STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

IN RE: ESTATE OF WILLIE CAMPBELL, JR.

MARY MAYES, LYDIA PEELE, WILLIS FURMAN CAMPBELL, CHARLES CAMPBELL, MELVIN CAMPBELL, JEFFERY CAMPBELL, MAGGIE CAMPBELL, VELECIA CLAY, and ALEASE LERMEL KELLY,

Petitioners,

vs.

REBECCA CAMPBELL, Personal Representative of the Estate of WILLIE CAMPBELL, JR.,

Respondent.

IN THE PROBATE COURT
CASE NO: 2014-ES-15-00022

ORDER

This matter comes before the Court on a Motion for Reconsideration and to Alter or Amend Order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure filed by Petitioners on December 28, 2016. Petitioners argue that the Court misapplied the burden of proof; that the Court erred in holding that the Petitioners presented insufficient evidence of undue influence; and that the Court erred in failing to find that the will was invalid due to mistake. Respondent filed a Return to the Motion on January 17, 2017.

I. Burden of Proof

Relying on *Macaulay v. Wachovia*, 351 S. C. 287, 569 S.E.2d 371 (Ct. App. 2002), Petitioners argue that the existence of a fiduciary relationship between Decedent Willie Campbell, Jr. and Respondent not only created a presumption of invalidity of the will but also shifted the burden to Respondent to affirmatively show the absence of undue influence. As such, Petitioners argue that the Court failed to properly assign the burden of proof to the Respondent.

In *Macaulay*, the Court was asked to determine whether a trust was the result of undue influence, inter alia. The Court of Appeals found that the existence of the confidential relationship between the settlor of the trust and the beneficiaries created a presumption of invalidity of the instrument and shifted the burden to the proponents of the trust to affirmatively show the absence of undue influence.

Three years after *Macaulay*, the Court of Appeals decided *Howard v. Nasser*, 364 S. C. 279, 613 S.E.2d 64 (Ct. App. 2005). Unlike *McCauley* which addressed the validity of a trust, *Howard* addressed the validity of a will. At the trial court level, the court found that the existence of a fiduciary relationship created a presumption of invalidity of a will but does not shift the burden of proof to the proponent of the will to show the absence of undue influence. The Court of Appeals agreed, relying, in part, on S. C. Code Ann. §62-3-407, which states "[c]ontestants of a will have the burden of establishing undue influence…parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." The Court found that though there was a fiduciary relationship between the testator and the proponent of the will, creating the presumption of invalidity, the burden did not shift:

> We emphasize 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. *Id.* at 288.

The Court of Appeals further discussed this "unusual burden-shifting scheme" further in *Gordon v. Busbee* in 2012, explaining: "While the fiduciary may have the burden to offer some evidence to establish a *lack* of undue influence…the ultimate burden of proof remains with the complaining party unless the fiduciary offers no evidence to rebut the relevant presumption." 397 S.C. 119, 141, 723 S.E.2d 822, 834 (Ct. App. 2012).

In the case at hand, Respondent presented evidence rebutting the presumption of undue influence. And, the Petitioners had the ultimate burden of proving undue influence.

II. Sufficiency of Evidence Supporting Finding of Undue Influence

Petitioners also argue that this Court erred in holding that they presented insufficient evidence of undue influence.

> Generally, in order to overturn a will on this basis, the undue influence must: "amount to force and coercion, destroying free agency; it must not be the influence of affection and attachment; it must not be the mere desire of gratifying the wishes of another, for that would be a very strong ground in support of a testamentary act; by importunity which could not be resisted; that it was done merely for the sake of peace; so that the motive was tantamount to force and fear."

Calhoun v. Calhoun, 277 S.C. 527, 532, 290 S.E.2d 415, 418 (1982), (quoting *Floyd v. Floyd*, 3 Strob. 44, 34 S.C.L. 44 (1848)).

In the case at hand, the Court fully reviewed the evidence presented at the hearing and found that, despite the fiduciary relationship and the presumption of undue influence, Petitioners did not present adequate evidence to invalidate the Will on the basis of undue influence. Further, this Court noted that even if there had been undue influence, Decedent had the opportunity to change his will, thus negating any undue influence.

III. Mistake

Petitioners further argue that this Court erred in failing to invalidate the Will on the basis of mistake. Petitioners restate their argument presented at the hearing that Mr. Campbell was illiterate and that he would not have understood the effect of the language of the Will. In particular, Petitioners argue that, even if Sapp read the Will to Mr. Campbell, Mr. Campbell would not have understood that his wife would receive all assets if she outlived him, thus leaving nothing to his children. Petitioners reiterate their argument that the language of the Will is ambiguous, as Item Two leaves an outright gift to Mrs. Campbell of all property, whereas Items Four and Five direct the children with regard to division of the property. The Motion raises no new issues for the Court, and the Court reaffirms its finding that the evidence of mistake of the testator was not clear and convincing, as is required to invalidate the Will on the basis of mistake.

NOW, THEREFORE, it is hereby

ORDERED, ADJUDGED, and DECREED that Petitioners' Motion for Reconsideration and to Alter or Amend Order is denied.

AND IT IS SO ORDERED!

Hon. Ashley H. Amundson
Judge of Probate, Colleton County

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Walterboro, South Carolina
January 27, 2017