

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Circuit Court

Thomas A. Russo, Circuit Court Judge

Appellate Case No.2018-00001144

In the Matter of: Estate of Thomas G. Moore

Michael Dennis Moore,Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore, Respondents.

REPLY BRIEF OF RESPONDENT THOMAS PAUL MOORE TO RESPONDENTS
LINDA KAYE MOORE AND FRANCINE LAURA LAWHON'S INITIAL BRIEF

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ATTORNEYS FOR RESPONDENT
THOMAS P. MOORE

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ARGUMENT

Respondents Francine Laura Lawhon and Linda Kaye Moore's (collectively "Respondents") argument in their initial brief focuses on the issue of whether the lower court was correct in applying the doctrine of integration to include the letter ("Document") in the decedent's will. Respondents do not cite any applicable law or authority to support their argument, but rather state their disagreement with the conclusions of fact made by the probate court.

I. THE PROBATE COURT WAS THE FINDER OF FACT AND AS SUCH PROPERLY CONSIDERED ALL EVIDENCE ADMITTED AND TESTIMONY TAKEN AND MADE FINDINGS OF FACT ACCORDINGLY.

The standard of review as to each issue on appeal depends upon the nature of the underlying issue-is it a matter of law, or is it a matter of equity?¹ In matters of law, the appellate court cannot disturb the lower court's findings of fact unless there is no evidence in the record to support the lower court's findings.² Only for matters sounding in equity can an appellate court find facts in accordance with its own view of the preponderance of the evidence.³ And even then, the appellate court may find that the probate judge was in a better position to see and hear the witnesses and evidence and defer accordingly.⁴

¹ Dean v. Kilgore, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993); see also Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

² Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Townes Assocs., 266 S.C. 81, 221 S.E.2d 773; Alexander's Land Co., L.L.C. v. M & M & K Corp., 390 S.C. 582, 703 S.E.2d 207 (2010); Auto Owners Ins. Co. v. Rollison, 378 S.C. 600, 663 S.E.2d 484 (2008).

³ Howard, 315 S.C. 356, 434 S.E.2d 254 (1993); see also Townes Assocs., 266 S.C. 81, 221 S.E.2d 773 (1976); Goldman v. RBC, Inc., 369 S.C. 462, 632 S.E.2d 850; Doe v. Clark, 318 S.C. 274, 457 S.E.2d 336 (1995); Lowcountry Open Land Trust v. Charleston S. Univ., 376 S.C. 399, 656 S.E.2d 775 (Ct. App. 2008).

⁴ U.S. Bank Trust Nat'l Ass'n v. Bell, 385 S.C.364, 684 S.E.2d 199 (Ct. App. 2009); see also Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011); Pinckney v. Warren, 344 S.C. 382, 544 S.E.2d 620 (2001).

An action to construe a will or to determine its validity is an action at law.⁵ The issue which Respondents contests are actions at law. Respondents in their brief fail to name an issue which sounds in equity. Thus, this Court cannot disturb the lower court's findings of fact unless there is no evidence in the record to support the lower court's findings.

The crux of Respondents' arguments is that they disagree with the lower court's findings of facts. Testimony was presented at the hearings and was properly considered by the probate court as the fact finder. The probate court weighed the evidence and made findings of fact. The Respondents' disagreement with the probate court's findings is not proper grounds for reversal.

For instance, Respondents note that Appellant Dennis Moore's testimony conflicted with Respondent Thomas Paul Moore's ("Moore") testimony regarding, among other things, the location where the will and the Document was found. The probate court, as the finder of fact, could, and apparently did, weigh the veracity of the testimony based on the evidence admitted and made findings of fact. Respondents were within their right to contest such testimony and submit evidence supporting their argument. The existence of conflicting testimony alone does not negate the lower court's findings of fact.

II. NO NEW FACTUAL EVIDENCE CAN BE ADMITTED AT THIS TIME, THUS RESPONDENTS' CITATION TO ADDITIONAL EVIDENCE NOT INCLUDED IN THE RECORD ON APPEAL IS IMPROPER.

On appeal from the lower court, this Court is limited to considering arguments based on the evidence that was admitted in probate court, and no new evidence can be

⁵ See Kemp v. Rawlings, 358 S.C. 28, 594 S.E.2d 845 (2004); In re Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005).

presented.⁶ Respondents repeatedly reference purported facts which were not admitted in probate court nor included on the Record on Appeal. Pursuant to Rule 210(c), SCACR, “[t]he Record [on Appeal] shall not, however, include matter which was not presented to the lower court...”⁷

A. The proper avenue to contest Moore’s testimony was through cross-examination and rebuttal witnesses.

Respondents contest the evidence relied upon by the probate court using purported evidence that was not admitted in probate court nor included on the Record on Appeal. For example, the Respondents assert under the section entitled Statement of the Facts that Moore’s relationship with the church was more than twenty (20) years ago.⁸ In the Section entitled Statement of the Issues on Appeal, Respondents allude that this improperly influenced the probate court.⁹ Evidence supporting Respondents’ position on the issue of whether Moore’s relationship with the church was a long time ago or not, was not admitted in the probate court. Thus it is not properly raised now. Furthermore, such information is irrelevant and has no bearing on the applicable issues at law. Finally, the inclusion of and reliance on such improper evidence prevents Moore from being able to cross-examine or refute such evidence. The proper avenue for contesting the testimony and exhibits presented by Moore in probate court was through cross-examination and rebuttal witnesses. Respondents failed to adequately do so and cannot now claim that they were unfairly prejudiced.

⁶ S.C. Code Ann. §62-1-308(i) (2014).

⁷ Rule 210(c), SCACR.

⁸ Respondents’ Br., Statement of the Facts, Jan. 9, 2019.

⁹ Respondents’ Br., Statement of the Issues on Appeal, Jan. 9, 2019.

B. Respondents made a calculated choice not to engage in discovery and thus, cannot now claim prejudice.

Respondents also claim that they were “ambushed with this [Document] the day of trial.”¹⁰ Respondents assert that they were not provided with the Document in advance of trial and go so far as to assert that “the [Document] never existed...” and thus such evidence should be excluded.¹¹ This is a red herring and does not entitle the Respondents to relief for the following reasons.

First and foremost, the fact that Respondents conclude that the Document never existed was contradicted in probate court by Appellant’s and Moore’s testimony that it did. Respondents’ wrongful assertion that Moore was lying under oath is not conclusive on the truthfulness of Moore’s testimony. Respondents merely cite conflicting testimony from the record to support their argument.¹² The fact that there was conflicting testimony does not mean that the court must accept such testimony.

Furthermore, the motion by Moore to submit the Document as part of the decedent’s will pursuant to the doctrine of integration was not prejudicial because Respondents failed to request such documents through discovery. No written discovery was exchanged between the parties. Limited depositions were taken, and some documents were exchanged voluntarily. However, none of the parties submitted Requests for the Production of Documents to the others. Respondents’ failure to do so and then face surprise at trial was a risk that they took in conducting the litigation. Nothing unfair occurred. The Respondents’ simply took a risk and then did not like the outcome when the risk failed to pay off.

¹⁰ Respondents’ Br., Argument §§4-5, Jan. 9, 2019.

¹¹ *Id.*

¹² Respondents’ Br., Argument §§1-2, Jan. 9, 2019.

III. RESPONDENTS HAVE NOT RAISED ANY VALID GROUNDS TO SUPPORT A REVERSAL OF THE LOWER COURTS' RULINGS.

Respondents assert that “4 of the 5 children” will request that this Court overturn the lower court on the issue of the doctrine of integration and its application in this case. Additionally, Respondents erroneously proclaim that “[t]he doctrine of integration should have NEVER been mentioned in this Probate.”¹³ These are not proper grounds for reversal and should be disregarded by this Court. Furthermore, Respondents have not cited any law or other legal authority which would substantiate a reversal of the lower courts.

CONCLUSION

For the reasons stated herein, the circuit court should be affirmed. There is sufficient factual evidence in the record to support the probate court’s findings on all of the issues raised on appeal. Further, the application of the law to those facts should be upheld because the probate court did so appropriately and Respondents fail to raise any other legal authority that shows otherwise.

Signature on following page

¹³ Respondents’ Br., Statement of the Issues on Appeal, Jan. 9, 2019.

TURNER, PADGET, GRAHAM & LANEY, P.A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Pierce Campbell', written over a horizontal line.

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January 24, 2019
Florence, SC

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
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Thomas A. Russo, Circuit Court Judge

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Thomas Paul Moore, et al,.....Respondents,

**REPLY BRIEF OF RESPONDENT THOMAS PAUL MOORE TO
RESPONDENTS LINDA KAYE MOORE AND FRANCINE LAURA
LAWHON'S INITIAL BRIEF**

and

**REPLY BRIEF OF RESPONDENT THOMAS PAUL MOORE TO
RESPONDENT PHILLIP FREDERICK MOORE'S INITIAL BRIEF**

CERTIFICATE OF SERVICE

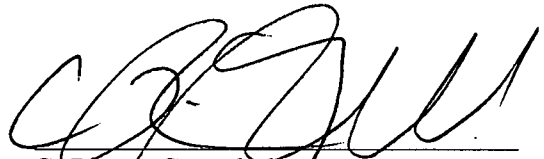
I certify that I have served the above entitled Reply Briefs and this Certificate of Service on January 24, 2019, via Hand Delivery, to the Deputy Clerk, South Carolina Court of Appeals, 1220 Senate Street, Columbia, SC 29201 and by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

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January 24, 2019

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Re: Michael Dennis Moore v. Thomas Paul Moore, Francine Laura Lawhon, Linda Kay Moore, and Phillip Frederick Moore
Appellate Case No.: 2018-001144
TPGL File No.: 13272.101

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the following for filing in the above case:

1. Reply Brief of Respondent Thomas Paul Moore to Respondents Linda Kaye Moore and Francine Laura Lawhon's Initial Brief;
2. Reply Brief of Respondent Thomas Paul Moore to Respondent Phillip Frederick Moore's Initial Brief, and
3. Certificate of Service.

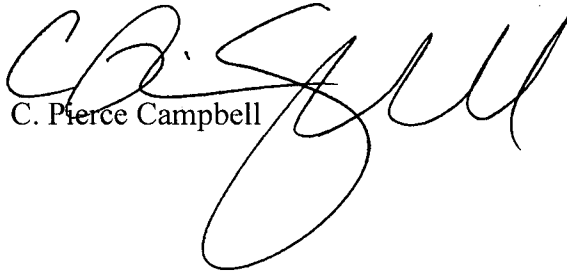
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Please file the originals with the Court, file-stamp the copies for us and return them to our courier. We are serving copies of the Reply Briefs on all parties of record via United States mail. Thank you for your assistance in this matter.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.



C. Pierce Campbell

CPC/met
Enclosures

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