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STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

Appeal from Richland County
Probate Court

The Honorable Amy W. McCulloch, Probate Judge

Appellate Case No. 2016-001960

In the Matter of the Estate of William D. Paradeses

Georganna Paradeses, as Personal Representative of the Estate of William D. Paradeses,..... Petitioner,

v.

Georganna Paradeses, Eleanor Glisson (Faye) (a.k.a. Faye Greeson, Pam Paradeses, Stephanie Starr, Robin Pace, Mary Paradeses and Jim Paradeses,.....Respondents.

OF WHOM

Georganna Paradeses, individually, Pam Paradeses, Stephanie Star, Robin Pace, Mary Paradeses and Jim Paradeses are.....Appellants,

AND

Eleanor Glisson (Faye) (a.k.a. Faye Greeson) is.....Respondent.

REPLY BRIEF OF APPELLANTS

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Argument in Reply

Appellants argue in their brief-in-chief that a rebuttable presumption should operate in favor of the writings upon the original Last Will and Testament of William D. Paradeses being made by Mr. Paradeses himself, where the original Last Will and Testament was discovered among his belongings after his death, with the markings made thereon. Respondent criticizes Appellants' argument for not being reflective of South Carolina law, despite her simultaneous observation that there is no binding precedent on point.

Respondent is correct that Appellants rely on persuasive precedent from other States in arguing that this Court should recognize such a presumption. Indeed, South Carolina Courts have long recognized a presumption, rebuttable by clear and convincing evidence, that a will which cannot be located after the testator's death has been destroyed by the testator *animo revocandi. See, e.g. In re Estate of Pallister,* 363 S.C. 437, 611 S.E.2d 250 (2005).

Although our courts have not been called upon to decide whether such a presumption operates where testator had possession of the will until his death and where the original will is discovered among his possessions with certain provisions stricken, such a presumption flows logically from *Pallister* and its predecessor cases in South Carolina.

In addition to the Virginia case cited in Appellants' brief, other cases from Virginia and elsewhere have confirmed those States' recognition of a rebuttable presumption on these facts. For example, *Franklin v. McLean,* 192 Va. 684, 66 S.E.2d 504 (Va. 1951) included clear findings that such a presumption operated where the

testator's will was discovered entirely stricken through with pencil, and where no evidence was presented regarding who made the strike-outs, how or when.

Likewise, the Supreme Court of Mississippi has also found the existence of rebuttable presumption that a will discovered among the testator's possessions with partial cancelations was intended by the testator to be revoked *pro tanto*:

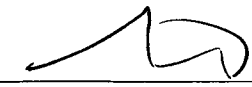
> Relative to this proof of intent to revoke and of the fact that it was done by the Testator, we find a presumption that the lower court apparently did not consider applicable here which is stated in 79 Am.Jur.2d, Wills, Section 607, as follows:
>
> It is generally agreed that if the Will produced for probate which is shown to have been in the custody of the Testator after its execution was found among the Testator's effects after his death in such a state of mutilation, obliteration, or cancellation as represents a sufficient act of revocation within the meaning of the applicable statute, it will be presumed in the absence of evidence to the contrary that such act was performed by the Testator with the intention of revoking the instrument.
> *Palmer v. Harpole*, 359 So.2d 752, 754 (Miss. 1978)

Appellants would thus submit that the presumption recognized by other States' courts should be confirmed by this Court, as it is in harmony with South Carolina's standing presumption of revocation where a will cannot be found after the testator's death.

Conclusion

Respectfully, Appellants submit that the Probate Court's finding that revocation of the devise to Faye could not be accomplished without the formalities of a codicil was in error and must be reversed. They therefore ask that this Court reverse the August 23, 2016 and September 12, 2016 Orders of the Probate Court and find that the devise was effectively revoked.

Respectfully submitted,



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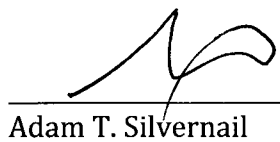
CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants hereby certifies that the foregoing brief complies with Rule 211(b).



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STATE OF SOUTH CAROLINA
In the Supreme Court

Appeal from Richland County
Probate Court

The Honorable Amy W. McCulloch, Probate Judge

Case No. 2016-ES-40-0215

Georganna Paradeses, as Personal Representative of the Estate of William D. Paradeses,..... Petitioner,

v.

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Eleanor Glisson (Faye) (a.k.a. Faye Greeson) is.....Respondent.

Certificate of Counsel

The undersigned counsel for Appellants hereby certifies that the final Brief and Reply Brief filed herewith comply with Rule 211(b).

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