

THE STATE OF SOUTH CAROLINA  
In the Circuit Court

APPEAL FROM HAMPTON COUNTY  
Probate Court

The Honorable Sheila B. Odom, Probate Court Judge

Case No. 2018-CP-25-00084

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SC Court of Appeals

In the Matter of: The Estate of Gertrude J. Williams and the Gertrude J. Williams Revocable Trust under agreement dated September 9, 2008:  
Carlos Fisher.....Appellant,

v.

A.G. Solomons, Jr., in his capacity as Personal Representative of the Estate of Gertrude J. Williams, and A.G. Solomons, Jr. in his capacity As Trustee of the Gertrude J. Williams Revocable Trust under agreement dated September 9, 2008.....Respondent.

**ORDER DENYING THE APPEAL OF CARLOS FISHER**

THIS MATTER CAME BEFORE ME on October 8, 2018 for oral arguments of the appeal by Carlos Fisher of the Order of the Honorable Sheila B. Odom filed February 12, 2018, in the Probate Court for Hampton County. Present at the hearing were Sean Michael Bolchoz, attorney for the Appellant, Carlos Fisher, and Kelly M. Jolley, attorney for the Respondent, A.G. Solomons, Jr. in his capacity as Personal Representative of the Estate of Gertrude J. Williams and in his capacity as Trustee of the Gertrude J. Williams Revocable Trust under agreement dated September 9, 2008. For the reasons stated herein, the appeal is denied and the Order of February 12, 2018 is affirmed.

This matter is before the Circuit Court for an appeal of a case that was initiated in the

Hampton County Probate Court pertaining to the Estate of Gertrude J. Williams (hereinafter the "Estate") on February 19, 2016. Gertrude J. Williams (hereinafter "Williams") died on March 15, 2015, and her Estate has been open since shortly following her death. Williams left behind a pour-over Will, wherein the assets of her Estate poured over into her Trust, the Gertrude J. Williams Revocable Trust (hereinafter the "Trust") under agreement dated September 9, 2008 (hereinafter the "Trust Agreement"). The Trust Agreement provided for several testamentary gifts, including a \$25,000.00 testamentary gift to Appellant Carlos Fisher (hereinafter "Appellant" or Fisher") and his wife, Mary Brown Fisher. Appellant had, jointly with Joe Powell, rented the hunting rights to a parcel of real property located in Hampton County that is now a Trust asset known as the Pine Hill Tract (hereinafter the "Property") for a \$500.00 annual rental fee. Appellant's Probate Court action initiated on February 19, 2016 alleges that Williams intended to give Appellant lifetime hunting rights to the Property for free upon Williams' death, which Appellant alleges is evidenced by a 1997 letter written by Williams to Appellant (hereinafter the "Williams Letter").

Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law. Bank of New York v. Sumter County, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010). "On review of an order granting summary judgment, the appellate court applies the same standard as that used by the trial court." Id. At 155, 691 S.E.2d at 477. On appeal from a final order of the probate court, the circuit court must apply the same standard of review that an appellate court would apply on appeal. In re Howard, 315 S.C. 356, 361, 434 S.E.2d 254, 257 (1993). The standard of review applicable to cases originating in the probate court depends upon whether the underlying cause of action is at law or in equity. In re Estate of Hyman, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004); In re Thames, 344 S.C. 564, 568, 544 S.E.2d 854, 856 (Ct. App. 2001). Since this action is at law,

this court should uphold the findings of the probate court if there is any evidence to support them. Estate of Weeks, In re, 329 S.C. 251, 260, 495 S.E.2d 454, 459 (Ct. App. 1997).

In granting the Cross Motion for Summary Judgment to the Respondent, the Probate Court relied on the Will and Trust Agreement, the Williams Letter in conjunction with a letter from Joe Powell, S.C. Code Ann. § 19-11-20 (2012) (hereinafter the “Dean Man’s Statute”), S.C. Code Ann. §§ 32-3-10(4)-(4) (2006) (hereinafter the “Statute of Frauds”), the deposition testimony of the Parties, and applicable South Carolina case law in ruling that Appellant had no rights of any kind in the Property. The Probate Court found that because neither the Will nor the Trust Agreement contained reference to the Williams Letter or a gift to Appellant of lifetime hunting rights to the Property for free, Williams did not gift Appellant hunting rights to the property for free as a testamentary gift. The Probate Court additionally found that Williams did not gift the hunting rights to the Property for free to the Appellant as an *inter vivos* gift because there was no voluntary donative intent accompanied by an effective delivery of the gift and a subsequent adequate acceptance, and that even if there had been an *inter vivos* gift, Williams’ death effectively revoked the gift because she did not divest herself of it during her lifetime. Baptist Foundation for Christian Educ. V. Baptist College at Charleston, 282 S.C. 53, 58, 317 S.E.2d 453, 457 (S.C. App., 1984). Appellant relies on the Williams Letter as evidence of the gift; however, the Probate Court found that the letter does not expressly indicate a gift. During oral argument, Appellant drew attention to the fact that the Williams Letter was filed; however, the record shows that it was not filed by Appellant until after Williams’ death and after Respondent had informed Appellant that he did not believe that the letter granted lifetime hunting rights.

Furthermore, in examining the deposition testimony and arguments of the Parties, the Probate Court found that there was no admissible evidence in the record supporting the alleged

agreement between Williams and Appellant. The Probate Court ruled the deposition testimony of Appellant and his wife is inadmissible pursuant to the Dead Man's Statute, because the testimony (1) dealt with a transaction or communication between Appellant and a person deceased; (2) is against Respondent, who is defending this action as an administrator; and (3) affects a present interest of Appellant. Kelly v. Peeples, 362 S.E.2d 636, 294 S.C. 63 (S.C., 1987); citing Long v. Conroy, 246 S.C. 225, 142 S.E.2d 459 (1965); Davie v. Atkinson, 291 S.C. 188, 352 S.E.2d 517.

Additionally, the Probate Court found that the Statute of Frauds bars Appellant's alleged hunting rights in the Property because it is undisputed that the alleged agreement between Appellant and Williams granting Appellant lifetime hunting rights to the Property without obligation to pay rent upon Williams' death was never put in writing. See S.C. Code Ann. §§ 32-3-10(4)-(4) (2006).

Lastly, the Probate Court found that the Williams Letter did not and could not create a valid and enforceable lifetime hunting lease because it does not evidence a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975).

After considering the arguments at the hearing, the Probate Court Order of February 12, 2018, the record on appeal, and the submissions of the Appellant and Respondent, this Court finds that the evidence reasonably supports the findings of the court below. No questions of material fact precluded the Probate Court from granting Respondent summary judgment.

Accordingly, the decision of the Hampton County Probate Court is affirmed, and

IT IS SO ORDERED.

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R. Lawton McIntosh  
Judge of the Tenth Judicial Circuit

October \_\_\_\_, 2018  
Anderson, South Carolina



Hampton Common Pleas

**Case Caption:** Carlos Fisher VS A.G. Solomons

**Case Number:** 2018CP2500084

**Type:** Order/Other

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