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 RESPONDENT PHILLIP FREDERICK MOORE'S INITIAL BRIEF

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ATTORNEYS FOR RESPONDENT
THOMAS P. MOORE

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Respondent Phillip Frederick Moore's ("Respondent Phillip") argument in his initial brief focuses on the lower court's recognition of the doctrine of integration and its application in this case. Respondent Phillip argues that the doctrine of integration has not been recognized by the courts in South Carolina and further argues that even if it is recognized in South Carolina, it was improperly applied in this case. Respondent Moore has filed a motion to dismiss Respondent Phillip's brief in its entirety; however, this Reply is being filed in an abundance of caution to comply with the Appellate Court Rules.

In support of his argument, Respondent Moore cites voluminous amounts of statutory law and case law, most of which is not binding, not on-point, or not correctly applied to the facts of this case. For example, on pages 13 – 15 of Respondent Phillip's initial brief, he recites large portions of cases originating from Tennessee.[1] Such case law is not binding on this court and as such it should be given little weight. Contrastingly, the Martin case, which was relied upon by the lower courts in concluding that the principle of the doctrine of integration has been used in South Carolina, is a reported South Carolina case that constitutes controlling law.[2]

In an effort to remain succinct, Respondent Moore will not attempt to address all of the irrelevant statutory and case law cited. Respondent Moore has extensively analyzed the applicable case law in his initial brief which supports the conclusion that South Carolina has already recognized the doctrine of integration. The Court's time need not be wasted in reviewing the law here.

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[1] Initial Br. of Resp't., p. 13-15.
[2] Martin v. Hamlin's Ex'rs, 35 S.C.L. 188, 4 Strob. 188, 11850 WL 2884, 53 Am. Dec. 673 (1850).

I. THE LOWER COURTS WERE CORRECT IN RULING THAT THE "DOCTRINE OF INTEGRATION" IS A CONCEPT PREVISOULY UTILIZED AND APPLIED BY SOUTH CAROLINA COURTS.

A. Respondent Phillip Frederick Moore does not properly state the doctrine of integration in his initial brief.

At the outset, it is important to note that Respondent Phillip's first argument seems to misunderstand and misstate the doctrine of integration. He seems to argue that the letter at issue, hereinafter referred to as the "Document", would itself need to be executed and witnessed in accordance with the South Carolina Probate Code's statutory requirements for the valid execution of wills.[3] Were this the case, then the Document would itself constitute a second will.

The probate court went to great lengths to explain the doctrine of integration in its Order.[4] In summary here, integration allows for another document in existence at the time of the making of the will to be included in the will if intended by the testator.[5] Integration holds that the applicable statutes require that a will must be validly executed one time. The documents and pages constituting the will must be present when the document is executed, but the statutes do not require that each individual page be executed and witnessed to constitute a validly executed will. This is consistent with South Carolina state law.[6]

Respondent Phillip disregards the doctrine of integration as "nothing more than a prohibited way to try to make an end run around the clear, plain, and simple statutory

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[3] Initial Br. of Resp't., p. 12.
[4] Final Order, at 2-5.
[5] Estate of Hicks, 3 Cal. App. 3d 312, 314, 83 Cal. Rptr. 499, 501 (1970); see also In re Will of Carter, 565 A.2d 933, 936 (Del. 1989) ("Under the doctrine of integration, a separate writing may be deemed an actual part of the testator's will, thereby merging the two documents into a single instrument."); In re Estate of Benson, C7-95-2185, 1996 Minn. App. LEXIS 330, at *4 (Ct. App. Mar. 19, 1996) ("Multiple writings may constitute a single integrated will if the separate writings were present at the time of the will's execution and the testator intended them to function as a single instrument.").
[6] S.C. Code Ann. §62-2-502 (2014).

requirements for executing a valid will or codicil..."[7] Contrary to what Respondent Phillip attempts to assert, the doctrine of integration is the court interpreting the statutes as codified by the legislature and applying them to facts of each case. This interpretation of the statutes is a proper responsibility of the court. It is not, as Respondent Phillip suggests, the court legislating from the bench.

For these reasons and those set forth in Respondent Moore's initial brief, the lower court correctly concluded that South Carolina recognizes the doctrine of integration.

B. Case law supports the conclusion that South Carolina courts have already utilized the doctrine of integration.

South Carolina case law supports a finding that the principles of integration have already been recognized in South Carolina.[8] As noted above, Respondent Moore's initial brief has extensively analyzed the applicable case law and other authorities which support the conclusion that South Carolina has already recognized the concept of integration. Such analysis is referenced and incorporated herein. Despite Respondent Phillip's extensive recitation of law, he fails to mention a single authority in South Carolina or otherwise that contradicts this theory or finds it inapplicable in South Carolina.

II. THE LOWER COURTS WERE CORRECT IN APPLYING THE DOCTRINE OF INTEGRATION AND RULING THAT THE DOCUMENT WAS A PROPERLY INTEGRATED PART OF THE DECEDENT'S WILL.

In the second section of his Initial Brief, Respondent Phillip urges this Court to overturn the lower courts on three grounds which focus on the application of the doctrine of integration to the facts of this case. First, he asserts that there is no evidence that the

[7] Initial Br. of Resp't., p. 17, Jan. 14, 2019.
[8] Martin v. Hamlin's Ex'rs, 35 S.C.L. 188, 4 Strob. 188, 11850 WL 2884, 53 Am. Dec. 673 (1850).

Document was present when the decedent executed his Will in 1999.[9] Second, Respondent Phillip asserts, incorrectly, that the Document seeks to alter the dispositive provisions of the decedent's will.[10] Finally, Respondent Phillip once again ignores the lower court's findings of fact as to the consistency and congruency of the Document and the decedent's Will, and simply disagrees with the probate court's finding of facts.

A. All of the issues involved in this appeal are actions at law, and as such, 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.

In evaluating the arguments Respondent Phillip makes, it is imperative that the Court apply the correct standard of review. 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 presented.[11] Further, the arguments must have been raised with specificity, in a timely manner and ruled upon by the probate court.[12] All determinations of fact and law not appealed are the law of the case.[13]

The standard of review as to each issue depends upon the nature of the underlying issue-is it a matter of law, or is it a matter of equity?[14] In matters of law, the appellate court cannot disturb the lower court's findings of fact unless there is no evidence in the

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[9] Id., p. 24.
[10] Id.
[11] S.C. Code Ann. §62-1-308(i) (2014).
[12] S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903 (2007).
[13] Biales v. Young, 315 S.C. 166, 432 S.E.2d 482 (1993) (finding that failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal); see also Anderson v. Short, 323 S.C. 522, 476 S.E.2d 475 (1996) (stating where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case); Carolina Chloride, Inc. v. Richland Cnty., 394 S.C.154, 714 S.E.2d 869 (2011) (finding the trial judge's unappealed procedural ruling was the law of the case); Judy v. Martin, 381 S.C. 455, 674 S.E.2d 151 (2009) (finding circuit court's unchallenged ruling on magistrate court's subject matter jurisdiction was the law of the case); Ulmer v. Ulmer, 369 S.C. 486, 632 S.E.2d 858 (2006) (holding circuit court erred in changing visitation order because respondent never petitioned the probate court to modify the visitation order; therefore, the matter was not properly preserved for review).
[14] 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).

record to support the lower court's findings.[15] Only for matters sounding in equity can an appellate court find facts in accordance with its own view of the preponderance of the evidence.[16] 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.[17]

An action to construe a will or to determine its validity is an action at law.[18] The issue which Respondent Phillip contests is an action at law. Respondent Phillip fails 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.

B. As applied to the facts of this case, the lower court correctly ruled that the document at issue was a properly integrated part of the decedent's will.

For the first time, a party to this action is contesting the authenticity of the Document. The authenticity of the Document was not contested at trial, nor was it contested on appeal to the circuit court, and was not contested in the instant appeal by the Appellant. At trial, Respondent Phillip's counsel contested admission of the Document on the basis that the Document was not a part of the decedent's will.[19] They did not contest the authenticity of the Document. As such this issue is not preserved for review.

In Goethe v. Browning, the court found that it was a determination of fact as to

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[15] 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).

[16] 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).

[17] 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).

[18] 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).

[19] Prob. Ct. Hearing Tr., dated Dec. 22, 2015, p. 161-64.

whether or not the documents purported to be the will are in fact the will of the testator.[20] Therefore, the findings of fact on the issue of what constitutes the testator's will are conclusive and cannot be overturned unless there is no evidence to support them.[21]

The Document was located with the will when the will was found.[22] That evidence was uncontested at trial, despite what Respondent Phillip argues herein. Additionally, the coherence and continuity between the two documents was inherent.[23] The court found that these facts created a presumption of the presence of the Document at the time the will was executed.[24] No evidence of any contrary intent by the testator was presented. Respondent Phillip's argument fails to note that the probate court was able to weigh any and all evidence regarding the location of the Document with the will.

Determining which sheets of paper or documents compose a will is a question of fact.[25] "If the [finder of fact] is satisfied by intrinsic evidence or otherwise that the purported will composed of one, two, or more sheets is the will of testator, and render their verdict accordingly, it is sufficient."[26]

Second, Respondent Phillip incorrectly contends that the Document seeks to alter the dispositive provisions of the decedent's will. The Document does not conflict with the remaining terms of the decedent's will; rather, it complements the decedent's will. There are no other provisions in the decedent's will that specifically provide for contrary distributions of the church property. To the extent that Respondent Phillip is asserting that the Document conflicts with the residuary clause of the decedent's will, this is an

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[20] Goethe v. Browning, 146 S.C. 7, 143 S.E. 362 (1928).
[21] Id.
[22] Final Order, at 5.
[23] Final Order, at 5.
[24] Id.
[25] Goethe v. Browning, 146 S.C. 7, 143 S.E. 362, 364 (1928).
[26] Id.

erroneous conclusion. If such were the case, then all specific devises in a will would conflict with residuary clauses.

Finally, Respondent Phillip erroneously makes the assertion that integration fails because Respondent Moore never put forth on any of the attesting witnesses to prove that the subject document was in fact present at the time of the execution of the Will. By the same token Respondent Phillip never put forth any of the attesting witnesses to prove that the subject document was not identified at the time of the execution of the Will. In fact, Respondent Phillip did not put forth any evidence to suggest that the document was not present at the time of the execution of the Will or that the Decedent did not intend to include the document as part of the Will.

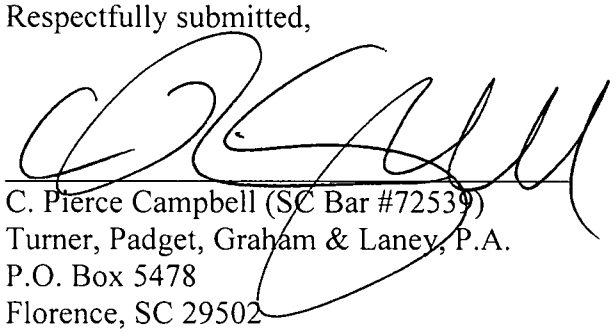
The probate court correctly applied the law of integration to include the disposition in the letter with the other terms of the will because the facts showed that to be the intent of the testator. No contrary facts were presented at trial, and no law disputing the doctrine of integration has been presented.

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 Respondent Phillip fails to raise any other legal authority that shows otherwise.

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

Respectfully submitted,



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