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

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SC Court of Appeals

COLLETON COUNTY
PROBATE COURT
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This matter comes before the Court upon a Petition challenging the validity of the Last Will and Testament of Willie Campbell, Jr. dated November 3, 2008 (hereinafter, "the Will"). Petitioners in this matter are the children of Willie Campbell, Jr. (hereinafter, "Mr. Campbell"), to wit: Mary Mayes, Lydia Peele, Willis Furman Campbell, Charles Campbell, Melvin Campbell, Jeffery Campbell, Maggie Campbell, Velecia Clay, and Alease Lermel Kelly. Respondent to the Petition is Rebecca Campbell ("Respondent"), Personal Representative for the Estate and Mr. Campbell's surviving spouse.

This Court appointed Respondent as Personal Representative for the Estate and admitted the Will to probate on February 10, 2014. Petitioners filed their Petition on March 24, 2014. Respondent filed an Answer and Counterclaim on April 14, 2014. Petitioners filed an amended Petition on November 19, 2014; Respondent filed her Answer and Counterclaim on January 30, 2015. The Court held a hearing on the Petition on October 25 and 26, 2016.

At the hearing, Petitioners were represented by attorney R. Morrison M. Payne, Esquire; Respondent was represented by Walter H. Sanders, Jr., Esquire. The hearing included seven witnesses and eight exhibits.

Based on the record of the Court, evidence presented, and testimony of the witnesses, this Court makes the following findings of fact and conclusions of law.

This Court has jurisdiction over this matter, and venue is proper.

I. Background

By all accounts, Mr. Campbell was a hardworking businessman who, despite the lack of a formal education, amassed an estate worth in excess of One Million Dollars, composed primarily of real estate.

Mr. Campbell was married three times. His first marriage, which ended in divorce, produced two children, Mary Mayes and Lydia Peele. His second marriage, to Edna Mae Campbell, produced seven children: Willis Furman Campbell, Charles Campbell, Melvin Campbell, Jeffery Campbell, Maggie Campbell, Velecia Clay, and Alease Lermel Kelly. Following Edna Mae's death in 1981, Mr. Campbell remarried to Respondent within months. He and Respondent were married until his death on October 30, 2013. Witnesses testified that the marriage between Mr. Campbell and Respondent was a marriage of necessity for Mr. Campbell, as he needed help with household chores and with reading and writing. In contrast, Respondent testified that their marriage was good and mutually beneficial.

AHA #2

With regard to Mr. Campbell's reading and writing, son Melvin Campbell testified that Mr. Campbell relied on others for help. For example, Melvin recalled writing receipts for his father's tenants' rent payments. He testified that Respondent would read the newspaper to Mr. Campbell and help Mr. Campbell with his church treasurer reports because of his inability to read and write

well. Daughter Mary Mayes testified that she knew her father could not read or write and she recalled having to read mail to him growing up.

Melvin testified that his father suffered from health challenges including prostate cancer, chronic obstructive pulmonary disease, and a stroke; however, these health challenges developed primarily after the Will execution in 2008.

Witnesses testified that prior to Mr. Campbell's marriage to Respondent, the children enjoyed a good relationship with him. Following the marriage, the relationship with Petitioners was not as close, as Respondent did not welcome them into the couple's home. Petitioner Mary Mayes testified that Respondent "didn't like the family, per se." Son Melvin Campbell testified that Respondent made it uncomfortable to visit Mr. Campbell, and that he was rarely able to visit with his father outside of Respondent's presence. Henrietta Lewis, Mr. Campbell's sister, testified that Mr. Campbell and Respondent fought and that Respondent once threatened to get an attorney and take everything.

Witnesses testified that Mr. Campbell repeatedly stated over the years that he would not leave a will and preferred that his property be "heirs' property." Mary Mayes testified that she spoke with her father in 2012 about his real estate, and Mr. Campbell denied having a will and stated he was not going to make one. She testified that Mr. Campbell wanted his children to share his property and to use it to look out for one another. Melvin Campbell expressed shock over the existence of the Will and the provisions of it, testifying that his father would never leave the children out, particularly Charlie, who has special needs. Roosevelt Chaplin, Mr. Campbell's former brother-in-law, testified that Mr. Campbell was adamant that he would not make a will and that he wanted his property to be left as "heirs'." Henrietta Lewis testified that Mr. Campbell had told her that he wanted his property to remain heirs' property and he never mentioned making a

will. Alese Lermel Campbell Kelly echoed the testimony of the other witnesses, stating that her father did not make a will; she further testified that in 2010, she and her father went to look at his real estate, and he promised her the house of her choice.

Mr. Campbell's attorney Benjamin Sapp testified that he assisted with the closings for Mr. Campbell's real estate transactions, estimating that he performed approximately fifteen to twenty closings for Mr. Campbell from 1995 until Mr. Campbell's death. Sapp testified that over the years he advised Mr. Campbell to make a will. In 2008, Mr. Campbell heeded his attorney's advice, executing a will on June 16, 2008 (Respondent/Defendant's Exhibit 1) and, when son Melvin was in a serious accident, Mr. Campbell executed his second (and final) Will on November 3, 2008 (Petitioners'/Plaintiffs' Exhibit 3).

In contradiction to the testimony presented by Petitioners' witnesses, Respondent testified that she and Mr. Campbell had a romantic relationship in which they relied on one another. She testified that she helped him with his reading, and that Mr. Campbell was able to copy writing and that he had excellent number skills. She testified that he owned four parcels of real estate at the time of their marriage in 1981 but that he acquired the remainder of his real estate during their marriage. She testified that she helped him by preparing church treasurer reports. She denied knowledge of medical problems of Mr. Campbell in 2008 when he executed the Will.

II. Legal Analysis

Petitioners challenge the validity of the Will on the basis of undue influence and mistake.

A. Undue Influence

Generally, in order to overturn a will for undue influence, the undue influence must:

> [A]mount 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)). Undue influence is typically proved by circumstantial evidence, as it is not generally exercised openly. *See, e.g., Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d 788 (1983).

When a fiduciary relationship exists between the testator and the proponents of the will, there arises a presumption of undue influence. Even with the presumption of undue influence that arises when there is a fiduciary relationship, "the contestants of the will still retain the ultimate burden of proof to invalidate the will." *Howard v. Nasser*, 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct. App. 2009). "A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one imposing the confidence." *In re Estate of Cumbee*, 333 S. C. 664, 672, 511 S.E.2d 390, 394 (quoting *Brown v. Pearson*, 326 S.C. 409, 422, 483 S.E.2d 477, 484 (Ct. App. 1997)). A fiduciary relationship existed between Mr. Campbell and Respondent. In addition to their marriage of approximately 32 years, Mr. Campbell relied on Respondent for reading and writing, and she was the holder of a general power of attorney executed by Mr. Campbell.

In addition to the fiduciary relationship, Respondent had the opportunity and motive to influence Mr. Campbell. One witness testified that Respondent once threatened Mr. Campbell with divorce, claiming she would get an attorney and take what he had; also, witnesses testified that they rarely were able to visit with Mr. Campbell without Respondent present. Witnesses testified that they felt uncomfortable visiting Mr. Campbell because of the strained relationship between Respondent and the children and also the tense relationship between Mr. Campbell and

Respondent. However, witnesses testified that they were able to meet with Mr. Campbell alone, even if only rarely.

Petitioners' witnesses testified that Mr. Campbell desired to leave his property to his heirs and that he wanted the children to use it to care for one another. Sapp testified that he had advised Mr. Campbell to make a Will and that in 2008, Mr. Campbell finally yielded to the advice. While the Will does not reflect Petitioners' expectation of property disposition, unjust or even cruel dispositions in one's Will do not amount to undue influence. "A testator may make an unjust or unreasonable distribution of his estate if he wishes and may discriminate against and exclude members of his own family who normally might be objects of his affection." *In re Last Will and Testament of Smoak*, 286 S.C. 419, 425-426, 334 S.E.2d 806, 810 (1985).

Despite 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 circumstantial evidence here does not, "point unmistakenly and convincingly to the fact that the mind of the [testator] was subject to that of some other person so the will is that of the latter and not of the former." *Byrd v. Byrd*, 279 S.C. 425, 427, 308 S.E.2d 788, 789 (1983).

Even if there were undue influence, the unhampered opportunity to change one's will negates the undue influence. "Where the testator has an unhampered opportunity to revoke a will or codicil subsequent to the operation of undue influence upon him, but does not change it, the court as a general rule considers the effect of undue influence destroyed." *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 217, 578 S.E.2d 329, 334 (2003); *Smith v. Whetstone*, 209 S.C. 78, 39 S.E.2d 127 (1946).

In this case, Mr. Campbell made two nearly identical wills in 2008. Mr. Campbell lived nearly five years after making the Will, and the record does not reveal any evidence that Mr. Campbell attempted to alter that Will. In fact, Attorney Sapp testified that he met with Mr. Campbell several other times after Will execution, and Mr. Campbell never discussed making any changes to the Will. Though there was some evidence that Mr. Campbell may not have had testamentary capacity at the end of his life, there were at least two years that he remained able to change or revoke his Will had he desired to do so. Here, Mr. Campbell was still driving as late as 2010 just before his stroke, and there was no evidence that he could not have made an appointment with his attorney to change his Will after November 3, 2008.

B. Mistake and Ambiguity

Petitioners also argue that the Will was a product of mistake. To modify or invalidate a will based on mistake of the testator, there must be "clear and convincing evidence that testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement." S. C. Code Ann. §62-2-601, 1976, as amended.

Petitioners introduced into evidence notes from Attorney Sapp's file (Plaintiffs'/Petitioners' Exhibits 4 and 5). Exhibit 4, which is undated and in Respondent's handwriting, appears to be a form for Mr. Campbell's Will; Respondent characterized it as a "sample," and testified that she drafted it at Mr. Campbell's direction. It states:

> I, [Willie Campbell, Jr.], is [sic] willing my real estate and personal properties to my wife, Rebecca Brown Campbell until after her death. After her death, I want my real estate and personal properties to be will [sic] to my daughter Mary Lee Campbell Mayes, my son Melvin Campbell and my grandson Glen Mayes...They will be responsible also to distribute finances to my other children...Charles Campbell is unable to take care of himself. Therefore, I want Melvin Campbell to be responsible for his finances and care...

These notes appear to indicate a possible desire to create a life estate in Respondent. The Will, however, does not create a life estate. Instead, Item Two of the Will devises a fee simple interest in all property to Respondent:

> I give, devise, and bequeath all of my property, both real and personal, of whatever kind or description and where ever situated to my wife, Rebecca Brown Campbell; however, should she predecease me or should we die in a common disaster, then and in that event, I give, devise, and bequeath all of my property to my daughter, Mary Lee Campbell Mayes, my son, Willis Furman Campbell and my grandson, Glen Mayes, share and share alike.

Item Four states:

> It is my wish and desire that my daughter, Mary Lee Campbell Mayes, my son, Willis Furman Campbell and my grandson, Glen Mayes be held responsible for distributing finances to my sons, Melvin Campbell, Jeffery Campbell and Charles Campbell, and to my daughters, Lydia Campbell Peele, Veleica [sic] Campbell Clay, Maggie Mae Campbell and Alecese [sic] Lemerle Campbell Kelly.

Item Five goes on to state: "It is my wish and desire that my son, Willis Furman Campbell, be responsible for the finances and care of my son, Charles Campbell, as he is unable to care for himself."

No explanation was presented for the apparent difference between the verbiage in the notes and the fee simple gift in the Will, other than Sapp testifying that Mr. Campbell must have changed his mind. Sapp testified that, due to the Will being executed nearly eight years ago, he could not recall the specifics of his conversations with Mr. Campbell regarding the Will. However, he testified that he would have read the Will to Mr. Campbell and confirmed Mr. Campbell's understanding of each of the Will provisions, particularly the disposition of all property to Respondent. Sapp acknowledged Mr. Campbell's limited ability to read and write, and testified that he was cognizant of that at the time of Will execution. Sapp further testified that following

execution of the Will in November 2008, he and Mr. Campbell did not discuss the Will further but that Sapp continued to perform other legal work for Mr. Campbell after the will was signed.

Petitioners argue that the gift in Item Two and the language in Items Four and Five is inconsistent and ambiguous. They contend that the language would have been confusing to Mr. Campbell, and they allege that Mr. Campbell would have thought that he was providing for his children, particularly Charles, as he had a strong desire to do so. Further, they contend that the Will did not reflect Mr. Campbell's intent to leave his property to his children; further, due to Mr. Campbell's limited education and inability to read or write well, they opined that he would not have understood that the wills left the property to Respondent without providing any property to his children if Respondent outlived him.

To introduce extrinsic evidence to construe a will, the will itself must be equivocal. "'The paramount rule of will construction is to determine and give effect to the testator's intent.'" *Estate of Gill ex rel. Grant v. Clemson University Foundation*, 397 S.C. 419, 426, 725 S.E.2d 516, 520 (Ct. App. 2012) (quoting *Holcombe-Burdette v. Bank of Am.*, 371 S. C. 648, 655, 640 S.E.2d 480, 483 (2006)). In determining a testator's intent, the court must look first at the terms of the will itself. And, each item must be considered in relation to the others. *Holcombe-Burdette v. Bank of Am.*, 371 S. C. 648, 640 S.E.2d 480 (2006)).

The language of the Will is clear. All property is devised to Respondent in fee simple, unless she predeceased her husband. Had Respondent predeceased Mr. Campbell, the property would go to Mary Lee Campbell Mayes, Willis Furman Campbell, and Glen Mayes. The language in Items Four and Five is precatory. In those Items, Mr. Campbell merely expresses his desire for his property. Mr. Campbell had the advice of counsel in executing his Will, and his counsel would have made sure that he understood the provisions of it prior to signing. Though evidence was

presented that Mr. Campbell had expressed his desired to leave his property to his children, his Will states otherwise, and the discrepancy between his expressed wishes to his family and the terms of the Will does not act to invalidate his Will.

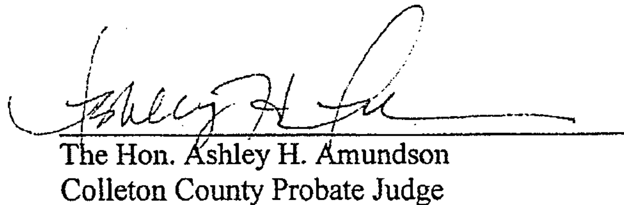
The evidence presented on the issue of mistake does not rise to the clear and convincing standard necessary to invalidate the Will on that basis.

Therefore, it is ORDERED, ADJUDGED, and DECREED that:

The Will of Willie Campbell, Jr. dated November 3, 2008 is valid and not a product of undue influence or mistake. The Personal Representative shall proceed with estate administration in compliance with the South Carolina Probate Code.

AHA #10

IT IS SO ORDERED!



The Hon. Ashley H. Amundson
Colleton County Probate Judge

December 15, 2016
Walterboro, South Carolina