judge for the Fourteenth Judicial Circuit

March \_\_\_\_\_, 2018  
Walterboro, South Carolina



Colleton Common Pleas

**Case Caption:** Mary Mayes , plaintiff, et al VS Rebecca Campbell, Pr For The Estate  
Of Willie Campbell, Jr.  
**Case Number:** 2017CP1500120  
**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122