

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Trial Court Case No. 2011-ES-10-0465  
Appellate Case No. 2013-001817

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APR 01 2014  
SC Court of Appeals

In Re: Estate of Sylvia J. Reagan

Linda Reagan Shelley

Appellant.

v.

Ramona D. Becker, individually and as Personal Representative of  
the Estate of Sylvia J. Reagan, Beryl Routon, Kayla Dawn Kastrup,  
and Tom Coats,

Defendants

Of Whom

Ramona D. Becker, individually and as Personal Representative of  
the Estate of Sylvia J. Reagan is

Respondent.

RECORD ON APPEAL

David K. Haller  
Haller Law Firm, P.C.  
115 River Landing Dr, Ste 102  
Charleston, SC 29492  
(843) 849-1384  
Attorney for Appellant

Joseph S. Brockington, Esq.  
171 Church Street, Suite 160  
Charleston, SC 29401  
Attorney for the Respondent

## INDEX

1.	Order dated March 16, 2012 .....	1
2.	Order Denying Motion to Alter or Amend dated November 28, 2012 .....	6
3.	Form Order 4 Affirming Probate Court dated July 29, 2013 .....	8
4.	Order Granting Rule 59(e) Motion dated September 27, 2011 .....	10
5.	Petition for Informal Testacy and Appointment dated March 22, 2011 .....	12
6.	Petition for Formal Testacy and Appointment dated September 21, 2011.....	17
7.	Answer dated October 14, 2011 .....	23
8.	Petitioner's Motion to Reconsider Pursuant to SCRCF Rule 59, or in the alternative, to Set Aside Judgment Pursuant to SCRCF Rule 60 and to Order Formal Proceedings dated June 24, 2011 .....	25
9.	Motion to Alter or Amend dated March 29, 2012 .....	27
10.	Notice of Appeal (to Circuit Court) dated December 3, 2012 .....	52
11.	Transcript of Proceedings from January 12, 2012 .....	58
12.	Last Will and Testament of December 29, 2009 .....	146
13.	Last Will and Testament of February 25, 2011 .....	148



This court was presented with a hand-written document purporting to be the Last Will and Testament of Sylvia J. Reagan, on or about March 17, 2011. The Will was not accepted informally because one witness executed the document with a Notary Public signature. On or about March 22, 2011, Dr. Ramona Becker presented a form Will, properly witnessed, and signed by Sylvia J. Reagan to the Probate Court. That Will was admitted to the Court and the Court issued a Certification of Appointment naming Ramona D. Becker as the Personal Representative of the Estate of Sylvia J. Reagan on March 22, 2011.

## II. ISSUE PRESENTED

Does the holographic Will presented by Linda Reagan Shelley as the Last Will and Testament of Sylvia J. Reagan meet the statutory requirements of having two witnesses as required by section 62-2-502, South Carolina Code of Laws, 1976, as amended, when the document on its face has one witness and a Notary Public's signature notarizing the document?

## III. FINDINGS OF FACT AND CONCLUSION

The Court's inquiry must start with the statutory requirement found in section 62-2-503, Code of Laws of South Carolina, 1976, amended. That section requires two witnesses to the Testator's signature on the Will. Here, as in other cases related to the Last Will and Testament of a deceased, the wishes of the Testator is paramount. The testimony revealed that the Testator called Delores Belin-Burns, a neighbor, to her home and requested that she come over to notarize a document. Mrs. Burn's uncontroverted testimony states that she did exactly what the Testator asked her to do, which was to notarize a document. There was never a request that she witness this Will, but to notarize a document.

Petitioner's attempt to change the character of the person from Notary to witness is ineffective because the Testator's wishes were only that she notarize the document. Clearly the

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Testator knew how to ask that Delores Belin-Burns witness and notarize as she had done with her prior Will.

Some jurisdictions have allowed a Notary Public to be an attesting witness to a Will under strict circumstances. *In re estate of Tomasa Alfaro, deceased*. 301 Ill. App.3d 500, 703 N.E. 2d 620, 234 Ill. Dec. 759. The strict requirements are:

That he was requested to attest the instrument intended to act as a witness, and added the [NOTARY] certificate in the belief that it would give greater efficiency to his attestation. 79 Am. Jur. 2d Wills. Section 268(1975), see *In re Hull's Will*, 117 IOWA 738, 740-44, 89 N.W. 979, 980-81 (1902); *In re ESTATE of PRICE*, 73 WASH. App 745, 752, 871 P2d 1079, 1083 (1994).

In the instant case, none of the requirements are met. Delores Belin-Burns was not requested to attest the instrument nor did she intend to act as a witness. In this case, simply because Ms. Belin-Burns was asked to notarize the document and the other witness was not requested to witness or attest does not mean that this request or conduct of Ms. Sylvia Reagan was reprehensible. In this case, this court has not validated the February 25 Will as properly executed, so this must occur prior to the decision of burdens in contested cases.

By §62-3-406 (a), If evidence concerning execution of an attested will which is not self-proved is necessary in contested cases, the testimony of at least one of the attesting witnesses is required. South Carolina Code Ann. §62-3-406(a). From the above strict requirements for a Notary Public to be a witness signature as well a Notary signature, the February 25 Will does not meet this requirement, and thus the testimony of an attesting witness is null.

Ms. Shelley had the burden of proving that the February 25 Will was a writing signed by Ms. Reagan and witnessed by two individuals, "each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will." South Carolina Code Ann. §62-2-502.

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I find that Ms. Shelley has not met her burden due to the inconsistent testimony from Mrs. Jones and Mrs. Belin-Burns.

All of the witnesses called by the Petitioner testified that they recognized Ms. Reagan's signature and her handwriting on the Will, the testimony was inconsistent in what they indicated they witnessed, whether they actually saw her sign the Will, or whether Ms. Sylvia Reagan verbally acknowledged that the February 25 Will was her "Last Will and Testament." The testimony of of Sara H. Jones as to her role in this process and what she "witnessed" is problematic and is not helpful in determining whether her signature as a witness is valid. Most notably, Ms. Jones stated during her deposition that Ms. Belin-Burns brought the completed Will to Mrs. Reagan's home, but that was disputed by Ms. Belin-Burns.

The core dispute is whether the February 25 Will was witnessed properly by two witnesses who either 1) saw Ms. Reagan sign the Will; 2) saw or heard Ms. Reagan acknowledge the Will; or 3) saw or heard Ms. Reagan acknowledge her signature on the Will. Based on the testimony of both Ms. Jones and Ms. Belin-Burns, I find that the February 25 Will was not validly executed. Though Ms. Shelley understands and is suitable to serve as Personal Representative of the Estate of Sylvia Reagan, her priority as the primary beneficiary of the February 25 Will does not change the status of the February 25 Will, which must be decided before further action takes place.

This Court does not find that the holographic Will submitted by Petitioner meets the statutory requirements of two witnesses as required by section §62-2-503. While the statute does allow for the Notary Public to be a witness to a Will along with Notarizing the Will there is no provision for a Notary Public to Notarize without also signing as a witness. This Court,

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therefore, declines to expand the plain meaning of the statute and rejects the Will offered by Petitioner.

For the reasons stated above, this Court candidly rules that the holographic Will submitted by Petitioner is not the Last Will and Testament of Sylvia J. Reagan and that the Will submitted by Ramona D. Becker is accepted by this Court and she is reinstated as the Personal Representative.

**IT IS THEREFORE ORDERED ADJUDGED AND DECREED** that the holographic Will submitted by Petitioners is not the Last Will and Testament of Sylvia J. Reagan; it is further

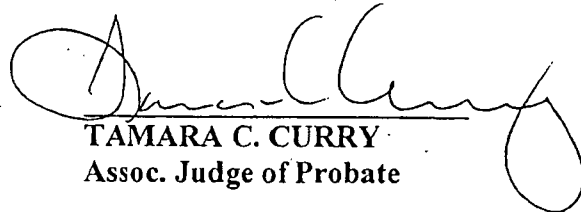
**ORDERED ADJUDGED AND DECREED** that Will submitted by Ramona D. Becker is accepted by this Court; it is further

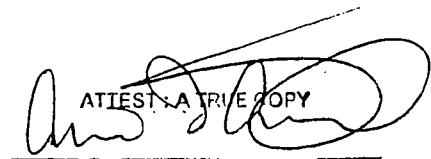
**ORDERED ADJUDGED AND DECREED** that Ramona D. Becker is accepted by this Court and she is reinstated as the Personal Representative.

**AND IT IS SO ORDERED!**

This the 16 day of March 2012.

Charleston, South Carolina

  
TAMARA C. CURRY  
Assoc. Judge of Probate

  
ATTEST: A TRUE COPY  
CLERK PROBATE COURT  
CHARLESTON COUNTY, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

THE PROBATE COURT  
CASE NO: 2011-ES-10-0465

Linda Regan Shelley, )  
Petitioner )

v. )

Ramona D. Becker, )  
Respondent. )

ORDER DENYING MOTION  
TO AMEND OR ALTER

DATE OF HEARING: May 7, 2012  
TRIAL JUDGE: Tamara C. Curry  
PETITIONER: Ramona D. Becker  
PETITIONER'S ATTORNEY: David J. Haller  
RESPONDENT: Linda Reagan Shelley  
RESPONDENT'S ATTORNEY: Robert L. Gaillard

This matter came to be heard before me on May 7, 2012 on a Motion to Alter or Amend, which Petitioner, by and through her attorney David J. Haller filed on March 29, 2012.

Petitioner asked the Court to Amend the Court's Order dated March 16, 2012. This Motion is based on the Petitioner moving the Court to reconsider its' Order based on the following issues:

1. The Petitioner argues that the court erred in finding the February 25, 2011 was a "holographic will not meeting the requirements as the Last Will and Testament of the decedent.
2. The Illinois law relied on by the court is counter to South Carolina Law.
3. The South Carolina statutory scheme places no limitation on the qualification of witnesses.
4. The witnesses testified unequivocally that Ms. Reagan told them the February 25 Will was her Will and either saw her sign the document or acknowledge her signature.

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5. The Respondent called no witnesses nor presented any evidence that "the Will submitted by Ramona D. Becker" was the Will of Ms. Reagan.
6. The court erred in holding the January 12, 2012 hearing was a continuation" of the Petitioner's Rule 59 motion.

Based on the arguments the Respondent seeks a Motion to Alter or Amend Judgment, and that Motion is hereby denied.

Accordingly, after a review of the Petitioner's arguments, supporting law and documents, the MOTION of Petitioner Linda Reagan Shelley to Alter and Amend the Order of the Court dated March 16, 2012 under Rule 59 of the South Carolina Rules of Civil Procedure is DENIED;

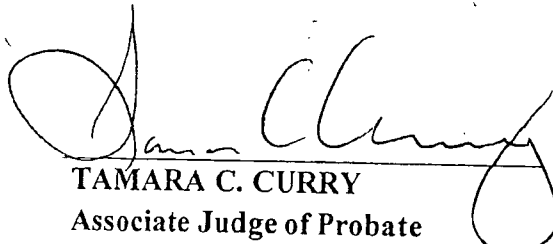
**ORDERED** that the holographic Will submitted by Petitioners is not the Last Will and


Testament of Sylvia J. Reagan; it is further;

**ORDERED** that the Will submitted by Ramona D. Becker is accepted by this Court; it is further;

**ORDERED** that Ramona D. Becker is accepted by this Court and she is reinstated as the Personal Representative.

**AND IT IS SO ORDERED.**

  
TAMARA C. CURRY  
Associate Judge of Probate

  
ATTEST: A TRUE COPY  
CLERK PROBATE COURT  
CHARLESTON COUNTY, SOUTH CAROLINA

November 20, 2012  
Charleston, South Carolina

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STATE OF SOUTH CAROLINA  
COUNTY OF Charleston  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-7929

Linda Reagan Shelley,

Ramona D. Becker, Individually and as  
Personal Representative of the Estate of  
Sylvia J. Reagan, et al.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
or  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
2012 JUL 29 PM 12:29  
CLERK OF COURT  
J. ARNSTADT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court: **AFFIRMED.** This matter came before the Court for a hearing on Linda Shelley's appeal from the ruling of The Honorable Tamara Curry in the above action. Upon review of the file and after hearing arguments of the parties, this Court **AFFIRMS** the ruling of The Honorable Tamara Curry.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Handwritten Signature]*

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Page 1

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

THE PROBATE COURT  
CASE NO. 2011-ES-10-00465

IN RE: Estate of Sylvia J. Reagan )  
 )  
Linda Reagan Shelley, )  
 )  
Petitioner, )

**ORDER GRANTING RULE 59 MOTION**

v. )

Ramona D. Becker, individually and as )  
Personal Representative of the Estate of )  
Sylvia J. Reagan, Beryl Routon, Kayla )  
Dawn Kactrup, and Tom Coats, )  
 )  
Respondents. )

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Date of Hearing: September 12, 2011  
Petitioner: Linda Reagan Shelley  
Petitioner's Attorney: David K. Haller, Esq.  
Respondents: Ramona D. Becker, PR  
Respondent: Beryl Routon  
Kayla Dawn Kactrup  
Tom Coats  
Resp.'s Attorney: Robert Gilliard, Esq.  
Court Reporter: Janice Shepherd, CSR, RPR

Pursuant to SCRCF Rule 59, Petitioner Linda Reagan Shelley filed this motion requesting the Court reconsider its March 22, 2011 order probating a December 2009 Will and appointing Respondent Ramona D. Becker as personal representative. Ms. Shelley received written notice of the entry of the order on June 17, 2011, when she came to the courthouse to review the clerk's file. Ms. Shelley contends that a Will dated February 25, 2011, revoked the Will probated by the Court and that she is the proper personal representative. For the reasons set forth herein, the motion is GRANTED.

Ms. Becker's testimony at the hearing revealed that she was aware of an instrument or document amending or revoking the Decedent's previous will, however; she filed the earlier will prepared by the Decedent to the Court. The testimony also revealed that Linda Reagan Shelley filed with the court the latter will dated February 26, which was not admitted for probate. Based on these facts, the Court rules that this matter should have been set for formal proceedings, as there is insufficient evidence to determine whether the December 29, 2009, was an unrevoked testamentary document. See S.C. Code Ann. §§ 62-3-303(c) and 62-3-311.

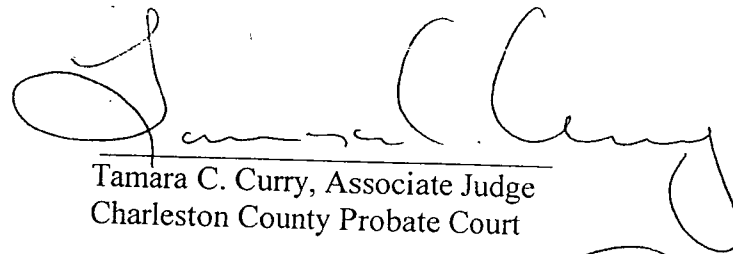
Accordingly, I amend the March 22, 2011 order probating the December 29, 2009 will, terminate Ms. Becker as personal representative effective immediately, and set this matter for formal proceedings before me on October 14, 2011, at 9:30 am.

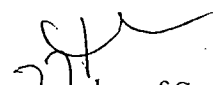
**THEREFORE, IT IS ORDERED**, that the March 22, 2011, order probating the Will of Sylvia Reagan dated December 29, 2009 is amended, and set for formal proceedings; and

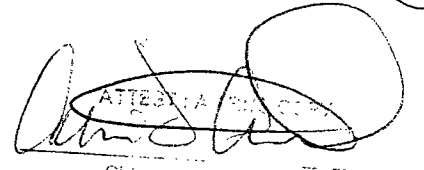
**IT IS FURTHER ORDERED**, that Ramona D. Becker is terminated as personal representative of the Estate of Sylvia Reagan effective immediately. Ms. Becker is directed to cease and desist any duty associated with being personal representative; and

**IT IS FURTHER ORDERED**, that this matter be set for formal proceedings on October 14, 2011, at 9:30 am.

**IT IS SO ORDERED!**

  
Tamara C. Curry, Associate Judge  
Charleston County Probate Court

  
This 27th day of September, 2011  
Charleston, South Carolina.

  
ATTEST: A Notary Public  
CLERK OF THE PROBATE COURT  
CHARLESTON COUNTY, SOUTH CAROLINA

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APPLICATION FOR (check any that apply) INFORMAL

PETITION FOR FORMAL TESTACY APPOINTMENT

PROBATE OF WILL APPOINTMENT

PROBATE COURT CHARLESTON, SC 2011 MAR 22 PM 1:38 FILE

Applicant/Petitioner: RAMONA D. BECKER Address: 5824 E. 48TH ST CIP. N., WICHITA, KS 67220-1600 Telephone: 316-774-3393

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

- 1. Give your relationship to the decedent, if any, and your interest in this proceeding. SYLVIA WAS MY FRIEND OF MANY YEARS & WE SHARED A BELOVED GRANDDAUGHTER - KAYLA DAWN KASTRUP. 2. Decedent Information

Name: SYLVIA J. REAGAN Last Four Digits of Social Security Number: XXX-XX- 251-44-5661 Date of Birth: MAY 26, 1931 Date of Death: MARCH 16, 2011 Age at date of death: 80 79 Domicile at date of death: 1351 CAMP ROAD CHARLESTON, SC 29412 (county) S. CAROLINA (state)

- 3. Venue for this proceeding is proper in this county because: Decedent was domiciled in this county at date of death. Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death. Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Table with 4 columns: Name, Date of Birth, Address, Relationship to Decedent. Rows include RAMONA DAWN BECKER, KAYLA DAWN KASTRUP, TOM COATS, and BERYL ROUTON.

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
SAM DAWWELL	NOT A MINOR	POPLAR BLUFF, OKLAHOMA	SON

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

NO  YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

NO  YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

NO  YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

NO  YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

NO  YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten years passed since the decedent's death?

NO  YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of TBD and real estate of about the value of TBD. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

NO  YES If yes, please explain on page 3 and then proceed to Section II.

THERE WAS A REVOKED WILL TO HER GRANDSON, TOM GOATS, WHO IS KAYLA DAWN'S FATHER.

IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- The original is attached
- The original is in the Court's possession
- An authenticated copy of a will probated in another jurisdiction is attached
- An authenticated copy of a will not probated in another jurisdiction is attached
- The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- Yes       NO If no, please explain on page 3.

3. The date of execution of the will was: DECEMBER 29, 2009  
codicil(s): DECEMBER 29, 2009

4. Are you aware of any instrument or document amending or revoking the will?

- NO       YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- YES       NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- YES       NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.  
(If more space is required, use additional sheet.)

#4 page 3 EXPLANATION

THERE WAS ANOTHER WILL WRITTEN SHORTLY BEFORE SYLVIA DIED BUT I UNDERSTAND IT HAS BEEN RULED INVALID BY THIS COURT.

#6 pg 3 EXPLANATION

THIS IS MY OPINION THAT SYLVIA HAD WRITTEN HER LAST WILL IN DEC 2009. I DO NOT BELIEVE SHE WAS SINCERELY INTENDING THE LAST MINUTE WILL TO BE HER TRUE WISHES.

IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

RAMONA D. BECKER  
5824 E. 48TH ST CIR. N. , WICHITA, KS. 67220-1600

2. Priority for this appointment is:

- named as Primary Personal Representative in will
- named as Alternate Personal Representative in will
- nominee of above Primary Personal Representative in will
- nominee of above Alternate Personal Representative in will
- surviving spouse of decedent who is devisee of decedent or nominee of said spouse
- other devisee of decedent, (describe): \_\_\_\_\_ or nominee of said devisee
- surviving spouse of decedent or nominee of said spouse
- other heir of decedent (describe): \_\_\_\_\_
- creditor (Forty-five days after death must have passed), or nominee of creditor
- other (describe): \_\_\_\_\_

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

N/A

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 20<sup>th</sup> day of

March, 20 11

[Signature]

Notary Public for South Carolina

My Commission Expires: 2/2017

Signature: [Signature]  
 Name: RAMONA D. BECKER  
 Address: 5824 E. 48TH ST. CIR. N.  
WICHITA, KS 67220-1600  
 E-mail: dr.milagro@cox.net  
 Telephone (O): 316-744-3393  
 (H): 316-516-3743

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be  GRANTED  DENIED informally this 22 day of March 2011

[Signature]  
95502  
Probate Court Judge

15

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: *Ramona D. Becker*  
Name: RAMONA D. BECKER  
Address: 5824 E. 48<sup>TH</sup> ST CIR. N.  
WICHITA, KS 67220-1600  
E-mail: dr.milagro@cox.net  
Telephone (O): 316.744.3893  
(H): 316-516-3743

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: Sylvia J. Reagan

IN THE PROBATE COURT

CASE NUMBER: 2011-ES-10-00465

APPLICATION FOR

INFORMAL

(check any that apply)

- PROBATE OF WILL
- APPOINTMENT

PETITION FOR

FORMAL

- TESTACY
- APPOINTMENT

PROBATE COURT  
CHARLESTON COUNTY

11 SEP 21 PM 1:03

FILED

Applicant/Petitioner: Linda Reagan Shelley

Address: 4611 West Add Avenue Charleston, SC 29405

Telephone: (843)327-7130

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

Step-daughter

2. Decedent Information

Name: Sylvia J. Reagan

Last Four Digits of Social Security Number: XXX-XX-5661

Date of Birth: May 24, 1931

Date of Death: March 16, 2011

Age at date of death: 79

Domicile at date of death: Charleston, South Carolina  
(county) (state)

3. Venue for this proceeding is proper in this county because:

- Decedent was domiciled in this county at date of death.
- Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.
- Decedent has a right to take legal action in this county because:

4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
<u>Linda Reagan Shelley</u>	<u>Not a Minor</u>		<u>Step-Daughter</u>
<u>Beryl Rowton</u>	<u>Not a Minor</u>		<u>Friend</u>

(use additional sheet if necessary)

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
Kayla Dawn Kastrop	4-12-91	3515. Poplar, Wichita, KS #67211	Granddaughter
Sam Bagwell	Not a Minor	Poplar Bluff, OK	Son
Tom Coats	Not a Minor		Grandson

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)

NO  YES If yes, please explain, on page 3.

6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?

NO  YES If yes, please explain, on page 3.

7. Has a guardian or conservator ever been appointed for this person?

NO  YES If yes, please explain on page 3.

8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?

NO  YES If yes, please state details, including name and address of such Personal Representative on page 3.

9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?

NO  YES If yes, please state details, including names and addresses on page 3.

10. Have more than ten years passed since the decedent's death?

NO  YES If yes, please state circumstances authorizing tardy probate on page 3.

11. The decedent died with a personal estate of about the value of TBD and real estate of about the value of TBD. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.

12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?

NO  YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- The original is attached
- The original is in the Court's possession
- An authenticated copy of a will probated in another jurisdiction is attached
- An authenticated copy of a will not probated in another jurisdiction is attached
- The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- Yes       NO If no, please explain on page 3.

3. The date of execution of the will was: February 25, 2011  
codicil(s): \_\_\_\_\_

4. Are you aware of any instrument or document amending or revoking the will?

- NO       YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- YES       NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- YES       NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.  
(If more space is required, use additional sheet.)

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III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

1. The name(s) and address(es) of the proposed Personal Representative(s) is/are:

Linda Reagan Shelley

2. Priority for this appointment is:

- named as Primary Personal Representative in will
- named as Alternate Personal Representative in will
- nominee of above Primary Personal Representative in will
- nominee of above Alternate Personal Representative in will
- surviving spouse of decedent who is devisee of decedent or nominee of said spouse
- other devisee of decedent, (describe): Step-daughter or nominee of said devisee
- surviving spouse of decedent or nominee of said spouse
- other heir of decedent (describe): \_\_\_\_\_
- creditor (Forty-five days after death must have passed), or nominee of creditor
- other (describe): \_\_\_\_\_

3. List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

None. Will is silent as to personal representative.

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 13<sup>th</sup> day of September, 20 11

Elizabeth Sticks  
Notary Public for South Carolina  
My Commission Expires: 6/13/2021

Signature: Linda Reagan Shelley  
Name: Linda Reagan Shelley  
Address: \_\_\_\_\_  
E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be  GRANTED  DENIED informally this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

**ORDER FOR HEARING ON FORMAL PETITION**

IT IS HEREBY ORDERED that a hearing on this matter be set for:

DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_  
PLACE: \_\_\_\_\_

Pursuant to Section 62-1-401, the petitioner is ordered to give notice of this hearing to all interested persons at least twenty (20) days prior to the hearing.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

**ORDER OF FORMAL TESTACY**

On hearing of the above petition, this Court finds that the person is deceased, venue is proper, and the proceeding was commenced within appropriate time limits.

The Court further finds that

the decedent died intestate. The heirs are:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

the decedent died testate. IT IS HEREBY ORDERED that the Last Will and Testament of the above-named decedent, dated, \_\_\_\_\_, be admitted formally to probate.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

SEE ATTACHED ORDER

**ORDER OF APPOINTMENT**

IT IS HEREBY ORDERED that the above application/petition for appointment be granted upon the filing of a bond as appropriate, qualification and acceptance.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Probate Court Judge

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Personal Representative of this estate.

Signature: Linda Reagan Shelley  
Name: Linda Reagan Shelley  
Address: 4611 W Ada Ave  
Chas. SC 29405

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_  
(H): \_\_\_\_\_

Attorney: \_\_\_\_\_  
Address: \_\_\_\_\_

E-mail: \_\_\_\_\_  
Telephone (O): \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESON )

IN THE PROBATE COURT FOR THE  
NINTH JUDICIAL CIRCUIT  
CASE NO. 2011-ES-10-465

IN RE: ESTATE OF SYLVIA J. REAGAN, )  
 )  
LINDA REAGAN SHELLEY, )  
 )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
RAMONA D. BECKER, individually and as )  
Personal Representative of the Estate of )  
Sylvia J. Reagan, BERYL ROUNTON, )  
KAYLA DAWN KACTRUP, TOM COATS )  
and SAM BAGWELL, )  
 )  
Respondents. )

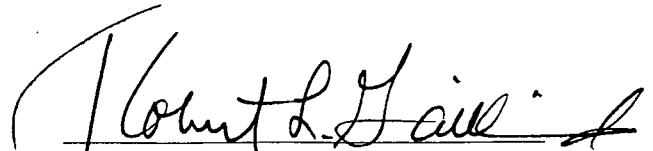
ANSWER

FILED  
11 OCT 14 PM 4:45  
PROBATE COURT  
CHARLESTON COUNTY

NOW COMES the Respondent, **RAMONA D. BECKER**, individually and as Personal Representative of the Estate of Sylvia J. Reagan, answering the Petition of Petitioner, Linda Reagan Shelley, by alleging and saying the following:

- FIRST:** That the Respondent denies each and every allegation of the Petition not hereinafter admitted, modified, qualified, or otherwise pleaded to.
- SECOND:** That the Respondent admits the allegations found in Part I, numbers 1, 2 and 3 of the Petition.
- THIRD:** That the Respondent denies all of the remaining allegations found in Part I, Part II and Part III of the Petition and demands strict proof thereof.

WHEREFORE, the Respondent having fully answered the Petition of Petitioner prays that the same be dismissed with each party bearing its own costs and for such other and further relief as the Court deems just and proper.



**ROBERT L. GAILLIARD**  
Attorney for Ramona Becker  
13 Elmwood Avenue  
Charleston, South Carolina 29403  
(843) 577-5250  
Fax (843) 722-2239

October 14, 2011  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON 24 )

THE PROBATE COURT  
CASE NO. 2011-ES-10-00465

April 17

In the matter of: Sylvia J. Reagan )  
 )  
Linda Reagan Shelley, )

Petitioner, )

vs. )

Ramona D. Becker, individually and )  
as personal representative of the )  
Estate of Sylvia J. Rogers, Beryl )  
Routon, Kayla Dawn Kactrup, and )  
Tom Coats, )

Respondents. )

**PETITIONER'S MOTION TO RECONSIDER  
PURSUANT TO SCRCP RULE 59, OR,  
IN THE ALTERNATIVE, TO SET ASIDE  
JUDGMENT PURSUANT TO SCRCP RULE  
60 AND TO ORDER FORMAL PROCEEDINGS**

TO: THE RESPONDENTS ABOVE NAMED

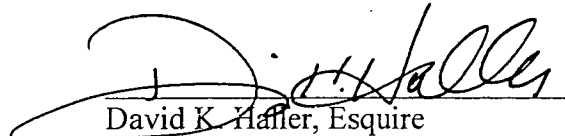
YOU WILL PLEASE TAKE NOTICE that the respondent, Linda Regan Shelley, will move, in ten (10) days at the Charleston County Courthouse, or at such other time and place as the court deems proper, for an order pursuant to SCRCP Rule 59 altering or amending the court's March 22, 2011 order granting informal probate of the above matter. The grounds for this motion are that the face of the petition makes the court aware of a second, later will, and formal proceedings are necessary to determine the validity of said will. Petitioner is a beneficiary under the later will. Petitioner learned of this order on June 17, 2011.

In the alternative, Petitioner seeks the same relief pursuant to SCRCP Rule 60.

To the extent necessary Petitioner seeks intervention in this matter pursuant to SCRCP Rule 24.

WHEREFORE, the Petitioner seeks the relief requested herein and such other relief as the court deems just, prudent, and proper.

Respectfully submitted,

  
David K. Haller, Esquire  
Haller Law Firm, P.C.  
115 River Landing Drive, Suite 102  
Charleston, SC 29492  
843-849-1384  
843-853-9377  
[dhaller@hallerlawfirm.com](mailto:dhaller@hallerlawfirm.com)

22 day of June, 2011  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
IN RE: Estate of Sylvia J. Reagan )  
Linda Reagan Shelley, )  
Petitioner, )  
v. )  
Ramona D. Becker, et al, )  
Respondents. )

IN THE PROBATE COURT  
CASE NO. 2011-ES-10-00465

**PETITIONER’S MOTION TO  
ALTER OR AMEND**

Petitioner Linda Shelley respectfully moves, pursuant to SCRCP Rule 59, for an order altering and amending the court’s March 16, 2012 order. Petitioner received notice of this order on March 21, 2012. The court’s order should be altered in at least the following particulars:

1. The court erred in finding the February 25 Will was “holographic.” A “holographic will is one that “dispens(es) with the witnesses but requiring that the whole will be cast in the testator's handwriting and that it be signed by him.” Rptr’s Cmts to S.C. Code 62-2-502. The court has already held that the February 25 Will purports to have two witnesses.
2. The Illinois law relied on by the court is counter to South Carolina law. South Carolina specifically rejects the requirement that a witness must be asked to serve as a witness or even have knowledge that the document he witnesses is a Will. “Section 62-2-502 requires neither ... *nor a specific request by the testator that the witnesses attest and sign.*”<sup>1</sup> The Illinois case cited by the court, “adhere(s) to the initial guiding principle that

<sup>1</sup> The full comment is: “Section 62-2-502 requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, nor a specific request by the testator that the witnesses attest and sign.”

“[o]ne who signs his name to a will is not an attesting witness unless he signs with that intention and not for some other purpose.” *In re Estate of Tomasa Alfaro*, 301 Ill.App.3d 500, 510, 703 N.E.2d 620, 627 (Ill. App. 2<sup>nd</sup> 1998)<sup>2</sup>. The court’s decision to create a requirement that a witness be requested to sign the Will rewrites the statute and is error.

3. South Carolina’s statutory scheme places no limitation on the qualification of witnesses. Routinely, a beneficiary of the Will or its drafter properly witness it. See S.C. Code Ann. 62-2-504(beneficiary remains competent to witness a will subject to potential conditions); *Coleman v. Dunlap*, 306 S.C. 491, 413 S.E.2d 15 (1992).<sup>3</sup> The Probate Code is clear that a witness’s competence is determined by what they hear or see and, perhaps, what they may receive, *not* by what office they hold. Creating an exception for notarizes not recognized by the Legislature is error. The decision is one of form over substance.
4. Both of the witnesses testified unequivocally that Ms. Reagan told them the February 25 Will was her Will and either saw her sign the document or acknowledge her signature. The court’s “findings of fact” are in error inasmuch as there was no evidence to support them. Further, the court erred in applying the facts to South Carolina law.

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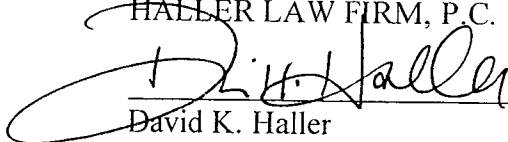
<sup>2</sup> Neither Illinois, Iowa, nor Washington (states all cited by the court) have adopted the Uniform Probate Code, whereas South Carolina has. *Uniform Law Commission*, [www.nccusl.org/Act](http://www.nccusl.org/Act). Respondent’s reliance on the laws of those states as persuasive authority compares apples to oranges. Moreover, the Illinois witness statute differs substantially to South Carolina’s. While South Carolina simply requires witnesses to either see the signing by or on behalf of the Testrix or hear the Testrix acknowledge the Will or signature, Illinois’s statute requires witnesses attest that, “he believed the testator to be of sound mind and memory at the time of signing or acknowledging the will.” 755 ILCS 5/6-4 (West 1996).

<sup>3</sup> See also S.C. Code Ann. 62-2-503(c): “A witness to any will who is also authorized to administer oaths under the laws of this State may notarize the signature of the other witness of the will in the manner provided in this section.” As the Reporter’s Comments state, “a will is self-proved if affidavits in ‘substantially’ the form of those set forth in the section are executed.” Clearly, South Carolina’s statutory scheme allows notaries to serve as witness—as Doris Belin-Burns did for the December 29, 2009 Will admitted to probate. The effect of the court’s holding here is that the notary must sign in two different places—something the Probate Code disclaims.

5. The respondent called no witnesses nor presented any evidence that, "the Will submitted by Ramona D. Becker" was the Will of Ms. Reagan. In formal proceedings, it is the burden of the proponent of the Will she puts forward to show 1) a writing, 2) signed by the Testrix, and 3) witnesses by two individuals in accord with S.C. Code Ann. 62-2-502. Becker admitted no writing signed by the Testrix and no witnesses were called to verify compliance with the Code. The December 29, 2009 Will is not properly self-proved pursuant to S.C. Code Ann. 62-2-503 and, accordingly, respondent was required, and failed to, comply with S.C. Code Ann. §62-3-406. The court erred in probating the same.
6. The court erred in holding the January 12, 2012 hearing was a "continuation" of the Petitioner's rule 59 motion. Said motion was granted in September of 2011, not appealed and is the law of the case.
7. Petitioner incorporates by reference the proposed order submitted by her as directed by the court and attached hereto as Exhibit A.

For the reasons set forth herein, petitioner prays the court alter or amend its order to find the February 25 Will the Last Will and Testament of Sylvia J. Reagan and for such other relief the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.



David K. Haller

115 River Landing Drive, Suite 102  
Charleston, SC 29492

(843) 849-1384

(843) 853-9377 FACSIMILE

[dhaller@hallerlawfirm.com](mailto:dhaller@hallerlawfirm.com)

27<sup>th</sup> day of March, 2012  
Charleston, South Carolina

12 MAY 73 10:09:19

# EXHIBIT A

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 IN RE: Estate of Sylvia J. Reagan )  
 )  
 Linda Reagan Shelley, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Ramona D. Becker, individually and as )  
 Personal Representative of the Estate of )  
 Sylvia J. Reagan, Beryl Routon, Kayla )  
 Dawn Kastrup, and Tom Coats, )  
 )  
 Respondents. )  
 )

THE PROBATE COURT  
 CASE NO. 2011-ES-10-00465

**ORDER GRANTING  
 PETITIONER'S RELIEF**

THIS MATTER was called for a hearing on cross-petitions for formal testacy of the Estate of Sylvia Jane Reagan. Petitioner Linda Reagan Shelley filed the initial petition seeking probate of a Will dated February 25, 2011 (hereinafter the "February 25 Will"). Respondent Ramona Becker answered and denied the validity of the February 25 Will and sought probate of a Will dated December 29, 2009 (hereinafter the "December 29, 2009 Will"). The remaining respondents were various beneficiaries under the two prospective wills. Based upon the testimony of the witnesses, the exhibits before the court, the matters upon which the court took notice, and the argument of counsel, I GRANT the petitioner's petition and DENY the respondent's petition.<sup>1</sup>

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<sup>1</sup> The matter was originally before the court on Ms. Shelley's Motion to Reconsider pursuant to Rule 59 or to Set Aside Judgment Pursuant to Rule 60 this court's order informally probating the December 29 Will. The court granted the motion and set the case for formal proceedings based on Ms. Becker's original petition for probate of the December 29 Will and her appointment as Personal Representative, wherein she acknowledged a later will (the February 25 Will) existed. Hence, formal proceedings were appropriate and informal probate should not have been granted.

## FINDINGS OF FACT

Petitioner called Sara Jones, RN, Doris Belin-Burns, and Linda Shelley as witnesses. Entered into the record as evidence was the February 25 Will without objection. The text of the February 25 Will revoked all other wills executed by Ms. Reagan. Also without objection from the respondent, the court took judicial notice of Ms. Reagan's official Certification of Death issued by the South Carolina Department of Health and Environmental Control showing Ms. Reagan died on March 16, 2011 in Charleston County, South Carolina.

Ms. Jones was Ms. Reagan's home health hospice nurse. She testified that on February 25, 2011, she arrived at Ms. Reagan's home for her regularly scheduled visit. When she arrived, Ms. Reagan called Doris Belin-Burns, Ms. Reagan's next door neighbor, to come to the house. Ms. Shelley was also present. While Ms. Belin-Burns, Ms. Shelley and Ms. Jones were together in the room with Ms. Reagan, Ms. Reagan had before her the February 25 Will and indicated to

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During the trial, respondent argued that the court lacked jurisdiction because, she argued, Ms. Shelley had more than 10 days notice of the entry of the judgment informally probating the December 29 Will and that my original order remained in place. However, this court previously found that Ms. Shelley received written notice of entry of the judgment on June 17, 2011 and the motion was timely. Ms. Becker failed to appeal that ruling and it is now the law of the case. *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 (1996).

In any event, even if the matter was not timely as a motion to reconsider, it would still satisfy the requirements of Rule 60. For a Rule 60 motion to be granted, the movant must show: 1) the motion was timely filed; 2) the reason for the delay; 3) the existence of a meritorious defense; and 4) prejudice to the non-moving party. *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001). Here, the motion was filed less than a year after the probate of the December 29 Will and is timely by rule. Rule 60(b), SCRPC. Second, the reason for the delay is that the clerk of this court informed Ms. Shelley in error that the February 25 Will was invalid because there was only one witness, when it should have been set for a formal proceeding to determine its validity; Ms. Reagan should not be harmed by misinformation from a probate clerk. Third, because Ms. Shelley has presented a writing facially signed by Sylvia J. Reagan and two witnesses, she has made a *prima facie* showing of a valid will, which entitles her to, at least, a trial on the merits. Last, Ms. Becker cannot claim prejudice because the court is required to uphold the intention of the Textrix and Ms. Becker and the beneficiaries of the December 29 Will would receive an unintended windfall under the previous ruling. In my view, this matter was properly set for formal proceedings whether the standard was under Rule 59 or Rule 60 and the time issue is irrelevant.

all of them that the document was her Will. Ms. Reagan then signed the February 25 Will and Ms. Jones and Ms. Belin-Burns signed the Will, as well. Ms. Belin-Burns also signed as a notary. Ms. Jones further testified that she recognized the handwriting on the February 25 Will as that of Ms. Reagan.

Ms. Belin-Burns is Ms. Reagan's next-door neighbor and friend for over 10 years. She testified that on February 25, 2011, Ms. Reagan called her and asked her to come to her house. Ms. Reagan told Ms. Belin-Burns that the February 25 Will was her Will. Ms. Belin-Burns identified the signature on the document as that of Ms. Reagan. Ms. Belin-Burns testified that she signed the February 25 Will. She further testified that she notarized the signature of Ms. Jones.

Ms. Shelley was Ms. Reagan's stepdaughter as Ms. Reagan was married to Ms. Shelley's father for approximately 10 years. She testified that after Ms. Reagan and her father divorced, they maintained a mother-daughter relationship. When Ms. Reagan returned to Charleston more than 15 years ago, Ms. Shelley became her primary care giver, assisting Ms. Reagan with everything from doctors visits and banking to house cleaning and personal hygiene. At various times ending in 2009, Ms. Reagan placed Ms. Shelley's name on bank accounts so that Ms. Shelley could assist Ms. Reagan with her needs and gave her credit cards to also help Ms. Reagan.

For about a six week period between late December of 2010 and early February of 2011, Ms. Reagan's granddaughter, Kayla Dawn Kastrup, came to stay with Ms. Reagan and assist her with her needs. However, after a few weeks, Kayla Dawn began spending more time out of the house than helping her. Further, Kayla Dawn had multiple tattoos and was smoking marijuana, practices Ms. Reagan did not approve. Ms. Reagan asked Kayla Dawn to leave. Ms. Reagan

then asked Ms. Shelley to move into the house to take care of her, which Ms. Shelley did until Ms. Reagan's death. It was during this time that Ms. Reagan prepared and signed the February 25 Will.

Ms. Shelley testified that she understood the requirements for serving as personal representative, having been the personal representative for her husband's estate, and was willing to serve. She had the court to probate the February 25 Will and to appoint her as personal representative of the Estate of Sylvia Reagan.

Respondent called Ramona Becker as her only witness and admitted into evidence a "Living Trust" pamphlet. Ms. Becker identified a document dated December 29, 2009, as a document she claimed as a Will of Ms. Reagan; however, this document was not moved into evidence by the respondent and no witnesses to it were asked to testify to its veracity. The "Living Trust" pamphlet was claimed to be the book from which the December 29 Will was prepared. Ms. Becker testified that she and Ms. Reagan's relationship resulted from "sharing a granddaughter." She testified that Ms. Shelley assisted Ms. Reagan in her care during her life. She also testified that she was in Kansas on February 25, 2011; hence she had no information about the February 25 Will.

#### **CONCLUSIONS OF LAW**

Based on the record before the court at the hearing on this matter, I find and hold as follows:

Sylvia J. Reagan died a resident of Charleston County on March 16, 2011. The matters presented by the parties are cross-petitions for the probate of a will and appointment of a personal representative. All parties received written notice of these proceedings as required

pursuant to S.C. Code Ann. §62-3-403. This court has jurisdiction over the subject matter of this case, the parties to this matter, and venue is proper in Charleston County.

In formal proceedings, the burden of proof is upon the petitioner to show prima facie evidence of death, venue, and the validity of the testamentary document she proposes as the Will of the Testrix.

Proponents of a will have the burden of establishing prima facie proof of due execution in all cases and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity.

S.C. Code 62-3-407. Further, “[a]ny party to a formal proceeding who opposes the probate of a will for any reason shall state in his pleadings his objections to probate of the will.” S.C. Code Ann. §62-3-404. The sole issues raised and noticed by the parties was whether the February 25 Will or the December 29 Will was the valid testamentary document of Sylvia Reagan and who should serve as personal representative of the estate. Hence, both Ms. Shelley and Ms. Becker were required to prove “due execution” of the document they contend as the Will of Ms. Reagan.

South Carolina Code Ann. §62-2-502 states:

[E]very will, shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

Ms. Shelley had the burden of proving that the February 25 Will was a writing signed by Ms. Reagan and witnessed by two individuals, “each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.” *Id.* I hold Ms. Shelley has met her burden.

Initially, there is no dispute that the February 25 Will is a writing. Second, there was no evidence that the signature of “Sylvia J. Reagan” was not Ms. Reagan’s signature. In fact, all of

the witnesses Ms. Shelley called testified that they recognized Ms. Reagan's signature and her handwriting on the Will.

The core dispute was whether the February 25 Will was witnessed properly by two witnesses who either 1) saw Ms. Reagan sign the Will; 2) saw or heard Ms. Reagan acknowledge the Will; or 3) saw or heard Ms. Reagan acknowledge her signature on the Will. Based on the testimony of both Ms. Jones and Ms. Belin-Burns, I hold that the February 25 Will was validly executed.

Pursuant to S.C. Code Ann. §62-3-406, a Will can be proved where one of the witnesses to it testifies as to its proper attestation. While I could accept either one of the witnesses testimony and reject the other, I find the testimony of both Ms. Jones and Ms. Belin-Burns credible and valid as to the proper execution of the February 25 Will. Ms. Jones testified that she saw Ms. Reagan sign the Will and acknowledge the document to be her Will. Ms. Jones identified the signature of Ms. Reagan and her own signature on the Will. Ms. Belin-Burns testified that Ms. Reagan told her that the document was her Will. Ms. Belin-Burns further identified Ms. Reagan's signature and her own signature. Accordingly, the February 25 Will was validly executed by Ms. Reagan and witnessed by two individuals as required by S.C. Code Ann. §62-2-502. I hold that the February 25 Will is the valid Last Will and Testament of Sylvia J. Reagan and that it revoked any prior wills that may have existed.

Respondent asserts that Ms. Belin-Burns was not a valid second witness because she signed as a notary and because Ms. Belin-Burns testified she was not asked by Ms. Reagan to sign as a witness but as a notary to Ms. Jones' signature. This is an invalid distinction. Respondent has provided no valid law to support the position that a witness must have been asked by a Testrix to serve as her witness for the witness to be valid. In fact, the Reporter's

Comments to S.C. Code Ann. §62-2-502, specifically disclaim respondent's position: "Section 62-2-502 requires neither subscription of the testator's signature, i.e., that it appear at the end of the will, nor publication of the will, i.e., the testator's announcement to the witnesses that the document is his will, *nor a specific request by the testator that the witnesses attest and sign.*" (emphasis added). The court further notes that it is not unusual for one of the two witnesses to serve as the notary for the other's signature to the self-proving affidavit. Last, to require the Testrix to specifically ask the witness to serve in the role adds an element to S.C. Code Ann. §62-2-502 and defeats the cardinal rule of testamentary interpretation, which is to effectuate the intent of the Testrix. For these reasons, respondent's argument is rejected.

Inasmuch as I find the February 25 Will was Ms. Reagan's valid last will and testament and that it revoked any other testamentary documents, respondent's petition is denied. Further, Ms. Becker failed to put forward any adequate evidence of a Will. No writing was admitted by the respondent and no witnesses testified as to the validity of any such document.

Ms. Shelley has asked to be appointed as personal representative of Ms. Reagan's estate. Ms. Shelley has priority as she is the primary beneficiary of the February 25 Will and the only other beneficiary failed to respond to the pleadings. Additionally, Ms. Shelley has previously served as personal representative of the estate of her late husband and understands the duties and obligations. I find Linda Reagan Shelley has priority of appointment and is a suitable person to serve as the personal representative of the Estate of Sylvia J. Reagan.

THEREFORE IT IS ORDERED that the February 25 Will be probated in the Probate Court of Charleston County as the last will and testament of Sylvia J. Reagan and her property and effects distributed as stated pursuant to the February 25 Will; and

IT IS FURTHER ORDERED that Linda Reagan Shelley be appointed as personal representative of the Estate of Sylvia J. Reagan with all of the powers and duties of a personal representative in South Carolina under statutory and common law; and

IT IS FURTHER ORDERED that respondent Ramona Becker file an accounting of her conduct as personal representative within fifteen (15) days of the date of this order, to serve the same on Ms. Shelley, and to hand over each and every document, pleading, correspondence, receipt and release, account, property, and all other materials relative to the Estate of Sylvia J. Reagan to Linda Shelley within five (5) days of receipt of this order.

AND IT IS SO ORDERED!!!

\_\_\_\_\_  
The Honorable Tamara Currie, Associate Judge  
Charleston County Probate Court

This \_\_\_ day of \_\_\_\_\_, 2012

At Charleston, South Carolina

JAN 29 1968

# EXHIBIT B

C

Appellate Court of Illinois,  
Second District.

In re ESTATE OF Tomasa ALFARO, Deceased  
(Juanita Koble et al., Petitioners-Appellants, v. Santos Alfaro et al., Respondents-Appellees).

No. 2-97-0916.

Nov. 24, 1998.

In will contest, the Circuit Court, Lake County, John G. Radosevich, J., granted summary judgment to contestants. Proponents appealed. The Appellate Court, Bowman, J., held that: (1) fact questions regarding the genuineness, intent, and legal efficacy of the signatures of the attesting witnesses precluded summary judgment, and (2) a notary's signature may be deemed the signature of an attesting witness under the proper circumstances.

Reversed and remanded.

West Headnotes

[1] Wills 409 ⚡ 222

409 Wills

409V Probate or Contest of Will

409V(B) Actions to Establish or Determine  
Validity in General

409k222 k. Nature and form of remedies  
in general. Most Cited Cases

In probate process, the admission proceeding is limited to determining whether a prima facie showing of compliance with the statute governing the testimony required to admit a will to probate has been made. S.H.A. 755 ILCS 5/6-4.

[2] Wills 409 ⚡ 423

409 Wills

409V Probate or Contest of Will

409V(R) Operation and Effect

409k422 Conclusiveness of Probate or

Record

409k423 k. In general. Most Cited  
Cases

Admission of a will to probate is not res judicata as to issues that may be raised in a later will contest, and such a contest allows the relitigation of the same issues raised in the admission proceeding.

[3] Wills 409 ⚡ 428

409 Wills

409V Probate or Contest of Will

409V(R) Operation and Effect

409k422 Conclusiveness of Probate or  
Record

409k428 k. Validity of provisions of  
will. Most Cited Cases

Order admitting a will to probate is not final as to the validity of the will where a timely, direct contest of the will is initiated in the same proceeding.

[4] Wills 409 ⚡ 309

409 Wills

409V Probate or Contest of Will

409V(N) Hearing or Trial

409k308 Scope of Inquiry and Powers of  
Court

409k309 k. In general. Most Cited  
Cases

Wills 409 ⚡ 312

409 Wills

409V Probate or Contest of Will

409V(N) Hearing or Trial

409k312 k. Mode of hearing or trial in  
general. Most Cited Cases

Question presented in a will contest is not whether the will was properly admitted but whether the will is to be declared valid or invalid, and all questions concerning the validity of the will are tried de novo.

**[5] Wills 409 ↪ 222**

## 409 Wills

## 409V Probate or Contest of Will

## 409V(13) Actions to Establish or Determine Validity in General

## 409k222 k. Nature and form of remedies in general. Most Cited Cases

While proceeding to admit will to probate requires only a prima facie showing of the validity of the will, the will contest provides the contestant a full opportunity, after admission, to investigate thoroughly all the circumstances affecting the validity of the instrument.

**[6] Wills 409 ↪ 288(1)**

## 409 Wills

## 409V Probate or Contest of Will

## 409V(M) Evidence

## 409k287 Presumptions and Burden of Proof

## 409k288 In General

## 409k288(1) k. In general. Most Cited Cases

In a will contest, the burden is on the contestant to provide proof sufficient to overcome the prima facie validity of the previously admitted will.

**[7] Wills 409 ↪ 309**

## 409 Wills

## 409V Probate or Contest of Will

## 409V(N) Hearing or Trial

## 409k308 Scope of Inquiry and Powers of Court

## 409k309 k. In general. Most Cited Cases

Statutory scheme for probate of a will preserves the right of a contestant to show fraud, compulsion, forgery, or other improper conduct sufficient to invalidate a will. S.H.A. 755 ILCS 5/6-1 et seq.

**[8] Wills 409 ↪ 302(5)**

## 409 Wills

## 409V Probate or Contest of Will

## 409V(M) Evidence

## 409k299 Weight and Sufficiency

## 409k302 Execution, Existence, and Genuineness

## 409k302(5) k. Recitals of formalities of execution. Most Cited Cases

If an instrument contains an attestation clause that shows on its face that all of the formalities required by law have been met and the signatures on the instrument are admittedly genuine, a prima facie case has been made in favor of the due execution of the will; however, when the evidence clearly shows that the attestation clause does not speak the truth, the attestation clause alone cannot establish a prima facie case in favor of due execution.

**[9] Wills 409 ↪ 302(1)**

## 409 Wills

## 409V Probate or Contest of Will

## 409V(M) Evidence

## 409k299 Weight and Sufficiency

## 409k302 Execution, Existence, and Genuineness

## 409k302(1) k. In general. Most Cited Cases

Prima facie case of the validity of a will may be overcome by the positive testimony of the subscribing witnesses that one of the statutory requirements for execution was not met.

**[10] Judgment 228 ↪ 181(15.1)**

## 228 Judgment

## 228V On Motion or Summary Proceeding

## 228k181 Grounds for Summary Judgment

## 228k181(15) Particular Cases

## 228k181(15.1) k. In general. Most Cited Cases

Disputed issues of material fact regarding the genuineness, intent, and legal efficacy of the signatures of the attesting witnesses precluded summary judgment in will contest.

**[11] Judgment 228 ↪ 185(5)**

## 228 Judgment

## 228V On Motion or Summary Proceeding

## 228k182 Motion or Other Application

## 228k185 Evidence in General

## 228k185(5) k. Weight and sufficiency.

## Most Cited Cases

Credibility determination is generally improper in a summary judgment proceeding.

## [12] Judgment 228 ⚡ 185.3(8)

## 228 Judgment

## 228V On Motion or Summary Proceeding

## 228k182 Motion or Other Application

## 228k185.3 Evidence and Affidavits in

## Particular Cases

## 228k185.3(8) k. Contracts. Most Cited

## Cases

When there is no ambiguity in the language of a document requiring the admission of extrinsic evidence, summary judgment may be a proper procedure to construe the language and determine the validity of the document; however, where the parties seek to draw different inferences on questions of intent from the same document and have introduced conflicting extrinsic evidence to demonstrate the intent and validity of the signatures, summary judgment is particularly inappropriate.

## [13] Judgment 228 ⚡ 181(4)

## 228 Judgment

## 228V On Motion or Summary Proceeding

## 228k181 Grounds for Summary Judgment

## 228k181(4) k. Necessity that right to

## judgment be free from doubt. Most Cited Cases

Court cannot decide factual disputes as a matter of law and should grant a motion for summary judgment as a matter of law only when the right of the moving party is clear and free from doubt.

## [14] Judgment 228 ⚡ 181(2)

## 228 Judgment

## 228V On Motion or Summary Proceeding

## 228k181 Grounds for Summary Judgment

## 228k181(2) k. Absence of issue of fact.

## Most Cited Cases

Even where the facts are undisputed, if fair-minded persons could draw different inferences from those facts, then a triable issue of fact exists and summary judgment is inappropriate.

## [15] Wills 409 ⚡ 116(2)

## 409 Wills

## 409IV Requisites and Validity

## 409IV(C) Execution

## 409k113 Attestation and Subscription by

## Witnesses

## 409k116 Competency of Witnesses

## 409k116(2) k. Notary. Most Cited

## Cases

## (Formerly 409k113.1)

## Wills 409 ⚡ 294

## 409 Wills

## 409V Probate or Contest of Will

## 409V(M) Evidence

## 409k291 Admissibility

## 409k294 k. Attesting witnesses. Most

## Cited Cases

Legal efficacy of a notary's signature as an attesting witness to a will depends on the particular facts of the case, and must be shown by sufficient extrinsic evidence when it is not clear from the face of the instrument itself.

## [16] Wills 409 ⚡ 113.1

## 409 Wills

## 409IV Requisites and Validity

## 409IV(C) Execution

## 409k113 Attestation and Subscription by

## Witnesses

## 409k113.1 k. In general. Most Cited

## Cases

One who signs his name to a will is not an attesting witness unless he signs with that intention and not for some other purpose.

## [17] Wills 409 ⚡ 113.1

## 409 Wills

## -409IV Requisites and Validity

## -409IV(C) Execution

## -409k113 Attestation and Subscription by Witnesses

-409k113.1 k. In general. Most Cited Cases

It is essential to the effectiveness of a person's attestation of a will that he act with the intent to attest the instrument, and he must sign with the intention of performing the act necessary to become a witness to the execution of the instrument.

**[18] Wills 409 ⚔ 113.1**

## 409 Wills

## -409IV Requisites and Validity

## -409IV(C) Execution

## -409k113 Attestation and Subscription by Witnesses

-409k113.1 k. In general. Most Cited Cases

Intent of performing act necessary to become a witness to the execution of a will is manifested by the circumstances under which the witness signs, and they are determinative.

**[19] Wills 409 ⚔ 113.1**

## 409 Wills

## -409IV Requisites and Validity

## -409IV(C) Execution

## -409k113 Attestation and Subscription by Witnesses

-409k113.1 k. In general. Most Cited Cases

Where a statute requires witnesses to "attest" a will, they must sign their names thereto as witnesses, in addition to perceiving the acts necessary to the legal execution of the will.

**[20] Wills 409 ⚔ 302(2)**

## 409 Wills

## -409V Probate or Contest of Will

## -409V(M) Evidence

## -409k299 Weight and Sufficiency

## -409k302 Execution, Existence, and Genuineness

-409k302(2) k. Genuineness of will and signatures thereto. Most Cited Cases

When one acts strictly in his capacity as a notary public, such as by notarizing the witnesses' signatures on a will, the act of notarization tends to prove the authenticity of the witnesses' signatures and the verification of the attestation clause.

**[21] Notaries 276 ⚔ 1**

## 276 Notaries

276k1 k. Nature and existence of office. Most Cited Cases

"Notary public" is an official who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures.

**[22] Wills 409 ⚔ 113.1**

## 409 Wills

## -409IV Requisites and Validity

## -409IV(C) Execution

## -409k113 Attestation and Subscription by Witnesses

-409k113.1 k. In general. Most Cited Cases

Where the circumstances show that a notary was in fact acting as an attesting witness to a will, the notary's certificate may be regarded as superfluous.

**[23] Wills 409 ⚔ 113.1**

## 409 Wills

## -409IV Requisites and Validity


## -409IV(C) Execution

## -409k113 Attestation and Subscription by Witnesses

-409k113.1 k. In general. Most Cited Cases

Where the character in which a person signs a will appears not to be that of a witness but of a notary public purporting to take an oath, his signing is

not effective as an attesting witness.

[24] Wills 409  116(2)

409 Wills

409IV Requisites and Validity

409IV(C) Execution

409k113 Attestation and Subscription by Witnesses

409k116 Competency of Witnesses


409k116(2) k. Notary. Most Cited

Cases

(Formerly 409k113.1)



When it is contended that a notary's signature on a will ought to be deemed the subscribing signature of a required attesting witness, the question to be determined is whether the notary was attesting merely to the genuineness of a signature or signatures and was therefore acting only in the capacity of a notary, or whether the notary was attesting to all of the acts that comprise the proper execution of a will and was therefore acting as an attesting witness.

[25] Wills 409  116(2)

409 Wills

409IV Requisites and Validity

409IV(C) Execution

409k113 Attestation and Subscription by Witnesses

409k116 Competency of Witnesses


409k116(2) k. Notary. Most Cited

Cases

(Formerly 409k113.1)



Notary's signature on a will may be deemed the signature of an attesting witness so long as all of the legal requirements of a valid attestation were nonetheless complied with when the notary affixed his signature.

[26] Wills 409  116(2)

409 Wills

409IV Requisites and Validity

409IV(C) Execution

409k113 Attestation and Subscription by Witnesses

409k116 Competency of Witnesses

409k116(2) k. Notary. Most Cited

Cases

(Formerly 409k113.1)

Notary's certificate and signature cannot serve both as an attestation of a will and a notarial certificate at once.

**\*\*622 \*502 \*\*\*761** Thomas B. Hood, Thomas B. Hood Law Offices, P.C., Gurnee, and Clayton P. Voegtle, Voegtle & Lichter, Libertyville, for Ramona Alcala, Estate of Tomasa Alfaro and Juanita Koble.

David M. Stepanich, Waukegan, for Antonio Alfaro, Domingo Alfaro, Julian Alfaro, Santos Alfaro, Tomas Alfaro and Felipa Navarro.

Justice BOWMAN delivered the opinion of the court:

In this will contest case, petitioners, Juanita Koble and Ramona Alcala (proponents of the will), appeal from the circuit court's order granting summary judgment to respondents, Santos Alfaro, Domingo Alfaro, Julian Alfaro, Antonio A. Alfaro, Tomas Alfaro, and Felipa Navarro (contestants of the will). On appeal, the proponents argue that the trial court erred in finding the will invalid and granting summary judgment to the contestants of the purported will of Tomasa Alfaro (Alfaro), deceased. Under the circumstances presented, we conclude that the entry of summary judgment was inappropriate. We reverse the judgment and remand the cause for further proceedings.

Before we consider the facts and merits of this appeal, we briefly examine the requirements for admitting a will to probate and for contesting a will. Section 6-4 of the Probate Act of 1975(Act) states:

“(a) When each of 2 attesting witnesses to a will states that (1) he was present and saw the testator or some person in his presence **\*503** and

by his direction sign the will in the presence of the witness or the testator acknowledged it to the witness as his act, (2) the will was attested by the witness in the presence of the testator and (3) he believed the testator to be of sound mind and memory at the time of signing or acknowledging the will, the execution of the will is sufficiently proved to admit it to probate, unless there is proof of fraud, forgery, compulsion or other improper conduct which in the opinion of the court is deemed sufficient to invalidate or destroy the will. The proponent may also introduce any other evidence competent to establish a will. If the proponent establishes the will by sufficient competent evidence, it shall be admitted to probate, unless there is proof of fraud, forgery, compulsion or other improper conduct which in the opinion of the court is deemed sufficient to invalidate or destroy the will.

(b) The statements of a witness to prove the will under subsection 6-4(a) may be made by (1) testimony before the court, (2) an attestation clause signed by the witness and forming a part of or attached to the will or (3) an affidavit which is signed by the witness at or after the time of attestation and which forms part of the will or is attached to the will or to an accurate facsimile of the will." 755 I.C.S. 5/6-4 (West 1996).

[1][2][3][4] The probate process represents a continuum of proceedings, and an order of admission is among the first to be entered. The admission proceeding is limited to determining whether a *prima facie* showing of compliance with section 6-4(a) of the Act has been made. *In re Estate of Lynch*, 103 Ill.App.3d 506, 507-08, 59 Ill.Dec. 233, 431 N.E.2d 734 (1982). However, the admission of a will to probate is not *res judicata* as to issues that may be raised in a later will contest, and such a contest allows the relitigation of the same issues raised in the admission proceeding. *Lynch*, 103 Ill.App.3d at 508-09, 59 Ill.Dec. 233, 431 N.E.2d 734. An order admitting a will to probate is not final as to the validity of the will where a timely, dir-

ect contest of the will is initiated in the same proceeding. The question presented in a will contest is not whether the will was properly admitted but whether the will is to be declared valid or invalid, and all \*\*623 \*\*\*762 questions concerning the validity of the will are tried *de novo*. *Sternberg v. St. Louis Union Trust Co.*, 394 Ill. 452, 459, 68 N.E.2d 892 (1946); *In re Estate of Koziol*, 236 Ill.App.3d 478, 485-86, 177 Ill.Dec. 279, 603 N.E.2d 60 (1992).

[5][6] The procedures and quantum of proof are quite different in the two types of litigation. While the admission proceeding requires only a *prima facie* showing of the validity of the will, the will contest provides the contestant a full opportunity, after admission, to investigate thoroughly all the circumstances affecting the validity of the instrument. *Lynch*, 103 Ill.App.3d at 509, 59 Ill.Dec. 233, 431 N.E.2d 734. In a will contest, the burden is on the contestant to provide proof sufficient to overcome the *prima* \*504 *facie* validity of the previously admitted will. *Lewis v. Deamule*, 376 Ill. 219, 221-22, 33 N.E.2d 440 (1941).

[7][8][9] The statutory scheme preserves the right of a contestant to show fraud, compulsion, forgery, or other improper conduct sufficient to invalidate a will. *In re Estate of Jaeger*, 16 Ill.App.3d 872, 874, 307 N.E.2d 202 (1974). If the instrument contains an attestation clause that shows on its face that all of the formalities required by law have been met and the signatures on the instrument are admittedly genuine, a *prima facie* case has been made in favor of the due execution of the will. However, when the evidence clearly shows that the attestation clause does not speak the truth, the attestation clause alone cannot establish a *prima facie* case in favor of due execution. *Jaeger*, 16 Ill.App.3d at 875, 307 N.E.2d 202. A *prima facie* case of the validity of the will may be overcome by the positive testimony of the subscribing witnesses that one of the statutory requirements was not met. *In re Estate of Thomas*, 6 Ill.App.3d 70, 72, 284 N.E.2d 513 (1972).

Section 8-1(a) of the Act provides, among other things, that any interested person may file a petition to contest the admission of the will to probate within six months of its admission. 755 I.L.C.S. 5/8-1 (a) (West 1996). Any party to the proceeding may demand a trial by jury, and the contestant shall in the first instance proceed with proof to establish the invalidity of the will; at the close of the contestant's case, the proponent may present evidence to sustain the will. An authenticated transcript of the testimony of any witness taken at the time of the hearing on the admission of the will to probate, or an affidavit of any witness received as evidence under section 6-4(b), is admissible as evidence. 755 I.L.C.S. 5/8-1(c) (West 1996).

Having reviewed the legal background for this type of proceeding, we now turn to the factual and legal issues presented by this appeal. At the initial hearing to admit the will to probate, Elba Franco testified on behalf of the proponents of the will. She identified a six-page document (the purported will) upon which she recognized her signature and the initials "L.C." She stated that her initials appeared on each page of the document. She recalled Ramona Alcalá coming into the office with an older lady (Tomasita Alfaro). She saw Alfaro sign the document and Alfaro seemed to know what she was doing.

The document was dated February 23, 1992, the date on which it was signed. Franco was called in to witness her signature. Lucy Copado was present during the signing of the will. Franco saw Copado place her initials on each sheet. Franco did not know Alfaro before that day and did not know if she spoke English. She did not hear her say anything that day. When asked whether an investigator asked her if Copado was present and signed the will, Franco said, "I told him \*505 most likely she was." According to Franco, Copado was there "because that's the way it usually ran in the office. Lucy Copado would be there." Franco did not remember the older lady (Alfaro) but did remember being a witness to the signature. Franco volunteered

in the office to help Copado. She believed that it was Lucy Rios who prepared the will. Rios was not a lawyer.

Lucy Rios testified that she was self-employed in a secretarial service and also worked for the Lake County health department. She sometimes did translating and interpreting for the court and did income taxes and typing for several lawyers' offices. She identified the document in question that \*\*624 \*\*\*763 was prepared by her office as the will of Tomasita Alfaro. Rios had known Alfaro's daughter Ramona for the past 15 years and knew the family well. Alfaro asked Rios to prepare the will. Rios had her daughter Lucy type it up. When they came to the office, Rios went over the will and Alfaro signed it. In court, Rios recognized her own signature on the last page of the document "as the notary to the document." Rios's initials also appeared on every page of the document.

Rios testified that Ramona (Alfaro's daughter), Tomasita Alfaro, Rios's daughter Lucy (Copado), Elba Franco, another daughter of Rios, and Janie were present in the office. Copado, Franco, and Rios signed the document and they saw Alfaro sign it. Rios saw Franco place her name and initials on the document and saw her sign her name as a witness to the document. Rios also saw Copado sign the document and place her initials on the left side of each page of the document. Alfaro was present when Franco and Copado signed the will. Alfaro appeared to know what she was doing when she signed the document.

Rios further testified that Alfaro understood the document; it was all translated into Spanish. When Alfaro came into the office on February 23, she had already told Rios what she wanted. Everything was done in Spanish, and then Rios translated into the English language. The day Alfaro came in, Rios read everything to her in Spanish. Rios read her the document and Alfaro agreed with it.

In court, Rios acknowledged that she was not a lawyer. Alfaro told her what she wanted in the will.

(Cite as: 301 Ill.App.3d 500, 703 N.E.2d 620, 234 Ill.Dec. 759)

Rios only spoke to Alfaro in Spanish. She never heard Alfaro speak English. Rios said she could write a will in Spanish. In this case, Rios translated the will into English. She did not write the will in Spanish. She explained to Alfaro the effect of giving all of the residue of her estate to her two daughters.

Fred Dudink testified as a document examiner and handwriting analyst. After examining the paper, the watermarks, and the typewriting font, he did not find any alterations in the document. He concluded \*506 after comparisons with other exemplars that the signature of Alfaro compared favorably with the standards he used. He also concluded that the same person who wrote the initials "I.C." also wrote the name Lucy Copado. He would not testify, however, that the signature purporting to be that of Copado was actually that of Copado. On cross-examination, he stated he was prepared to testify that Copado's signature was a "disguised writing."

The contestants' counsel examined Diane Marsh, a forensic document examiner. After studying Copado's writing habits and comparing Copado's signature standards with the signature on the will, Marsh concluded that the signature attributed to her did not compare favorably with the signature on the will. She opined that someone attempted to duplicate Copado's signature on the will.

Rios was recalled to testify. She stated that Copado was her daughter and was one of the persons who witnessed the will. Rios had not spoken with her since August 1995 because of a dispute over financial matters.

The evidence deposition of Lucy Copado was admitted into evidence. In the deposition, Copado testified that she typed a document purporting to be the will of Alfaro. She was then working at Rios's secretarial service in Waukegan. Rios is her mother. Ramona Alcalá, Alfaro's daughter, brought in a will to be typed. The writing was on a yellow legal pad, was in English, and had been given to Rios. Copado

believed that the will was something that Alcalá had brought in. She recalled that, on February 23, Alfaro, Alcalá, and Rios were present. Copado signed a will that day in the presence of Rios and Alfaro. She did not remember Franco being present. Copado was certain that the signature on the will now before her was not her signature. She stated that her signature was forged. The initials were not hers either. She was not certain if Alfaro had signed the will earlier on the day in question. No one said to Copado, "This is Tomasa's will and she wants you to be a witness" or made any similar comment. Copado testified that this was the only will she had ever witnessed, and she did not know who would normally witness wills in her mother's office. Copado \*\*625 \*\*\*764 worked in that office for about two years and typed the wills, formatting them on a computer.

Following the evidentiary hearing, Judge Trobe found that the signature of one attesting witness and of the notary were genuine and that there existed a *prima facie* case "favoring due execution" of the will. He concluded that there was a presumption of validity and admitted the will to probate in an order dated December 5, 1996. The judge did note, however, that there was no Illinois case directly addressing whether the signature of a notary may be treated as a signature of an attesting witness.

\*507 On April 11, 1997, the contestants filed a petition to contest the validity of the will (755 ILCS 5/8-1 (West 1996)). The contestants were children and heirs of the deceased who, under the will, would receive little by comparison to the proponents. Count I alleged, *inter alia*, fraud in the execution of the will and that the forged signature of Copado rendered the will a nullity. Count II alleged that the will written in English was invalid; that the proponents had the will prepared by Rios, a non-lawyer; and that Rios could not explain the meaning of the will to the decedent, who could not read or speak English to a proficient degree. Count III alleged various acts showing that proponents exerted undue influence over the decedent in having the

will prepared and that the will was not that of the decedent. Count IV alleged, *inter alia*, that the will was not legally enforceable because of alleged legal errors in the drafting of the will by Rios and that certain gifts under the will would fail because of the manner in which the residuary clause was drafted.

The contestants later filed a motion for summary judgment arguing that the forgery of Copado's signature discredited the testimony of the attesting witness, Franco, and of the notary, Rios. The contestants also argued that Rios, acting as a notary public in authenticating the alleged signatures of the two attesting witnesses, could not be an attesting witness under Illinois law and that her testimony would only be admissible where the signatures of the attesting witnesses were "admittedly genuine."

In granting summary judgment to the contestants, Judge Radosevich found that there were two signatures (Elba Franco and Lucy Copado) which appeared as the signatures of attesting witnesses on the purported will of the deceased; that the signature of Lucy Copado as an attesting witness was forged; that Lucy Rios signed the will as a notary; that Rios did not sign the will as an attesting witness; that the affidavit in the will was not signed by Rios; and that the initials that appeared on the margin next to the affidavit did not act as an affirmation of said affidavit. As a result, the court determined that, since there was only one attesting witness to the will, the will could not be probated pursuant to section 6-4 of the Act (755 I.L.C.S. 5/6-4 (West 1996)). Having determined that there was only one attesting witness and the will was therefore invalid, the court specifically did not reach the issue of the credibility of the attesting witness, Franco, and the notary, Rios.

In opposing the entry of summary judgment, the proponents have maintained both here and in the trial court that there were triable factual issues regarding whether the attesting witness Franco and the notary Rios were discredited; whether Rios was

acting as an attesting \*508 witness; and whether the forgery affected the validity of the will. The proponents argued that more evidence should be considered. Alternatively, on appeal the proponents argue that Rios's testimony should stand to show that she was acting as an attesting witness and that this court should determine as a matter of law that Rios's signature made the will valid. The contestants appear to argue that there are no triable issues of fact; that the notary cannot act as an attesting witness; and that the notarial certificate could not be deemed a signature of an attesting witness.

[10] We agree that summary judgment should not have been entered in this case where there are, at the very least, disputed issues of material fact regarding the genuineness, intent, and legal efficacy of the signatures. Even if it were assumed *arguendo* that Franco's signature was valid, there remains a disputed factual and legal question whether the notary could act as an attesting \*\*626 \*\*\*765 witness under the circumstances. It is contestants' position that the status of the notary is merely a question of law. However, contestants concede in their brief that "a notary may act as an attesting witness when signing **as an attesting witness**," and then they state that the "real question is why a signature of a notary verifying a signature which is found to be forged should be given any credence." (Bold in original.) Similarly, there is a controverted issue of material fact whether the signature of Copado was forged.

[11] It is significant that there are important questions of credibility that have not been addressed by either of the judges that heard this case. It would be difficult, if not impossible, for this court to sustain what appear to be the factual findings of a trial court that declined to consider the credibility of the witnesses where the testimony regarding what happened at the signing of the will is conflicting. Summary judgment was entered on the basis of a cold record which contained conflicting versions regarding the execution of the will. A credibility determination and a weighing of the

evidence would appear necessary to sustain the factual findings of the court in this case; however, such determinations are generally improper in a summary judgment proceeding. *Schulenburg v. Rexnord, Inc.*, 254 Ill.App.3d 445, 450, 193 Ill.Dec. 857, 627 N.E.2d 16 (1993).

[12][13] When there is no ambiguity in the language of a document requiring the admission of extrinsic evidence, summary judgment may be a proper procedure to construe the language and determine the validity of the document. See *Giannetti v. Angioli*, 263 Ill.App.3d 305, 312-13, 200 Ill.Dec. 744, 635 N.E.2d 1083 (1994). However, where as here parties seek to draw different inferences on questions of intent from the same document and have introduced conflicting extrinsic evidence to demonstrate the intent \*509 and validity of the signatures, summary judgment is particularly inappropriate. See *Giannetti*, 263 Ill.App.3d at 313, 200 Ill.Dec. 744, 635 N.E.2d 1083. A court cannot decide factual disputes as a matter of law and should grant a motion for summary judgment as a matter of law only when the right of the moving party is clear and free from doubt. *Gatlin v. Ruder*, 137 Ill.2d 284, 293-94, 148 Ill.Dec. 188, 560 N.E.2d 586 (1990).

[14] Even where the facts are undisputed, if fair-minded persons could draw different inferences from those facts, then a triable issue of fact exists and summary judgment is inappropriate. *In re Estate of Ariola*, 69 Ill.App.3d 158, 167, 25 Ill.Dec. 388, 386 N.E.2d 862 (1979). Different trial judges in the same proceedings appear to have arrived at different conclusions regarding the effectiveness of the notary's signature. Judge Trobe did not make any credibility findings nor did he make a specific ruling that Copado's signature was forged. However, Judge Radosevich apparently concluded from a cold record containing conflicting testimony that Copado's signature was a forgery. We cannot say that the right to summary judgment is free from doubt. See *National Boulevard Bank v. Georgetown Life Insurance Co.*, 129 Ill.App.3d 73, 88, 84

Ill.Dec. 330, 472 N.E.2d 89 (1984).

[15] We conclude that summary judgment was inappropriate in this case, and the cause must be remanded for a further evidentiary hearing. A question of law remains to be decided by this court since it will likely be considered on remand. The case law of Illinois is unclear regarding whether a notary public may act as an attesting witness to a will. However, we see no reason why a notary cannot act in that capacity under the appropriate circumstances. The legal efficacy of a notary's signature as an attesting witness to a will of course depends on the particular facts of the case and must be shown by sufficient extrinsic evidence when it is not clear from the face of the instrument itself.

[16][17][18][19] We adhere to the initial guiding principle that "[o]ne who signs his name to a will is not an attesting witness unless he signs with that intention and not for some other purpose." *Williams v. Springfield Marine Bank*, 131 Ill.App.3d 417, 421, 86 Ill.Dec. 743, 475 N.E.2d 1122 (1985). It is essential to the effectiveness of the person's attestation that he act with the intent to attest the instrument, and he must sign with \*\*627 \*\*\*766 the intention of performing the act necessary to become a witness to the execution of the instrument. This intent is manifested by the circumstances under which the witness signs, and they are determinative. See 79 Am.Jur.2d *Wills* § 267 (1975). Where the statute requires witnesses to "attest" a will, they must sign their names thereto as witnesses, in addition to perceiving the acts necessary to the legal execution of the will. *In re Estate of Lum*, 298 Ill.App.3d 791, 794, 232 Ill.Dec. 864, 699 N.E.2d 1049 (1998). Those acts necessary to the legal execution of the will are clearly stated in section 6-4 of the Act. 755 I.C.S. 5/6-4 (West 1996).

[20][21] \*510 By contrast, when one acts strictly in his capacity as a notary public, such as by notarizing the witnesses' signatures on a will, the act of notarization tends to prove the authenticity of the witnesses' signatures and the verification of the attestation clause. A notary public is an official

who is authorized by the state or federal government to administer oaths and to attest to the authenticity of signatures. *In re Estate of Koziol*, 236 Ill.App.3d 478, 483, 177 Ill.Dec. 279, 603 N.E.2d 60 (1992); see 5 U.S.C. 3126-101(a) (West 1996) (notarial acts include "taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature").

[22][23] There is authority from other jurisdictions "that an officer authorized to take acknowledgments under oath, such as a justice of the peace or a notary public, may properly be considered to have attested a will, although his signature appears in the form of an official certificate of acknowledgment, provided that he was requested to attest the instrument, intended to act as a witness, and added the certificate in the belief that it would give greater efficacy to his attestation." 79 Am.Jur.2d *Wills* § 268 (1975); see *In re Hull's Will*, 117 Iowa 738, 740-44, 89 N.W. 979, 980-81 (1902); *In re Estate of Price*, 73 Wash.App. 745, 752, 871 P.2d 1079, 1083 (1994). Where the circumstances show that the notary was in fact acting as an attesting witness, the notary's certificate may be regarded as superfluous. See 79 Am.Jur.2d *Wills* § 268 (1975); see also *In re Ryan's Will*, 12 Misc.2d 192, 174 N.Y.S.2d 607, 608 (Sur.Ct.1958). However, where the character in which a person signs a will appears not to be that of a witness but of a notary public purporting to take an oath, his signing is not effective as an attesting witness. *In re Hammer's Estate*, 72 N.Y.S.2d 636, 637 (Sur.Ct.1946).

[24][25][26] When it is contended that a notary's signature ought to be deemed the subscribing signature of a required attesting witness, the question to be determined is whether the notary was attesting merely to the genuineness of a signature or signatures and was therefore acting only in the capacity of a notary or whether the notary was attesting to all of the acts required by the statute that comprise the proper execution of the will and he was therefore acting as an attesting witness. See

*Ryan's Will*, 174 N.Y.S.2d at 609. We hold that a notary's signature may be deemed the signature of an attesting witness so long as all of the legal requirements of a valid attestation were nonetheless complied with when the notary affixed his signature. *Price*, 73 Wash.App. at 752-753, 871 P.2d at 1083. However, the notary's certificate and signature cannot serve both as an attestation and a notarial certificate at once. *Price*, 73 Wash.App. at 753 n. 4, 871 P.2d at 1083 n. 4.

In the case before us, neither of the two judges made credibility determinations. We believe an evidentiary hearing was in order \*511 in the will contest where the facts concerning the execution of the will were in dispute and extrinsic evidence from the proceeding to admit the will tended to show that a forgery had been committed in attesting the testator's signature. Because there was conflicting evidence and the veracity of the witnesses was in question, the court should have made findings of fact and determinations of credibility in resolving whether the will was properly executed and attested—particularly with respect to Copado's signature. The judge who entered summary judgment was not in a position to determine the credibility of the witnesses regarding Copado's contested signature.

\*\*628 \*\*\*767 Accordingly, we reverse the judgment and remand the cause for further evidentiary proceedings and for the court to enter the findings of fact and conclusions of law it deems appropriate. The court may take into consideration the effect, if any, of any evidence of fraud, forgery, or other misconduct in determining the efficacy of the notary's signature and the validity of the will. It could very well be that the result will be the same on remand. Arguably, there is no ambiguity on the face of the instrument with respect to Rios's signature as a notary public. However, we are not in any position to affirm the judgment, given the procedural posture of this case, the uncertainty of the law at the time judgment was entered, and the state of the record now before us.

The judgment of the circuit court of Lake County is reversed, and the cause is remanded for further proceedings.

Reversed and remanded.

HUTCHINSON and RAPP, JJ., concur.

Ill.App. 2 Dist., 1998.

In re Estate of Alfaro

301 Ill.App.3d 500, 703 N.E.2d 620, 234 Ill.Dec.

759

END OF DOCUMENT

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 IN RE: Estate of Sylvia J. Reagan )  
 )  
 Linda Reagan Shelley, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Ramona D. Becker, individually and as )  
 Personal Representative of the Estate of )  
 Sylvia J. Reagan, Beryl Routon, Kayla )  
 Dawn Kastrup, and Tom Coats, )  
 )  
 Respondents. )  
 )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO. 2012-CP-10-\_\_\_\_\_

**NOTICE OF APPEAL**

Linda Regan Shelley appeals the orders of the Charleston County Probate Court dated March 16, 2012 and November 28, 2012. The grounds for the appeal are as follows:

1. The Court erred in finding the Will dated February 25, 2011 was a holographic will;
2. The Court erred in relying on Illinois law and ignoring South Carolina law. Illinois does not follow the Uniform Probate Code, which South Carolina does, and its statutory scheme is opposite to South Carolina's.
3. The Court erred in determining that a notary public could not properly serve as a witness to the Will.
4. The Court erred in not applying South Carolina law when both of the witnesses to the February 25, 2011 Will testified that the Testrix told them that document was her Will and both of them either saw her sign the document or acknowledged her signature.
5. The Respondent presented no evidence that the Will probated by the Court was the Will of the Testrix.

6. The Court erred in holding the January 12, 2012 hearing was a 'continuation' of the SCRCP Rule 59(e)/ SCRCP Rule 60 motion.
7. The Court erred as a matter of law in probating the Will on file and naming Ramona D. Becker as personal representative.

WHEREFORE the appellant prays for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.



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3<sup>rd</sup> day of December, 2012  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

THE PROBATE COURT  
CASE NO: 2011-ES-10-0465

Linda Reagan Shelley, )  
 )  
Petitioner )

v. )

Ramona D. Becker, )  
 )  
Respondent. )

**ORDER**

<b>DATE OF HEARING:</b>	January 12, 2012
<b>TRIAL JUDGE:</b>	Tamara C. Curry
<b>PETITIONER:</b>	Linda Reagan Shelley
<b>PETITIONER'S ATTORNEY:</b>	David Haller, Esq.
<b>RESPONDENT:</b>	Ramona D. Becker
<b>RESPONDENT'S ATTORNEY:</b>	Robert Gailliard, Esq.
<b>COURT REPORTER:</b>	Janice Shepherd, AW Roberts & Associates

This matter came to be heard before me on January 12, 2012 at approximately 11:15 am on the following: Continuation of Petitioners Rule 59 Motion, Petitioner's Motion for Summary Judgment, Petitioner's Motion in LIMINE, Petitioner's Request for Formal Testamentary Proceedings and the Respondent's Request for Formal Testamentary Proceedings.

**I. PROCEDURAL**

Sylvia J. Reagan died a resident of Charleston County on March 16, 2011. The matters presented by the parties are cross-petitions for the probate of a will and appointment of a Personal Representative. All parties received written notice of these proceedings as required pursuant to S.C. Code Ann. §62-3-403. This court has jurisdiction over the subject matter of this case, the parties to this matter, and venue is proper in Charleston County.

*1cc  
8/5  
1/16/12*

This court was presented with a hand-written document purporting to be the Last Will and Testament of Sylvia J. Reagan, on or about March 17, 2011. The Will was not accepted informally because one witness executed the document with a Notary Public signature. On or about March 22, 2011, Dr. Ramona Becker presented a form Will, properly witnessed, and signed by Sylvia J. Reagan to the Probate Court. That Will was admitted to the Court and the Court issued a Certification of Appointment naming Ramona D. Becker as the Personal Representative of the Estate of Sylvia J. Reagan on March 22, 2011.

## II. ISSUE PRESENTED

Does the holographic Will presented by Linda Reagan Shelley as the Last Will and Testament of Sylvia J. Reagan meet the statutory requirements of having two witnesses as required by section 62-2-502, South Carolina Code of Laws, 1976, as amended, when the document on its face has one witness and a Notary Public's signature notarizing the document?

## III. FINDINGS OF FACT AND CONCLUSION

The Court's inquiry must start with the statutory requirement found in section 62-2-503, Code of Laws of South Carolina, 1976, amended. That section requires two witnesses to the Testator's signature on the Will. Here, as in other cases related to the Last Will and Testament of a deceased, the wishes of the Testator is paramount. The testimony revealed that the Testator called Delores Belin-Burns, a neighbor, to her home and requested that she come over to notarize a document. Mrs. Burn's uncontroverted testimony states that she did exactly what the Testator asked her to do, which was to notarize a document. There was never a request that she witness this Will, but to notarize a document.

Petitioner's attempt to change the character of the person from Notary to witness is ineffective because the Testator's wishes were only that she notarize the document. Clearly the

ICC  
195  
3/16/12



5. The Respondent called no witnesses nor presented any evidence that "the Will submitted by Ramona D. Becker" was the Will of Ms. Reagan.
6. The court erred in holding the January 12, 2012 hearing was a continuation" of the Petitioner's Rule 59 motion.

Based on the arguments the Respondent seeks a Motion to Alter or Amend Judgment, and that Motion is hereby denied.

Accordingly, after a review of the Petitioner's arguments, supporting law and documents, the MOTION of Petitioner Linda Reagan Shelley to Alter and Amend the Order of the Court dated March 16, 2012 under Rule 59 of the South Carolina Rules of Civil Procedure is DENIED;

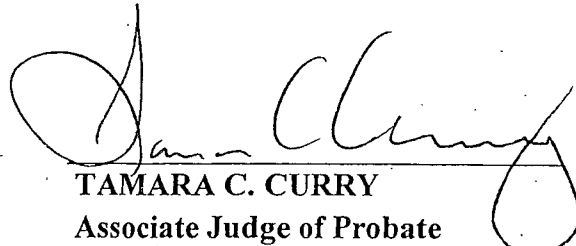
**ORDERED** that the holographic Will submitted by Petitioners is not the Last Will and

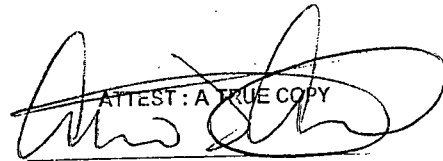
*icc*  
Testament of Sylvia J. Reagan; it is further;

*of 2*  
**ORDERED** that the Will submitted by Ramona D. Becker is accepted by this Court; it is further;

*2/8/12*  
**ORDERED** that Ramona D. Becker is accepted by this Court and she is reinstated as the Personal Representative.

**AND IT IS SO ORDERED.**

  
**TAMARA C. CURRY**  
Associate Judge of Probate

  
ATTEST: A TRUE COPY  
CLERK PROBATE COURT  
CHARLESTON COUNTY, SOUTH CAROLINA

November 28, 2012  
Charleston, South Carolina

1 STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

2 COUNTY OF CHARLESTON

3 IN RE: THE ESTATE OF  
4 SYLVIA J. REAGAN

COPY

5 LINDA REAGAN SHELLEY,

6 Petitioner,

7 vs.

CASE NO. 2011-ES-10-0465

8 RAMONA D. BECKER, individually  
9 and as Personal Representative of  
10 The Estate of SYLVIA J. REAGAN,  
11 BERYL ROUTON, KAYLA DAWN KASTRUP,  
12 and TOM COATES,

13 Respondents.

14 HEARING BEFORE THE HONORABLE TAMARA C. CURRY

15 DATE: January 12, 2012

16 TIME: 11:21 a.m.

17 LOCATION: Charleston County Judicial  
18 Building  
19 100 Broad Street  
20 Charleston, SC

21 REPORTED BY: Janice N. Shepherd,  
22 Registered Professional  
23 Reporter

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES

25 Fast, Accurate & Friendly

Charleston, SC Hilton Head, SC Myrtle Beach, SC  
24 (843) 722-8414 (843) 785-3236 (843) 839-3376

25 Columbia, SC Greenville, SC Charlotte, NC

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15  
16  
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24  
25 (INDEX AT REAR OF TRANSCRIPT)

1 THE COURT: Ladies and Gentlemen, this  
2 is the Estate of Sylvia Reagan, Case Number  
3 2011-ES-10-0465. We originally had a hearing -- I  
4 believe it was held September the 12th, 2011, in  
5 regards to an order granting a Rule 59 Motion. And  
6 at that particular hearing, there were issues  
7 raised regarding two wills that were executed by  
8 the decedent and whether or not this matter should  
9 have been set for formal appointment.

10 Since that time, we have a Motion For  
11 Summary Judgment and Formal Appointment of the  
12 Personal Representative Intestacy filed by Attorney  
13 Haller. Am I correct?

14 MR. HALLER: That's correct, Your  
15 Honor.

16 THE COURT: And then we also have a  
17 Motion in Limine filed by you?

18 MR. HALLER: Yes, ma'am.

19 THE COURT: And I believe recently  
20 there was a Motion to Use Deposition Testimony that  
21 has also been filed by you?

22 MR. HALLER: It has, Your Honor. I  
23 believe that motion is moot because Ms. Belin-Burns  
24 is here in the courtroom, and my information is  
25 Ms. Jones was to be here at 11:15, and I assume she

1 is wandering the halls looking for courtroom 4A at  
2 this moment.

3 THE COURT: Correct. And I'm sorry.  
4 Usually we do use this courtroom because it's ours.  
5 And at the time, I had -- I do mental health court,  
6 and it was set in the wrong courtroom. So I  
7 apologize. So if --

8 MR. HALLER: I think I hear the door  
9 opening behind us.

10 THE COURT: We can always put a notice  
11 on the door if there are any other witnesses that  
12 you believe --

13 MR. HALLER: There she is. Thank you,  
14 Your Honor.

15 THE COURT: So the motion to use  
16 deposition testimony is moot?

17 MR. HALLER: Yes, ma'am.

18 THE COURT: Okay. Other than the items  
19 that I listed, are there any other issues before  
20 the court today?

21 MR. HALLER: Other than the -- in the  
22 event Your Honor denies the Motion For Summary  
23 Judgment, then we go forward --

24 THE COURT: Correct. But I'm just  
25 saying, anything other than what I listed?

1 MR. HALLER: None from Ms. Reagan.

2 THE COURT: Okay. Attorney Gailliard?

3 MR. GAILLIARD: We ask the Court to  
4 reinstate the order appointing Ramona Becker as  
5 personal representative of the estate and accept  
6 the will dated December 29th, 2009 as --

7 THE COURT: Those are the issues before  
8 the Court today?

9 MR. GAILLIARD: Yes.

10 THE COURT: Okay. Any other  
11 preliminary matter?

12 MR. HALLER: No, ma'am.

13 THE COURT: Then do you want the Court  
14 to address the Motion in Limine first or the Motion  
15 For Summary Judgment?

16 MR. HALLER: The Motion For Summary  
17 Judgment. I think the Motion in Limine is probably  
18 very narrow, because looking at the people who  
19 might be called to testify, I don't believe -- I  
20 don't believe anybody at this point looks like  
21 they're going to be in violation of the dead man's  
22 statute.

23 THE COURT: Correct. And I was going  
24 to question, you have to look at it witness by  
25 witness and whether or not any of the exceptions

1 apply to those witnesses.

2 MR. HALLER: I understand, Your Honor.  
3 Originally, I had understood that there would be  
4 another witness who may be called. But my  
5 understanding is that that person is not here. So  
6 as I understand, Your Honor, there is no Motion in  
7 Limine. If an issue comes up per witness, we will  
8 address it at that time.

9 THE COURT: Correct.

10 MR. HALLER: Yes, ma'am. As to our  
11 Motion For Summary Judgment, we filed the motion  
12 pursuant to Rule 56 on the basis of South Carolina  
13 Code 62-2-502, which is the execution of will  
14 statute, which provides that every will shall be in  
15 writing signed by the testator with some caveats as  
16 to the testator's signature and further says: And  
17 shall be signed by at least two witnesses -- two  
18 persons, each of whom witnessed either the signing  
19 or the testator's acknowledgment of the signature  
20 or of the will.

21 We took the depositions of the two  
22 witnesses to the will that Ms. Shelley asked the  
23 Court to probate.

24 THE COURT: Can you say which date  
25 that -- so we can make a difference between the

1 February versus the --

2 MR. HALLER: Yes, ma'am, the February  
3 25th will, which is the will that Ms. Shelley puts  
4 forward to the Court.

5 There are two signatures other than  
6 Ms. Reagan's signature on the will. First of all,  
7 I asked both Ms. Jones and Ms. Belin-Burns if they  
8 recognized Ms. Reagan's signature on the will, and  
9 both said, yes, they did. And I believe both of  
10 them also testified that they either heard her say  
11 that that was her signature or saw her sign the  
12 will. Ms. Belin-Burns testified as follows.

13 Question: Did she tell you  
14 that she signed the document  
15 as well?

16 Answer: Yeah, she told me she  
17 signed it.

18 Question: Do you recognize  
19 her signature?

20 Answer: Yes, I do.

21 Question: And Ms. Reagan  
22 indicated to you at the time  
23 that that was her will?

24 Answer: She said that was her  
25 will, and she wanted -- she

1           asked me, would I notarize  
2           Sara Jones' signature, and I  
3           told her I would. She then  
4           acknowledged that the  
5           signature at the very bottom  
6           is her signature.

7 Ms. Jones, who was Ms. Reagan's Hospice nurse also  
8 testified as follows.

9           I knew it well enough to know  
10          that this looks to be her  
11          handwriting.

12 This, she is referring to the February 25th will.

13          I was there that day, and  
14          that was as an outside party.  
15          I agreed to say yes, but I did  
16          witness the exchange.

17 Question: Did she tell you  
18 that this was her signature?

19 Answer: I actually think she  
20 signed it the same time I did.

21 Question: Did Ms. Reagan tell  
22 Delores at the time that you  
23 were signing it and that she  
24 signed it, that this document  
25 here, Exhibit 1, was her will?

1 Answer: I believe Delores  
2 asked her if that was what she  
3 wanted, and Sylvia said yes.  
4 Whether she nodded or  
5 verbalized it, I don't recall.

6 So, Your Honor, what we have is two  
7 individuals who have both said, number one, that  
8 the February 25th will was signed by Ms. Reagan,  
9 that it is in writing, we have a document in  
10 writing signed by Ms. Reagan, and signed by two  
11 people, one of whom testifies that she actually saw  
12 Ms. Reagan sign the document, and the other one  
13 testifies that Ms. Reagan indicated to her that  
14 that was her will and then signed the document.

15 Under 62-2-502, that is all that is  
16 required to probate and testate a will. And,  
17 accordingly, because there is no genuine issue of  
18 material fact, we'd ask that the Court probate this  
19 will. Thank you.

20 THE COURT: Thank you. Attorney  
21 Gailliard, do you have a response?

22 MR. GAILLIARD: Yes. May it please the  
23 Court, Your Honor.

24 First of all, by the statutes -- and  
25 I'm referring to the Probate Court Section

1 62-3-406, in a contested case, Your Honor, it  
2 declares that the testimony of at least one of the  
3 attesting witnesses is required.

4 If the Court requires the testimony of  
5 a witness, I don't know how the petitioner can now  
6 come in and say, well, we're entitled to summary  
7 judgment, and the Court says you've got to have a  
8 witness to testify.

9 As to the depositions, Your Honor, you  
10 would need to see the entire depositions.

11 Mr. Haller is taking things out of context. If we  
12 just talk about the deposition of Sara Jones, she  
13 said she was just witnessing an occasion between  
14 the decedent, Sylvia Reagan; Delores Belin-Burns;  
15 and Linda Shelley. So I kept asking her, what is  
16 it that you're talking about? She even says at one  
17 point that she's not a handwriting expert, she  
18 believes that's the lady's signature.

19 Either she saw her sign it, or she  
20 didn't see her sign it.

21 And we have the deposition of  
22 Ms. Belin-Burns, who says that, look, all I did,  
23 they called me in to notarize the signature of the  
24 witnesses, and that's all I did. And she's here to  
25 testify about that. So I don't understand how we

1 can be talking about summary judgment when the  
2 statute itself says that you have to have a witness  
3 here to testify.

4 THE COURT: Any response, Mr. Haller?

5 MR. HALLER: Your Honor, the  
6 depositions are the testimony, number one. Number  
7 two -- and I believe the comments to 62-3-406 is  
8 actually referred to, the ability of the Court to  
9 rely on deposition testimony in certain conditions  
10 in lieu of having live testimony.

11 Of course, at the summary judgment  
12 stage, if the Court looks to see whether or not  
13 there is any genuine issue of material fact, the  
14 parties are not free to rest on their laurels or on  
15 their pleadings. They have to come forward with  
16 some genuine issue of material fact to create for  
17 the factfinder to go forward.

18 The only record before Your Honor is  
19 the testimony I put before you. I'm happy to  
20 provide the full testimony of the witness that  
21 follows. But if Mr. Gailliard believes there is  
22 some other testimony out there that the Court needs  
23 to see, it was his burden before today to come  
24 forward and file that information.

25 Last, Your Honor, the theory of the

1 defense is, because there is not the nicety of the  
2 witnesses being told, this is my will, please  
3 witness it for me, then the will is invalid. They  
4 don't argue to Your Honor that two people didn't  
5 sign the will. They don't argue to Your Honor that  
6 it's not Ms. Reagan's handwriting.

7           What they say is that they're not valid  
8 witnesses because they were not firstly asked or  
9 directly asked by the testatrix to sign the will.  
10 The comments to the statute say this: Code Section  
11 62-502 requires neither subscription of the  
12 testator's signature; i.e., that it appears at the  
13 end of the will, or publication of the will; i.e.,  
14 that the testator's announcement to the witness  
15 that the document is his will, nor specific request  
16 by the testator that the witnesses attest and sign.

17           In other words, the prior practice by  
18 which the testatrix had to say to the witnesses,  
19 this is my will, will you witness my signature to  
20 the will, which was before the Uniform Probate Code  
21 went into affect in 1986, is no longer the practice  
22 in South Carolina. Before the Uniform Probate  
23 Code, there were three witnesses that were  
24 required, and there was a specific manner in which  
25 that had to be done.

1           The Uniform Probate Code did away with  
2 all of those practices. While it says these  
3 practices are customary and unobjectionable, those  
4 practices are now gone. To probate a will, all you  
5 need to have is a writing, the testatrix'  
6 signature, and two witnesses that either saw the  
7 signature by the testatrix, heard the testatrix  
8 acknowledge that to be her will, or heard the  
9 testatrix acknowledge that to be her signature.  
10 And that is what the Court has before it.

11           Even if you take the next step of their  
12 argument, which is that somehow Ms. Belin-Burns is  
13 not competent as a witness because she signed it as  
14 a notary, I can tell you right now, the common  
15 practice in South Carolina is for there to be two  
16 witnesses, one who may be the notary to the  
17 self-proving affidavit. So you have the testatrix  
18 sign the will, the two witnesses sign after, having  
19 witnessed that, and then one would serve as the  
20 notary to the self-proving affidavit saying that I  
21 swear that I saw the testatrix sign the will, which  
22 in this state makes that will, per se, binding.

23           The fact that she is a notary does not  
24 qualify her as a witness to the will, which is what  
25 the core of their argument is.

1 As a matter of law, this will is valid  
2 in South Carolina. And that's all we ask the Court  
3 to do is to enforce what Mrs. Reagan's wishes were  
4 at her death. Thank you.

5 THE COURT: Anything further?

6 MR. GAILLIARD: Yes, Your Honor, just  
7 that -- and very briefly -- we have to go by  
8 Section 62-502, and it says you either see, or the  
9 testator acknowledges the signature.

10 And there is no nicety. The statute is  
11 clear. You have to stand up and acknowledge. If  
12 you don't have that, you don't have a valid will.  
13 And so certainly you would have to prove the  
14 acknowledgment, and that's not been done by  
15 deposition testimony.

16 THE COURT: Based on the arguments and  
17 the motion that's been filed, the Court believes  
18 that there are some genuine issues of material  
19 fact, and the Court is going to deny the Motion For  
20 Summary Judgment.

21 MR. HALLER: Thank you, Your Honor.

22 THE COURT: Are you ready to call your  
23 first witness?

24 MR. HALLER: Yes, ma'am. Your Honor,  
25 before I call a witness, I ask the Court to take

1 judicial notice that Sylvia Jane Sample Reagan died  
2 on March 16th, 2011, domiciled in Charleston  
3 County. I have the Death Certificate from the  
4 State of South Carolina, which we would move as  
5 Petitioner's Exhibit Number 1.

6 THE COURT: We can take judicial  
7 notice, but the Court does have an original copy of  
8 the Death Certificate.

9 MR. HALLER: Yes, ma'am. Is it  
10 necessary to make it an exhibit?

11 THE COURT: No, sir, because I have it  
12 right before me. But I would take judicial notice.

13 MR. HALLER: Thank you, Your Honor.  
14 Your Honor, the petitioners call Sara Jones.

15 SARA JONES,  
16 being first duly sworn, was examined and testified  
17 as follows:

18 DIRECT EXAMINATION

19 BY MR. HALLER:

20 Q. Good morning, Ms. Jones.

21 A. Yes.

22 Q. Thank you for coming.

23 A. Sure. Sorry I was late.

24 Q. It's quite okay. Would you please  
25 state your full name for the record?

1 A. Sara Hutchins Jones.

2 Q. Ms. Jones, did you know Sylvia Reagan?

3 A. I did.

4 Q. How did you know her?

5 A. She was my -- a Hospice patient of mine  
6 in her home.

7 Q. Are you any relation to her?

8 A. No.

9 Q. Do you know Linda Shelley?

10 A. Only through Sylvia.

11 Q. Do you know Ramona Becker?

12 A. We met once through Sylvia.

13 Q. Any relation to any of the parties?

14 A. No.

15 Q. I'm going to show you a document. Tell  
16 me if you recognize this.

17 A. Yes.

18 Q. And what do you believe that to be?

19 A. This was presented to me on the date of  
20 the 25th of February concerning witnessing her  
21 wishes that Linda be the recipient or the executor  
22 or whatever, that her Last Will and Testament be  
23 transferred to her.

24 Q. When you're talking about her, you  
25 mean --

1 A. Linda -- Sylvia to Linda. Sorry.

2 Q. Do you understand this to be the will  
3 of Sylvia Reagan?

4 A. Yes.

5 Q. Do you recognize the handwriting?

6 A. Yes.

7 Q. Whose handwriting do you recognize that  
8 to be?

9 A. Sylvia's.

10 MR. HALLER: Your Honor, we'd move this  
11 as Petitioner's Exhibit 1.

12 THE COURT: Any objection?

13 MR. GAILLIARD: No, Your Honor.

14 THE COURT: That will be Petitioner's  
15 1.

16 MR. HALLER: Yes, Your Honor.

17 (PET. EXH. 1, Sylvia Reagan Will, was  
18 marked for identification.)

19 BY MR. HALLER:

20 Q. Ms. Jones, I'm going to point to some  
21 language down there. Do you see your signature on  
22 that document?

23 A. I do.

24 Q. Did you see Ms. Reagan sign that  
25 document?

1 A. I believe I did.

2 Q. Did Ms. Reagan tell you that to be her  
3 will?

4 A. Yes.

5 Q. Did she tell you that that document  
6 indicated how she wanted her property disposed?

7 A. She didn't go so far as to say that.  
8 She did say that this was her intent, that this  
9 represented her intent on that day.

10 Q. So you both saw her sign the will --  
11 yes?

12 A. I believe I saw her sign it, yes.

13 Q. And you heard her declare that to be  
14 her will?

15 A. Yes. She indicated that this is what  
16 her wishes were.

17 Q. And you signed the will as well?

18 A. Yes.

19 Q. Did you see anybody else sign the will?

20 A. I believe Delores signed it as well  
21 when I was there.

22 Q. Was Ms. Belin-Burns in the room at the  
23 time Ms. Reagan made the declaration that that was  
24 her will?

25 A. Yes, we were all in the room together,

1 yes.

2 MR. GAILLIARD: Your Honor, I would  
3 object to leading the witness. There is not  
4 anything in this dep saying that this was the will  
5 and she was there when she said that this was the  
6 will. It kind of muddies the issues right here,  
7 and I object to leading the witness.

8 THE WITNESS: As I understand --

9 THE COURT: Hold on, hold on. Do you  
10 have a response?

11 MR. HALLER: I can re-ask the question.

12 BY MR. HALLER:

13 Q. What do you understand that document to  
14 be, Ms. Jones?

15 A. Last Will and Testament.

16 Q. Of whom?

17 A. Sylvia Reagan.

18 Q. And did you hear Ms. Reagan say that?

19 A. I heard her say that this represented  
20 her intent for that day, for what we were doing  
21 that day. Can I just say that --

22 THE COURT: You can't. You can't. You  
23 can only answer questions if he asks you. You  
24 can't testify yourself. And hopefully he'll ask  
25 the questions that will generate what you're trying

20

1 to say.

2 THE WITNESS: Okay.

3 BY MR. HALLER:

4 Q. Where did Ms. Reagan live at the time  
5 of her death?

6 A. In James Island on Camp Road.

7 Q. Do you know what county that is in?

8 A. Charleston.

9 MR. HALLER: Your Honor, I don't have  
10 any other questions for this witness. Thank you,  
11 Ms. Jones.

12 THE COURT: Attorney Gailliard.

13 CROSS-EXAMINATION

14 BY MR. GAILLIARD:

15 Q. Good morning, Ms. Jones.

16 A. Morning.

17 Q. Now, that is your signature on this  
18 document; is that correct?

19 A. Yes, it is.

20 Q. Now, are you today clear as to whether  
21 or not you saw Sylvia Reagan sign this document?

22 A. I believe I saw her sign that document.  
23 We all signed it that morning in the room together.

24 Q. I'm concerned about you saying you  
25 believe you saw it. Did you see it, or you didn't?

1 A. Well, it happened 11 months ago, so...

2 Q. I mean, if you're not clear, just tell  
3 the Court you're unclear.

4 A. I'm unclear.

5 Q. All right. Now, did you see Sylvia  
6 Reagan write this document?

7 A. I did not see her write this document.

8 Q. How did the document get before you?

9 A. When I arrived for my visit that  
10 morning, Sylvia and Linda were present already, and  
11 I arrived for my nursing visit with her. And as I  
12 recall, Delores came over during the first few  
13 minutes that I was there, during the first part of  
14 my visit there with her. And this document was  
15 presented at that time when we were all present.

16 Q. You said it was what?

17 A. This document was presented at that  
18 time when we were all present.

19 Q. And who presented it?

20 A. I believe Delores had it, but I can't  
21 recall whether it was in the home already or  
22 whether Delores came over and had it on her person.

23 Q. So, now, if I understand you, you're  
24 not clear how the document appeared; is that  
25 correct?

1           A.    I don't recall whether Delores had it  
2    in her possession when she arrived or whether it  
3    was on the coffee table in the living room when we  
4    were all there.

5           Q.    When you were asked to sign it, the  
6    document was already written out?

7           A.    Yes.

8           Q.    It was?

9           A.    Yes.

10          Q.    And you don't know whether Delores  
11   brought the document over or whether Sylvia Reagan  
12   presented it to you?

13          A.    As I testified in my deposition, my  
14   understanding was that this -- at the time, I felt  
15   like she had had Delores review this document prior  
16   to my arrival, and they were awaiting my arrival.  
17   Knowing that I was coming for a visit that morning,  
18   I would present them an opportunity as another  
19   witness to this. I don't recall whether it was in  
20   her notebook on her coffee table at the time or  
21   whether Delores had actually reviewed it prior to  
22   my arrival.

23          Q.    And you say reviewed it, what do you  
24   mean?

25          A.    To look over what she had written.

1 Q. Now, so at this point, you don't know  
2 where the document came from; is that correct?

3 A. I know the document was there. I was  
4 there for a nursing visit. I wasn't there to try  
5 to determine whether there was going to be an  
6 exchange of a will. I had no knowledge of this  
7 prior to my arrival that morning. This was  
8 presented to me during that visit.

9 Q. But to answer my question, you really  
10 can't tell us today where the document came from or  
11 whether it was at the premises when you arrived?

12 A. I believe it was at the premises when I  
13 arrived. Whether Delores had it, who lives next  
14 door, or not, but it was there. It was presented  
15 to me while I was there. It didn't just  
16 materialize itself. It clearly had been written  
17 before I arrived. It had not been signed. It said  
18 Last Will and Testament. I understood that to be  
19 what it was. And I simply was there. Apparently  
20 that particular day, I was an opportunity for a  
21 witness to that document.

22 Q. Well, in answer to my question, you're  
23 telling us you're just not sure where the document  
24 came from; is that correct?

25 THE COURT: Attorney Gailliard, I think

1 she's already been asked and has answered that a  
2 number of times. She may have not said it the way  
3 you want to, but she's answered it like three  
4 times.

5 MR. GAILLIARD: Your Honor, I haven't  
6 heard her answer that question at this point.

7 THE COURT: Let me have the court  
8 reporter to repeat what she said.

9 (The Court Reporter read the question  
10 commencing on page 23, line 13, and concluding on  
11 page 24, line 22.)

12 THE COURT: Is that not the answer to  
13 your question?

14 MR. GAILLIARD: Your Honor, I'll accept  
15 that as an answer.

16 BY MR. GAILLIARD:

17 Q. Now, Ms. Jones, you remember giving a  
18 deposition in the office of Attorney Haller back in  
19 September of last year?

20 A. I believe it was October. But, yes.

21 Q. You did?

22 A. Yes.

23 Q. Okay. And do you recall at that time  
24 saying:

25 When Delores came over, I'm

1                   pretty sure she had this with  
2                   her?

3                   Your Honor, I'm going to approach the  
4                   witness.

5                   A.     When Delores came over, I'm pretty sure  
6                   she had this with her, yes.

7                   Q.     Do you recall saying that?

8                   A.     Yes.

9                   Q.     At that time, you understood Delores  
10                  brought the document with her; is that right?

11                  A.     Yes.

12                  Q.     And is that your testimony today?

13                  A.     It was also my testimony on that day  
14                  that I was unclear about whether it was present in  
15                  the home or whether Delores had brought it. I  
16                  did -- that was addressed several times during that  
17                  same deposition. I do not recall and I will not  
18                  testify that 100 percent I am sure one way or the  
19                  other. I apologize that my memory fails me.

20                  Q.     All right. So what you're stating to  
21                  the Court today is that you just don't remember how  
22                  the document came into the house; is that right?

23                  A.     Well, it was one way or the other. It  
24                  was either there, or it came in with Delores.

25                  Q.     Let me just show you what you said on

1 that date. Would you look at --

2 A. I have a copy right here.

3 MR. HALLER: Objection, Your Honor,  
4 improper impeachment.

5 THE COURT: His objection is improper  
6 impeachment.

7 MR. GAILLIARD: Your Honor, I certainly  
8 can ask her to look at her deposition and see what  
9 she said in her deposition if she's saying  
10 something different today.

11 THE COURT: Correct. But you're trying  
12 to -- no one has admitted the original deposition.  
13 So that -- so you haven't even asked whether or not  
14 she had a copy of the deposition, and you're trying  
15 to impeach her. So where is the original copy of  
16 the deposition?

17 MR. HALLER: Your Honor, I have the  
18 original here. My point was that Ms. Jones has not  
19 denied what she said -- has not taken an  
20 inconsistent position with what Mr. Gailliard told  
21 her was in the deposition. The only time you can  
22 use impeachment is at the point in which she  
23 testifies to something that is inconsistent.

24 As Your Honor has pointed out, he's  
25 asked this question now for five minutes over and

1 over again --

2 THE COURT: Correct. But he has an  
3 opportunity, if there is something in the  
4 deposition, which I wouldn't know, that is  
5 inconsistent with what she testified to. The only  
6 way we can find out is if he's able to find  
7 something in the deposition and have it to show  
8 that it was inconsistent.

9 MR. GAILLIARD: Your Honor, this is the  
10 original deposition of Sara H. Jones,, and I'm going  
11 to ask her to look at her response to my question  
12 that she answered on that day on page 15 of the  
13 deposition.

14 THE COURT: Okay.

15 BY MR. GAILLIARD:

16 Q. Do you have a copy of the deposition,  
17 Ms. Jones?

18 A. I do.

19 Q. Would you?

20 THE COURT: Now, how -- go forward.

21 MR. GAILLIARD: Page 15, Your Honor.

22 THE COURT: You said page 15. Which  
23 line?

24 MR. GAILLIARD: Starting with line 5.

25 BY MR. GAILLIARD:

1 Q. Now, Ms. Jones, would you look at line  
2 5 and read lines 5 through 7 and tell us what you  
3 said on that date?

4 A. It says:

5 So when Delores came over, I'm  
6 pretty sure she had this with  
7 her. And maybe that's because  
8 she's a notary or something  
9 and she looked over it for  
10 her.

11 BY MR. GAILLIARD:

12 Q. So, now, on the day of your deposition,  
13 you were sure that Delores brought the document  
14 with her; is that correct?

15 A. I believe I said: I'm pretty sure.

16 Q. All right. You're pretty sure. Today  
17 you don't know whether she brought it or whether it  
18 was in the house when you got there. Is that  
19 right?

20 THE WITNESS: Your Honor, may I --

21 THE COURT: Just answer the question.

22 THE WITNESS: Okay. What was the  
23 question?

24 BY MR. GAILLIARD:

25 Q. I said, today, you're not sure whether

1 she brought the document, Delores brought the  
2 document with her, or it was in the house; is that  
3 correct?

4 A. No, I'm not sure, as I stated in the  
5 deposition.

6 MR. GAILLIARD: All right. That's all  
7 the questions for this witness, Your Honor.

8 THE COURT: Attorney Haller.

9 REDIRECT EXAMINATION

10 BY MR. HALLER:

11 Q. Real quick, Ms. Jones. You recall  
12 Ms. Reagan telling you that that was her will?

13 A. Yes.

14 Q. And after she told you that was her  
15 will, did she tell you that was her signature on  
16 the will?

17 A. Yes.

18 Q. After she told you it was her signature  
19 on the will, did you sign the will?

20 A. Yes.

21 MR. HALLER: Thank you, ma'am. No  
22 further questions.

23 MR. GAILLIARD: Your Honor, recross.

24 THE COURT: Go forward.

25 RECROSS-EXAMINATION

1 BY MR. GAILLIARD:

2 Q. Ms. Jones, Ms. Reagan never used the  
3 words that this was my Last Will and Testament, did  
4 she?

5 A. Not verbally, no, not necessarily.

6 Q. You mentioned during your deposition  
7 that she said that you thought these were her  
8 wishes. Tell us how you knew that these were her  
9 wishes.

10 A. As I recall, when I got there that day  
11 and this document came into play among the five of  
12 us, she handed it to me and asked if I would look  
13 at it and witness it and would I be willing to sign  
14 it as a witness.

15 I can't recall her verbiage. She  
16 wasn't able to have a very lengthy conversation  
17 with anyone because she couldn't breathe. So I  
18 looked at her and asked if this was what she  
19 wanted, and she either nodded or said yes to me.  
20 It was not a lengthy answer. She was unable to  
21 speak at length because of her condition. So there  
22 wasn't a lot of conversation going on verbally. It  
23 was short. It was to the point. It was, yes, this  
24 is my wish. Yes, will you sign this.

25 Q. So if I understand --

1           A.    Not this is my Last Will and Testament,  
2    la, la, la, la.  It wasn't like that.  It couldn't  
3    be.  She couldn't have a conversation like that  
4    with anyone.  She was very sick.  I asked her if  
5    this was what she wanted.  She nodded to me that it  
6    was.  And then I signed it as her witness.

7           Q.    So at this point, you're saying that  
8    she did not verbalize anything to you; is that  
9    correct?

10          A.    She may have said yes or said uh-huh  
11    or -- I don't recall that.  I know that I got an  
12    affirmative answer from her and I was satisfied it  
13    was an affirmative answer.

14          Q.    And your question to her was what?

15          A.    Is that what she wished, is that what  
16    she wished that I do, sign this document as her  
17    witness.

18          Q.    That's referring to signing of the  
19    document?

20          A.    I'm sorry?

21          Q.    You were referring to whether she  
22    wished you to sign the document?  That was your  
23    question to her, did she wish you to sign the  
24    document?

25          A.    Yes, was this what she wished and did

1 she wish for me to sign this document as a witness.  
2 And she indicated that she did.

3 Q. And she did that nonverbally; is that  
4 correct?

5 A. I don't recall whether there was a  
6 verbal response in addition to a nod. Whichever it  
7 was, it was an affirmative response that that is  
8 what she wanted.

9 Q. Now, you just mentioned that there were  
10 five of you there. Can you --

11 A. Four, I guess. Me --

12 MR. HALLER: Excuse me. We're going  
13 outside the bounds of what I redirected her on. I  
14 asked her three very simple questions about whether  
15 Ms. Reagan told her that it was her will, told her  
16 it was her signature, and she signed it thereafter.

17 THE COURT: The only reason I'm going  
18 to allow it is because she did indicate that there  
19 were five people in an answer to a question. So  
20 I'm going to allow it.

21 MR. HALLER: Thank you, Your Honor.

22 THE WITNESS: I apologize. There were  
23 four, me, Linda, Delores, and Sylvia.

24 THE COURT: Repeat that again. I'm  
25 sorry.

1 THE WITNESS: Me, Delores, Linda, and  
2 Sylvia.

3 BY MR. GAILLIARD:

4 Q. Now, Ms. Jones, finally, is it your  
5 testimony today that Sylvia Jones did not give a  
6 verbal response to your question? Sylvia Reagan,  
7 I'm sorry.

8 A. It is my testimony that I don't recall  
9 whether I got a verbal response from her.

10 MR. GAILLIARD: Nothing else, Your  
11 Honor.

12 THE COURT: Anything further?

13 MR. HALLER: No, ma'am.

14 THE COURT: Can this witness be  
15 released? Is she subject to recall?

16 MR. HALLER: I won't need any more  
17 testimony from Ms. Jones.

18 THE COURT: Thank you. Your next  
19 witness.

20 MR. HALLER: Petitioners call  
21 Ms. Delores Belin-Burns.

22 DELORES Belin-Burns,  
23 being first duly sworn, was examined and testified  
24 as follows:

25 DIRECT EXAMINATION

1 BY MR. HALLER:

2 Q. Good morning, Ms. Belin-Burns.

3 A. Good morning.

4 Q. Would you please state your full name  
5 for the record?

6 A. Delores Alfita Belin-Burns.

7 Q. Did you know Sylvia Reagan?

8 A. I did.

9 Q. How did you know her?

10 A. She was my neighbor.

11 Q. Other than being a neighbor, did you  
12 have any other relationship with her?

13 A. Yeah, we were close friends. She  
14 called me her daughter.

15 Q. Do you have any relationship with Linda  
16 Shelley?

17 A. No.

18 Q. How about Ramona Becker?

19 A. No.

20 Q. I'm going to show you -- you live in  
21 Charleston County?

22 A. Yes, sir, I do.

23 Q. Do you know the date on which  
24 Ms. Reagan is no longer with us?

25 A. That's right.

1 Q. Do you know which date, the date she  
2 passed away?

3 MR. HALLER: I think she took the  
4 exhibit. I think Ms. Jones took the exhibit.

5 THE COURT: Oh. Can you go see if --

6 MR. HALLER: Yes, ma'am.

7 THE COURT: Do you see it?

8 MR. HALLER: She put it on my desk.

9 THE COURT: Okay.

10 BY MR. HALLER:

11 Q. All right. Ms. Belin-Burns, I'm going  
12 to show you what's previously been marked as  
13 Exhibit Number 1 and see if you've seen that  
14 document before.

15 A. Yes.

16 Q. What is it?

17 A. It's a Last Will and Testament.

18 Q. I'm going to direct your attention --

19 THE COURT: I need you to speak in the  
20 mike, if you pull the mike towards you.

21 THE WITNESS: Yes, it says: Last Will  
22 and Testament.

23 BY MR. HALLER:

24 Q. Do you recognize down towards the  
25 bottom of the page the signatures down there?

1 A. I do.

2 Q. And whose signature do you recognize  
3 that to be?

4 A. All of the signatures or just --

5 Q. The ones whose handwriting you  
6 recognize.

7 A. Mine, Sara Jones, and it looks like  
8 Sylvia Reagan.

9 Q. Are you familiar with Ms. Reagan's  
10 handwriting?

11 A. Somewhat.

12 Q. Do you recognize that to be her  
13 signature?

14 A. It looks like it.

15 Q. Now, on February the 25th of 2011, did  
16 Ms. Reagan bring this document to your attention?

17 A. Yes, she called me.

18 Q. What did she tell you the document was?

19 A. She said it was her will.

20 Q. Did she identify that to be -- did she  
21 tell you that she had signed the document?

22 A. It was signed when I got there. I just  
23 assumed she signed it.

24 Q. Any reason to believe that she didn't  
25 sign it?

1 A. Not that I know of.

2 Q. But she had told you that that was her  
3 will?

4 A. She said it was her will.

5 Q. At the very bottom, you said you  
6 recognize that to be your signature?

7 A. It is.

8 MR. HALLER: Thank you. That's all the  
9 questions I have for this witness.

10 THE COURT: Attorney Gailliard.

11 CROSS-EXAMINATION

12 BY MR. GAILLIARD:

13 Q. Good morning, Ms. Burns.

14 A. Good morning, sir.

15 Q. Did you bring this document over to  
16 Sylvia Reagan's house when you came?

17 A. No, sir.

18 Q. You did not?

19 A. No.

20 Q. Did Sylvia call you and ask you to come  
21 over?

22 A. She did.

23 Q. What did she ask you to do?

24 A. To notarize the nurse's signature.

25 Q. Did she ask you to do anything else?

1 A. No.

2 Q. Now, you were a neighbor to Ms. Reagan;  
3 is that correct?

4 A. Yes, sir.

5 Q. And you did errands for her; is that  
6 right?

7 A. I did.

8 Q. You had an opportunity to visit with  
9 her on many occasions?

10 A. Yes.

11 Q. Now, the date on this document is what  
12 date?

13 A. February 25th.

14 Q. Can you tell the Court in what kind of  
15 condition Ms. Reagan was at that time?

16 MR. HALLER: Objection, Your Honor,  
17 relevance.

18 MR. GAILLIARD: Your Honor, we're  
19 talking about a will. Certainly it's relevant as  
20 to the testamentary capacity and --

21 THE COURT: But there has no been no  
22 petition filed in regards to testamentary capacity  
23 or a will contest. It's only whether or not this  
24 is the Last Will and Testament. So the Court is  
25 not going to allow those questions.

1 MR. HALLER: Thank you, Your Honor.

2 BY MR. GAILLIARD:

3 Q. Now, did you see Sylvia Reagan sign  
4 that document?

5 A. No, I didn't.

6 Q. Would you tell the Court exactly what  
7 she told you when she called you over?

8 A. She called me and asked me to notarize  
9 Sara Jones' signature.

10 Q. And at any time did she say to you that  
11 that was her Last Will and Testament?

12 A. She did not.

13 Q. No?

14 A. No.

15 MR. GAILLIARD: No other questions of  
16 this witness, Your Honor.

17 MR. HALLER: Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HALLER:

20 Q. Ms. Burns, what's the truth? Because a  
21 few minutes ago, when I asked you that question,  
22 you said she told you that was her Last Will and  
23 Testament, didn't you?

24 A. No, you asked -- she said -- you asked  
25 me if this is her will. I told you she said to me,

1 this is her will. She never said, this was her  
2 Last Will and Testament. She said it was her will,  
3 yes.

4 Q. Okay. So she told you that was her  
5 will?

6 A. Yes.

7 Q. And she told you she signed it?

8 A. I'm not sure if she told me she signed  
9 it or I recognized the signature. When I got  
10 there, it was already signed.

11 Q. But she told you it was her will?

12 A. She said it was her will.

13 MR. HALLER: Thank you. No further  
14 questions.

15 THE COURT: Anything further, Attorney  
16 Gailliard?

17 MR. GAILLIARD: No, Your Honor.

18 THE COURT: Do you have any problems  
19 with us relieving this witness -- she wouldn't be  
20 subject to recall -- if she desires to leave?

21 MR. HALLER: Not from the petitioner.  
22 She may be released.

23 THE COURT: Attorney Gailliard?

24 MR. GAILLIARD: No.

25 MR. HALLER: Thank you, ma'am. Thank

1 you for coming.

2 Your Honor, the only other witness I  
3 would call would be Ms. Shelley. She would be  
4 testifying that -- she would ask the Court to be  
5 appointed as personal representative and  
6 understands the duties of personal representative  
7 and would serve in that capacity if appointed,  
8 which I believe is probably already in the  
9 petition.

10 THE COURT: Right. You can call her,  
11 have her come forward.

12 LINDA REAGAN SHELLEY,  
13 being first duly affirmed, was examined and  
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HALLER:

17 Q. Ms. Shelley, would you please state  
18 your full name for the record?

19 A. Linda Reagan Shelley.

20 Q. Did you know Sylvia Reagan?

21 A. Yes, sir.

22 Q. How did you know her?

23 A. She married my dad when I was about 13  
24 years old.

25 Q. And did you continue to have a

1 relationship with her?

2 A. She -- her and my dad separated when I  
3 was around 16, and she moved back to Missouri. I  
4 tried to -- she tried to write me, and I told her  
5 that I didn't want to get in the middle of her and  
6 my daddy's -- I mean, I was -- whatever.

7 So I didn't hear any more from her  
8 until about 15 years before she passed away. She  
9 called and said she was coming to Charleston for a  
10 visit. She had got in touch with me through the  
11 Social Security because she was trying to collect  
12 on my dad if he was deceased. So they called me.  
13 And I told her she was welcome to stay at my house.

14 And she said: Are you sure?

15 And I said: Sure.

16 So she came, and she stayed with me for  
17 a week. She left Charleston, and then she called  
18 back and said that she was having movers pack her  
19 stuff up, she's moving back to Charleston. And she  
20 got a Realtor to get her an apartment in  
21 Summerville. Eventually, she moved to James  
22 Island.

23 Q. You were Ms. Reagan's stepdaughter?

24 A. Yes.

25 Q. I'll show you what's marked as Exhibit

1 Number 1 and see if you recognize this document.

2 A. Yeah.

3 Q. What do you understand that document to  
4 be, ma'am?

5 A. That she wanted to give me what she  
6 had.

7 Q. Do you understand that to be  
8 Ms. Reagan's will?

9 A. Yeah.

10 Q. Who is the primary beneficiary under  
11 that will?

12 A. Me.

13 Q. Would you like the Court to appoint you  
14 as personal representative of -- first of all,  
15 would you like the Court to probate Exhibit Number  
16 1 and make that the will of Sylvia Reagan?

17 A. Yeah.

18 Q. If that will is probated, would you  
19 agree to serve as personal representative?

20 A. Yes.

21 Q. Do you understand what the duties of  
22 personal representative are?

23 A. (Witness moves head up and down.)

24 Q. You've served as a personal  
25 representative before?

1 A. For my husband.

2 Q. And if appointed, would you serve  
3 diligently?

4 A. Yes, sir.

5 MR. HALLER: Thank you, Your Honor. No  
6 further questions.

7 THE COURT: Any questions of this  
8 witness, sir?

9 MR. GAILLIARD: Yes, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. GAILLIARD:

12 Q. Ms. Shelley, you were in the home on  
13 February 25th when this document was presented?

14 A. Yes, sir.

15 Q. Did Delores Belin-Burns bring it over?

16 A. No.

17 THE COURT: I'm sorry. What was your  
18 question?

19 BY MR. GAILLIARD:

20 Q. Did Delores Belin-Burns bring the  
21 document over to the house?

22 A. No. Sylvia was writing it. Unless I'm  
23 mistaken, she was writing it when Ms. Burns came  
24 in. She called Ms. Burns and told her that she  
25 needed her over there and she had wanted her to

1 sign something and bring her stamp.

2 So before she came, Sylvia started --  
3 was trying to get up \$15 to give to her for what  
4 she paid every time she did that. And so we went  
5 through the thing of getting the money together,  
6 and then she moved over from her chair to the couch  
7 and signed -- started writing out the will, and  
8 Ms. Burns came in.

9 Q. Now, did you assist Ms. Reagan and  
10 lived in her house up to the time of her passing?

11 A. The last three weeks, I did.

12 Q. About when did you move into the home  
13 with her?

14 A. I guess it was around February 10th or  
15 11th.

16 Q. And her granddaughter was living there  
17 with her prior to that time?

18 A. Um-hum.

19 THE COURT: You have to answers yes or  
20 no.

21 THE WITNESS: Yes.

22 BY MR. GAILLIARD:

23 Q. Did you see Sylvia Reagan sign this  
24 document?

25 A. Yeah. I was watching her write it.

1 Q. I'm sorry?

2 A. I was watching her write it.

3 Q. And did you see her sign it?

4 A. Yeah.

5 Q. Okay. Did you at any time say to her  
6 that you would leave if she didn't give all of her  
7 earthly goods to you?

8 A. No.

9 Q. What kind of relationship did you have  
10 with her?

11 A. We had ups and downs, like most moms  
12 and, I guess, daughters do over a period of 15  
13 years of trying to help her. Oh, excuse me, of  
14 helping her.

15 Q. When you say ups and downs, you all got  
16 along sometimes, and sometimes you didn't get  
17 along?

18 A. Sometimes she got to people because she  
19 was real persnickety. She -- she was real hard to  
20 deal with sometimes. But for the past ten years, I  
21 did everything that needed to be done for her,  
22 other than Delores Burns did go to the grocery  
23 store for her sometimes if she needed something and  
24 I wasn't there.

25 Q. And did she pay you for the things that

1 you did for her?

2 A. No.

3 Q. Did she allow you the use of her credit  
4 cards?

5 A. Yes, she did, for her things, not mine,  
6 other than \$20, maybe \$30 worth of gas a month for  
7 the past two years.

8 Q. And she also put you on her checking  
9 account; is that correct?

10 A. Um-hum.

11 THE COURT: You have to answer yes.

12 THE WITNESS: Yes.

13 BY MR. GAILLIARD:

14 Q. And you used those funds also; is that  
15 right?

16 A. For her, yes, sir.

17 Q. You said: For her?

18 A. Yeah, sir.

19 Q. Did you use her funds to travel back  
20 and forth from North Charleston to James Island to  
21 take care of her?

22 A. The \$20 or \$30 worth of gas she told me  
23 to put on her credit card, which I did once a  
24 month.

25 Q. Now, is it your testimony today that,

1 prior to Ms. Reagan's death, she gave you a rather  
2 large cash gift?

3 A. Yes.

4 Q. How much was that?

5 A. It was about 21,500, in there.

6 Q. When did she give you that gift?

7 A. She gave that to me about two weeks  
8 before she died. She told me when I went out to  
9 take it with me because she -- can I say why?

10 THE COURT: You can't say what she  
11 said.

12 THE WITNESS: Oh, okay. Anyway, yes,  
13 sir, she told me it was mine and for me not to say  
14 anything about it to anybody.

15 BY MR. GAILLIARD:

16 Q. And what did you do with that gift?

17 A. I took it and put it in a trust fund at  
18 an attorney's office, which it's still there.

19 Q. When she gave it to you, you gave it to  
20 an attorney and put it in his trust account?

21 A. Yeah.

22 THE COURT: That's not what she said.  
23 Do you want her to repeat what she testified to?

24 MR. GAILLIARD: Yes.

25 THE WITNESS: Oh, I just said I gave it

1 to an attorney, and he put it in a trust -- his  
2 trust fund with my name on it to keep, and she  
3 still has it.

4 BY MR. GAILLIARD:

5 Q. I'm not understanding what you're  
6 saying. You gave it to the attorney, and the  
7 attorney put it in his trust account, or he put it  
8 in a trust fund for you?

9 A. He put it in a trust fund for me. It  
10 was through him. I don't understand how that  
11 works, in all honesty.

12 Q. And can you tell the Court what kind of  
13 condition Ms. Reagan was about the time she wrote  
14 this will?

15 MR. HALLER: Same objection as before,  
16 Your Honor, relevance.

17 THE WITNESS: She probably was --

18 THE COURT: Hold on. Excuse me. His  
19 objection is that it's the same question that was  
20 asked before regarding testamentary capacity, and  
21 there has been no petition filed related to  
22 testamentary capacity, but only as to the formal  
23 appointment of which will. So the Court objected  
24 to that question because you've not filed a  
25 petition raising any issue related to the execution

50

1 of the will, any type of grounds in testing the  
2 will, only which will should be admitted.

3 MR. GAILLIARD: No other questions for  
4 this witness, Your Honor.

5 THE COURT: Thank you. Anything  
6 further of this witness?

7 MR. HALLER: I'm trying to clarify the  
8 trust fund, Your Honor. And if I could have just a  
9 little bit of leeway. I don't know that this is  
10 particularly relevant.

11 REDIRECT EXAMINATION

12 BY MR. HALLER:

13 Q. You took the money to an attorney here  
14 in Charleston?

15 A. Um-hum.

16 Q. Yes or no?

17 A. Yes.

18 Q. And why did you take it to the  
19 attorney?

20 A. Because Ramona Becker had called the  
21 police and accused me of stealing it. And I was  
22 truthful. And I went and took it to an attorney.  
23 But I wasn't the only one that had a key to the  
24 house. I always tried to be honest.

25 Q. Yes, ma'am. And he's holding that

1 money until the question of whose money it is --

2 MR. GAILLIARD: Your Honor, I'm going  
3 to object to leading this witness. I mean, he's  
4 going to ask her some questions, but he shouldn't  
5 lead her and ask her to say yes or no.

6 BY MR. HALLER:

7 Q. Why is he holding the money for you?

8 A. Because he told me that it should stay  
9 put up, that I shouldn't take it, because the Court  
10 hadn't really decided who was going to get it.

11 MR. HALLER: Thank you. No further  
12 questions, Your Honor.

13 THE COURT: Okay. Thank you. Attorney  
14 Gailliard, anything further from this witness?

15 MR. GAILLIARD: Yes, ma'am, something  
16 that he raised.

17 RECROSS-EXAMINATION

18 BY MR. GAILLIARD:

19 Q. Is it my understanding that you took  
20 this large cash gift to an attorney about two weeks  
21 prior to the death of Ms. Reagan?

22 A. After.

23 Q. I'm sorry?

24 A. It was after when I took it to an  
25 attorney.

1 Q. When did she give you the cash gift?

2 A. Well, she told me to take it about two  
3 weeks. And then she told me that, if something  
4 happened during the night or during the day and she  
5 had to be hospitalized, to please make sure I took  
6 the money because she had another key that  
7 somebody -- that Ramona had and wouldn't send back  
8 to her.

9 Q. I'm kind of unclear, Ms. Shelley.  
10 Could you tell us, please, when Sylvia Reagan gave  
11 you this large cash gift, approximately?

12 A. She told me about two weeks before she  
13 died, she told me to take it. And I left it there.

14 Q. When you said, you left it there, did  
15 you leave it in the house at that time?

16 A. Yeah, I left it in my black box that I  
17 had, that I had loaned her.

18 Q. Okay. And you did not take it to the  
19 attorney until after she passed?

20 A. Hum-um.

21 Q. I'm sorry?

22 A. Yes, no, sir, I did not take it to the  
23 attorney until after she passed. I thought it was  
24 mine. I didn't know that I was going to be accused  
25 of stealing.

1 Q. What accusation of stealing are you  
2 talking about?

3 A. Ramona. She called the police on me  
4 and accused me of stealing money.

5 Q. Did you ever tell Dr. Becker that you  
6 had gotten some \$20,000 as a gift from Sylvia  
7 Reagan?

8 A. Hum-um.

9 Q. I'm sorry?

10 A. No, sir.

11 Q. So if I understand you correctly,  
12 Sylvia Reagan gave you the large gift some two  
13 weeks prior to her death; is that right?

14 A. Um-hum.

15 THE COURT: You've got to answer --

16 THE WITNESS: Yes.

17 BY MR. GAILLIARD:

18 Q. You kept it at the house in some type  
19 of box; is that right?

20 A. Yes.

21 Q. And you did not take it to the attorney  
22 until after she passed?

23 A. After she passed.

24 Q. All right. Now, did you come down to  
25 the Probate Court sometime after the passing of

1 Sylvia Reagan and try to get this document admitted  
2 as probate?

3 A. Yes.

4 Q. Would you tell the Court what happened?

5 A. I took it to the office to have it  
6 probated, and the girl at first told me it looked  
7 fine. And she took it to the back and brought it  
8 back and said that there wasn't but one witness,  
9 that it needed two.

10 So I went back -- well, I called Ramona  
11 and told her that she could have the key to the  
12 house when she took her will down and had it  
13 probated. And the reason I did that is because I  
14 didn't think they'd probate hers, in all honesty,  
15 because Ms. Burns signed it as a witness and a  
16 notary. And I thought Ms. Burns didn't know.

17 And she called me, and she wanted to  
18 know who was getting the house and was there any  
19 more jewelry in there for her. And I told her no,  
20 that I gave her what Sylvia told me to give to her.

21 And I said: And I don't guess you know  
22 that you had to have two witnesses on the will  
23 besides the other.

24 And she said: Oh, I knew it.

25 And I said: Okay.



1                   That was it.

2                   Q.    Did you give Ramona Becker the Death  
3    Certificate so she could come down and submit her  
4    will?

5                   MR. HALLER:  Your Honor, we're getting  
6    beyond what the petition is at this point.

7                   MR. GAILLIARD:  Your Honor --

8                   MR. HALLER:  I object on the relevance  
9    grounds.

10                  MR. GAILLIARD:  We have two petitions  
11    to the Court.  If you look at the notice sent out  
12    on this, we have one that we ask that the Court  
13    consider to make Ramona Becker the personal  
14    representative and to reinstate her will, and that  
15    was put on the notice for today.

16                  THE COURT:  So how is that question,  
17    the admittance of the Death Certificate, related  
18    to -- because the Court requires a Death  
19    Certificate.

20                  MR. GAILLIARD:  My question is whether  
21    or not she gave Ramona Becker the Death  
22    Certificate.  Ramona did not have one.  She would  
23    not have been able to come down here and present  
24    her will unless she had gotten it.  If Ms. Shelley  
25    presented her with a Death Certificate, I'd like to

1 find that out.

2 THE COURT: I don't see how it's  
3 relevant, but I'll allow it.

4 THE WITNESS: I don't remember if I  
5 gave her one. I may not have. There was a lot  
6 going on then, and I'm getting older. My memory is  
7 not as good as it should be. As far as the Death  
8 Certificate, it didn't matter, because I'm the one  
9 that paid for them.

10 BY MR. GAILLIARD:

11 Q. Now, after Dr. Becker brought her will  
12 down here, did she allow you to see the Appointment  
13 of Representative Form that was given to her by the  
14 Probate Court?

15 MR. HALLER: Again, Your Honor, we're  
16 getting beyond what's in the petition. These are  
17 the issues that we dealt with back in September  
18 that you ruled to set aside the original judgment.  
19 And now that is now a certified order. Appeal time  
20 is gone. It's the law of the case.

21 THE COURT: Well, what the Court ruled  
22 was that there was confusion regarding the two  
23 wills, and we were having a formal hearing  
24 regarding the testacy issue.

25 MR. HALLER: Yes, ma'am. So I'm not

1 sure where --

2 THE COURT: So, I mean, I'm going to  
3 allow it, because that's what we're here for,  
4 because most of the testimony was how there was an  
5 appointment when there was another will and how it  
6 ended up where it ended up. And the Court took  
7 responsibility for never bringing that issue before  
8 Your Honor whenever there is a second will that  
9 comes forward.

10 MR. HALLER: Yes, ma'am. The other  
11 objection I have is we're getting far beyond the  
12 redirect. My redirect was simply how the money got  
13 to the trust account.

14 MR. GAILLIARD: This is his witness. I  
15 have a right to cross-examine her. That wasn't his  
16 redirect. That was his direct witness.

17 THE COURT: This is actually recross,  
18 because you all have already gone through  
19 cross-examination. And I allowed him to have  
20 redirect the second time. And so now this is your  
21 second time.

22 And so you can always call her back as  
23 a witness related to your petition for formal  
24 appointment for your client to be reinstated. But  
25 in reality, this is recross on the second time

1 around.

2 MR. HALLER: In the interest of  
3 judicial economy, I'll withdraw the objection.

4 THE COURT: Thank you. Do you want the  
5 question restated?

6 THE WITNESS: Please.

7 THE COURT: Can you restate your  
8 question?

9 BY MR. GAILLIARD:

10 Q. Did Dr. Ramona Becker show you the  
11 Certificate of Appointment around March when she  
12 got it from the Court and the Court admitted her  
13 will to probate?

14 A. Yes.

15 Q. She did?

16 A. Um-hum. Otherwise, I wouldn't have  
17 given her the keys.

18 MR. GAILLIARD: All right. Your Honor,  
19 no other questions for this witness.

20 THE COURT: Okay.

21 MR. HALLER: Nothing, Your Honor.

22 THE COURT: Thank you. You can step  
23 down.

24 MR. HALLER: Your Honor, the petitioner  
25 rests.

1 THE COURT: Thank you.

2 MR. HALLER: We would make motions, but  
3 I assume that -- can I just go ahead and put them  
4 down as made and denied?

5 THE COURT: Yes, sir.

6 MR. HALLER: Thank you, Your Honor.

7 MR. GAILLIARD: Your Honor, I do have a  
8 motion at this point. And that motion is that -- I  
9 don't know that the Court -- I'm challenging the  
10 jurisdiction of the Court to hear this matter as  
11 far as challenging or putting up this will, and  
12 that is because --

13 THE COURT: You said you're challenging  
14 the Court's jurisdiction?

15 MR. GAILLIARD: -- and on the  
16 timeliness of the case being brought by Attorney  
17 Haller.

18 The will that was probated by Ramona  
19 Becker was back in March. This Court issued its  
20 order. That was the order of the Court. And as  
21 you know, you have a time period, no more than 30  
22 days to file an appeal.

23 The Court granted the Rule 59 Motion  
24 with the claim. If you would look back at the  
25 Court's order, the Court's order indicates that

1 Linda Shelley got written notice of the Court's  
2 order sometime in July. Ms. Shelley just testified  
3 that she had actual notice --

4 THE COURT: Now, where is that in the  
5 order? It says what?

6 MR. GAILLIARD: Look on page 1 of your  
7 order, Your Honor, first paragraph. It says that  
8 the petitioner had written notice in July when she  
9 came to the Probate Court. She has just testified,  
10 Your Honor, that she had actual notice that this  
11 estate had been brought, that Ramona Becker was  
12 appointed the personal representative back in  
13 March. Therefore, the appeal time has run and --

14 THE COURT: The appeal time to...

15 MR. GAILLIARD: To challenge the will  
16 and to come in and ask that the order -- your order  
17 says that you are vacating --

18 THE COURT: You mean the order of  
19 appointment?

20 MR. GAILLIARD: That's right, Your  
21 Honor, the order of appointment. Your order says  
22 that you're vacating the order of appointment that  
23 appointed Ramona Becker and the representative.

24 THE COURT: But you're talking about my  
25 September 12th order.

1 MR. GAILLIARD: I am.

2 THE COURT: I'm trying to figure out  
3 which order you're referencing. You're saying that  
4 Shelley received written notice of the entry of the  
5 order on June 17th. I'm just asking you to  
6 clarify. Are you talking about the order of  
7 appointment, or are you talking about the Court's  
8 September order, because they are two separate --

9 MR. GAILLIARD: Your order indicates  
10 that she got notice of the order of appointment in  
11 July when she came to the Probate Court. And that  
12 was the basis, Your Honor --

13 THE COURT: This says June 17th.

14 MR. GAILLIARD: Well, June 17th, that  
15 she got written notice when she came into the  
16 courthouse some six months or three months after  
17 the Court had made this order appointing Ramona  
18 Becker as personal representative and admitting the  
19 will into probate.

20 THE COURT: Okay.

21 MR. GAILLIARD: She had 30 days from  
22 March 22nd, whenever the will was probated, in  
23 order to come and file her Rule 59 Motion.

24 THE COURT: Okay. And what is the  
25 basis of you coming to that conclusion? Where in

1 the statute does it say when you have -- and it's  
2 basically a fiduciary letter, because I don't think  
3 the Court signs --

4 MR. GAILLIARD: Well, Your Honor, what  
5 I'm saying is this matter came before the Court on  
6 a Rule 59 Motion.

7 THE COURT: But that was not done  
8 until -- that particular motion was not filed  
9 until -- it was months later, past the June 17th.  
10 Am I correct?

11 MR. GAILLIARD: That's correct.

12 THE COURT: Okay. So I'm just trying  
13 to clarify which date you're referring to that you  
14 had 30 days to respond. What statute are you  
15 relying on? Because when a person is appointed,  
16 you have the fiduciary letters, and then you have  
17 the signed order of appointment that's signed by  
18 the Court. So is that the order that you're  
19 referencing? But that was an order for informal  
20 probate. That's not formal probate. So the order  
21 signed by this Court is to allow the estate to be  
22 opened informally.

23 MR. GAILLIARD: Procedurally, what I'm  
24 saying, Your Honor, is that a Rule 59 Motion was  
25 filed to vacate the order appointing Ramona Becker.

1 THE COURT: Correct.

2 MR. GAILLIARD: Under Rule 59, you have  
3 a certain time period in order to file that motion.

4 THE COURT: And I'm asking, where do  
5 you see that in the statute? Are you saying that  
6 the Rule 59 Motion that they filed was technically  
7 filed wrong?

8 MR. GAILLIARD: It's untimely, Your  
9 Honor. It should not be heard. That's what I'm  
10 saying.

11 THE COURT: But it was already heard,  
12 and there was an order signed by this Court  
13 allowing a Rule 59 Motion. And you didn't appeal  
14 this Court's order allowing the hearing related to  
15 the Rule 59 Motion, because the order is signed by  
16 this Court granting the Rule 59 Motion was signed  
17 September 27, 2011. So at that particular time,  
18 you would have had to appeal this Court's order,  
19 because I granted the Rule 59 Motion, because I  
20 have an order saying I'm granting it, and it's  
21 dated September 27, '11.

22 So how would it be their responsibility  
23 when the Court ruled on the Rule 59 Motion? And  
24 that's why we're here today. And so to come back  
25 and say that this Court doesn't have jurisdiction

1 at that particular point, there should have been  
2 some order informing the Court that it was  
3 appealing the Court's September 27 order. And that  
4 would have needed to come from you and not them, if  
5 that's -- if that's your argument. That's what I'm  
6 trying to get clarification on, what order you're  
7 referencing, because I heard the Rule 59 Motion,  
8 and that's what that September order says.

9 MR. GAILLIARD: Your Honor, if I could  
10 just speak about the jurisdictional issue. When  
11 you ruled on the Rule 59 Motion, your order  
12 indicates clearly on its face that you were ruling  
13 because this petitioner only learned of your order  
14 of appointment --

15 THE COURT: That's incorrect, because  
16 if you go back and you look on the next page, it  
17 says specifically -- it says that she revealed that  
18 she was aware of an instrument, but that is  
19 Ms. Becker, who is your client.

20 What this Court ruled, it says:  
21 Ms. Becker's testimony at the hearing revealed that  
22 she was aware of an instrument or a document  
23 amending or revoking the decedent's previous will.  
24 However, she filed an earlier will prepared by the  
25 decedent to the Court. The testimony also revealed

1 that Linda Reagan Shelley filed with this Court the  
2 latter will dated February 26, which was not  
3 admitted for probate. Based on these facts, the  
4 Court rules that this matter should have been set  
5 for formal pleading proceedings as there is  
6 insufficient evidence to determine whether the  
7 December 29, 2009, was an unrevoked testamentary  
8 document. See -- and it says Section 62-3-303.

9 Then it says: Accordingly, I amend the  
10 March 22nd, 2011, order probating the decedent's --  
11 probating the December 29th, 2009 will. Terminate  
12 Ms. Becker as personal representative effective  
13 immediately.

14 So the Court did not make this order  
15 based on the fact that she said she became aware.  
16 In the testimony, and if you recall, I even in the  
17 middle of the hearing adjourned the hearing, went  
18 upstairs to try to determine where this will that  
19 everybody was referencing, where it was, because it  
20 was not in the file. When I investigated it, it  
21 was clear that one of the clerks had taken the  
22 subsequent will and had put it in a file document  
23 with estates that were not open, which is  
24 incorrect, because any time a subsequent will comes  
25 into the Probate Court, it is usually brought

1 before the judge, and then the Court or the judge  
2 makes a determination whether or not there -- that  
3 latter will should be admitted or whether or not  
4 there needs to be a formal hearing.

5 If there is an issue regarding  
6 signatures, any problem with the will, that is not  
7 left up to the clerk to make a determination that  
8 that is not going to be heard. It should have been  
9 brought to our attention, and then it would have  
10 been set for a formal hearing.

11 So one of the reasons we're having this  
12 hearing is because it was the Court's mistake in  
13 taking a will, not bringing it before the judge,  
14 putting it in a file, when it really should have  
15 been in this file. And that's why we're here  
16 today. And it had nothing to do with her, you  
17 know, that's why we're here. And it's our mistake,  
18 because I never would have know if there was a  
19 subsequent will if the clerk takes a will and  
20 doesn't file it with an open file.

21 Every filed document that comes in  
22 related to an open estate should be placed in that  
23 file. It should be clocked in, and it should be  
24 filed, and that original document maintained with  
25 the Court. And I took total responsibility and

1 said on the record, if we go back and look at the  
2 transcript, that our clerk should have never taken  
3 a will, placed it in a folder where the Court  
4 doesn't even know where it is, and it's an open  
5 file. It's incorrect.

6 So your rationale about her having  
7 notice, that's not why we're here today, because  
8 once you brought that will in, there should have  
9 been a formal hearing. And we do that with every  
10 latter will that comes in, because sometimes people  
11 find documents sometimes years later. And we've  
12 had to go back in and revert property when we  
13 realized that was the latter will and it was not in  
14 a place and they have not destroyed the previous  
15 will. So that's why I'm trying to follow your  
16 argument, because that's not why we're here today,  
17 and that's not what the Court ruled, and that's not  
18 what this order says.

19 Yes, sir.

20 MR. GAILLIARD: That's it, Your Honor.

21 THE COURT: Okay.

22 MR. GAILLIARD: We'll call our first  
23 witness at this point.

24 THE COURT: Okay. Thank you.

25 MR. GAILLIARD: Call Dr. Ramona Becker

1 to the stand.

2 RAMONA BECKER,

3 being first duly sworn, was examined and testified  
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. GAILLIARD:

7 Q. Good morning, Dr. Becker.

8 A. Good morning.

9 Q. Would you tell the Court where you're  
10 from?

11 A. I'm from Wichita, Kansas.

12 Q. And how do you know the decedent,  
13 Sylvia J. Reagan?

14 A. Because we share a granddaughter, and I  
15 met her after Dawn was born, and we've been good  
16 friends ever since.

17 Q. And at some point, did Sylvia Reagan  
18 send to you a Last Will and Testament?

19 A. Yes, she did, sir.

20 Q. I'm going to show you what's listed as  
21 a true copy of a Last Will and Testament. Do you  
22 recognize that?

23 A. Yes, I do.

24 Q. Is that the will that Sylvia Reagan  
25 sent to you?

1 A. Yes, it is.

2 Q. And did you have that in your  
3 possession?

4 A. Yes, yes, sir.

5 Q. After she passed -- Your Honor, the  
6 Court has the original of this?

7 THE COURT: Yes, we do.

8 BY MR. GAILLIARD:

9 Q. After she passed, did you have an  
10 opportunity to come to Charleston?

11 A. Yes, but it was about a year later. I  
12 mean, excuse me, after she passed. I had already  
13 been planning to come to Charleston, because she  
14 was sick, and I wanted to come and help her. And I  
15 had had -- I had been sick myself, and I had two  
16 deaths of very close friends which had delayed my  
17 coming back to Charleston to help Sylvia. And so I  
18 was already packing to come to be with her when she  
19 died.

20 Q. And after you arrived, were you able to  
21 stay at Sylvia's house?

22 A. No, not immediately, because Linda  
23 didn't want us in the house at all. So she  
24 wouldn't let us set foot in the house. And by the  
25 way, I brought my grandchildren with me, my

1 granddaughter Kayla Dawn, and my grandson Morgan,  
2 her brother.

3 Q. Did you file that Last Will and  
4 Testament with the Probate Court in Charleston  
5 County?

6 A. Yes, I did, sir.

7 Q. Were you appointed the personal  
8 representative of the estate?

9 A. Yes, sir.

10 Q. How did you get the Death Certificate  
11 in order to file the will?

12 A. Well, we had been in town for several  
13 days, and I had asked Linda when we went to get the  
14 ashes -- which I really do appreciate getting,  
15 thank you, Linda, because that was very important  
16 to us -- went over to talk to Linda, get the ashes  
17 on Sunday, I believe it was. We -- I asked her if  
18 she wanted to go to coffee, because she had been  
19 rather hostile and kind of paranoid before that  
20 point. And I wanted to be friends with her because  
21 I wanted my granddaughter to have some closure on  
22 Sylvia's death. She spent about two months with  
23 Sylvia before she died, and it had been a really  
24 good experience up to the very end. And then  
25 Sylvia had a -- I don't know what happened. But

1 anyway, there was --

2 Q. I'm just asking at this point, did you  
3 get a Death Certificate from Linda Shelley in order  
4 to file the will?

5 A. Okay. After we let --

6 THE COURT: Answer the question yes or  
7 no.

8 THE WITNESS: Yes, I did, on Tuesday,  
9 the 22nd, right before I went to the Court.

10 BY MR. GAILLIARD:

11 Q. And did you use that Death Certificate  
12 along with the will that you had in order to file  
13 the will for probate?

14 A. Yes. That's the only way I could have  
15 gotten it.

16 Q. And you were appointed the personal  
17 representative of the estate; is that correct?

18 A. Yes, yes, sir.

19 Q. And did you after that time get keys to  
20 the house?

21 A. No. When we went back to the house  
22 after I had been to the Probate Court and I was  
23 appointed, Linda met us at the house, and she  
24 immediately demanded to see the appointment. And  
25 she called it the PR certificate or something. At

1 that time, I was not familiar with that term,  
2 because in Kansas we call it an administrator or an  
3 executor. So I actually had to look at the paper  
4 to see what it said on there to see if that's what  
5 she wanted. I showed that to her, and then she  
6 demanded to see the will. I showed that to her.

7 And she became very angry, and she said  
8 she had another will and a lot of other things I  
9 won't say. And she said she's not going to give me  
10 the keys to the house, and she's going to go home  
11 and look for the other will that she thought she  
12 had, and if I wanted the keys, I'd have to go over  
13 to her house and get them.

14 Q. Did she make any comment about the will  
15 that she had that was not probated?

16 A. Well, before I went to the Court that  
17 day, she met us at the house, because we were going  
18 to leave town, and we were going -- she was going  
19 to let Dawn in the house so she did have some  
20 closure. That's what she told me, but she didn't  
21 do that.

22 When she got there, she said that they  
23 had not accepted her will. She said the Court had  
24 not accepted her will, and she was tired of messing  
25 with it, and she wanted me to take my will down to

1 the Court and see if the Court would accept it,  
2 which I thought was very strange. I couldn't  
3 understand her saying that. But she gave me the  
4 Death Certificate, and then the children and I came  
5 downtown with it. And I even called you before I  
6 came down, because I thought it was so strange that  
7 she would tell me to come down and see if my will  
8 was any good. I thought it was some kind of a  
9 trick or something, the way she had been acting.

10 Q. All right. The petitioner had a copy  
11 of their Exhibit Number 1 here. Now, are you  
12 familiar with this document?

13 A. I had not seen this until after  
14 September, I guess it was, whenever Mr. Haller  
15 presented this to the Court, and then you got a  
16 copy. That's the first time I had ever seen this.

17 Q. Now, the will that you have in front of  
18 you that the Court originally accepted, it looks  
19 like it was part of a form will; is that correct?

20 A. Yes, sir.

21 Q. Did you in searching the house find a  
22 book with form wills in it?

23 A. Yes, I did, sir.

24 Q. Do you have that with you here today?

25 A. Yes, I do.

1 MR. GAILLIARD: Your Honor, we'd like  
2 to introduce that as Respondent's Number 2.

3 THE COURT: Attorney Haller?

4 MR. HALLER: I haven't seen it, Your  
5 Honor.

6 By MR. GAILLIARD:

7 Q. Would you --

8 A. I think I might have given that to you.  
9 But if I didn't, it's in my files.

10 Q. Would you come back and get it for me?

11 THE COURT: She's still under oath, so  
12 you all shouldn't be speaking. Either she has it  
13 or she doesn't.

14 THE WITNESS: Yes, here it is.

15 THE COURT: You have to give it to  
16 Attorney Haller.

17 THE WITNESS: Okay. Here you go.

18 THE COURT: You can come back on the  
19 stand, ma'am.

20 THE WITNESS: Okay. Thank you.

21 MR. HALLER: Your Honor, I'm not sure  
22 what this is being admitted for.

23 THE COURT: Attorney Gailliard, what is  
24 the purpose or what is your intention to use that  
25 for?

1 MR. GAILLIARD: It shows, Your Honor,  
2 that the will that she has and probated was the  
3 first one in this form book, that this form book  
4 was right there next to Ms. Reagan, and she easily  
5 could have used this in order to prepare a proper  
6 will, if that was her intention.

7 THE COURT: Correct, but we're here to  
8 determine which will should be admitted and --

9 MR. HALLER: No objection, Your Honor.

10 THE COURT: Okay. He says he has no  
11 objection.

12 BY MR. GAILLIARD:

13 Q. Dr. Becker, did you find that form will  
14 book in the house?

15 A. Yes, I did. When I came back in May, I  
16 spent about a month here cleaning out the house and  
17 going through all of Sylvia's things.

18 Q. And would Ms. Reagan have had access to  
19 that in her house?

20 A. Yes, I found it in the desk in the  
21 front room. It was very accessible.

22 Q. And if you look at the document that  
23 you submitted to the Court, is the number on that  
24 document number 1?

25 A. Yes, it is, sir.

1 Q. Is number 2 still in the book?

2 A. Yes, it is.

3 MR. GAILLIARD: Your Honor, we just  
4 admit that as Respondent's 2.

5 THE COURT: Any objection?

6 MR. HALLER: None, Your Honor.

7 THE COURT: That will be Respondent's  
8 -- 1?

9 REPORTER: Yes.

10 THE COURT: -- because the other one  
11 wasn't -- the original, the second will wasn't  
12 admitted. You just used it for her testimony. Am  
13 I correct? This is your first exhibit?

14 MR. GAILLIARD: All right. Well, the  
15 Court has the original of the document we're  
16 talking about, yes.

17 THE COURT: Correct. But I'm saying  
18 this document will be your first exhibit?

19 MR. GAILLIARD: All right.

20 THE COURT: Am I right?

21 MR. GAILLIARD: Yes.

22 THE COURT: Okay. So that's  
23 Respondent's 1.

24 (RESP. EXH. 1, Will Forms Book, was  
25 marked for identification.)

1 BY MR. GAILLIARD:

2 Q. Now, Dr. Becker, did you have a  
3 conversation with Linda Shelley shortly after the  
4 passing of Sylvia Reagan?

5 A. Yes, I did, sir.

6 Q. How long did that conversation last?

7 A. Well, when I looked back at my  
8 telephone records, I knew it was a long time, but  
9 it was actually, I believe, 57 or 56 minutes.

10 Q. What -- would you give us the gist of  
11 that conversation?

12 A. It was a very difficult conversation  
13 for me, because I loved Sylvia. And she had just  
14 thought I -- I failed her because I hadn't gotten  
15 back in time to take care of her. And Sylvia did  
16 not want to go to the Hospice and die. She wanted  
17 to die in her home, and she should have died with  
18 somebody who loved her.

19 And when I talked to Linda that  
20 morning, she had called me to tell me that Sylvia  
21 died at 9:30. And we talked for a little while to  
22 start out with, and she was always kind of  
23 defensive with me.

24 And I told her, I said: I understand  
25 you had a hard time taking care of Sylvia, and it's

1 very hard to be a caretaker.

2           And I was really understanding how she  
3 felt, because I know it was hard, and I know she  
4 had a hard time with Sylvia. And she started  
5 telling me how Sylvia had ruined her life and how  
6 she had wasted all these years taking care of  
7 Sylvia. And I wrote everything down in my log as  
8 she was talking to me, because I always wear my ear  
9 piece for my phone. And when she started telling  
10 me all those things, I just wrote them down in my  
11 log. And I couldn't even keep up with everything  
12 she was saying, because she was just pouring out  
13 all this anguish. And I know it was a hard time.  
14 She had a hard life with Sylvia.

15           But I just listened to her, and I  
16 didn't say anything after she started in that vein,  
17 because I know sometimes people just need to get  
18 things off their back. You know, you just need to  
19 talk. And so I just listened.

20           But it was just like breaking my heart  
21 to hear this, because I loved Sylvia, and I wanted  
22 to take care of her, and I should have been there.  
23 I should have been there to take care of her so she  
24 could have died with somebody who loved her.

25           Q. Are you indicating to the Court that

1 Linda and Sylvia did not have a close personal  
2 relationship?

3 MR. HALLER: Objection, Your Honor,  
4 relevance.

5 THE COURT: Attorney Gailliard, what's  
6 the relevance?

7 MR. GAILLIARD: Undue influence, Your  
8 Honor.

9 THE COURT: But there has never been a  
10 petition filed to basically contest the will.  
11 Nothing has been filed in relation to that. And if  
12 there is going to be a will contest or if that was  
13 your position, there has not been a petition filed  
14 for that. We're here for who should be appointed  
15 formally, but not to contest the will. In terms of  
16 what -- in terms of a formal will contest to either  
17 allege fraud, undue influence, or any of those  
18 particular matters, there has never been anything  
19 filed alleging that.

20 MR. GAILLIARD: Your Honor, if I may  
21 just respond. At this point, the Court hasn't  
22 accepted either will.

23 THE COURT: I have not.

24 MR. GAILLIARD: And so --

25 THE COURT: But there has been no

1 petition formally filed challenging it related to  
2 those issues. So you can't come in and say there  
3 was undue influence or fraud because there would  
4 have needed to be a summons, a complaint, and the  
5 respondent would have had 30 days' notice to  
6 respond to whatever allegations related to how the  
7 will was executed, how it was formulated.

8 The issue is, is the will valid, has it  
9 been signed and executed validly, and is it a valid  
10 will, but not that there is any allegations that it  
11 was executed with undue influence or fraud or any  
12 of those matters.

13 And that's why when you started going  
14 into testamentary capacity, I wouldn't allow it,  
15 because there hasn't been anything filed indicating  
16 that she didn't have testamentary capacity.

17 MR. GAILLIARD: All right. Your Honor,  
18 at this point, the Court has not decided which  
19 will, if any, it will admit for probate; is that  
20 correct?

21 THE COURT: That's correct.

22 MR. GAILLIARD: So we're still timely  
23 if we want to challenge the --

24 THE COURT: I can't tell you whether or  
25 not it is timely or not. There is a statute that

1 tells you from the date of the actual -- what is  
2 timely and what is not.

3 MR. HALLER: Your Honor, it would be  
4 the petitioner's position that those issues to all  
5 of the parties on the issue of what is the  
6 testamentary document with Sylvia Reagan have been  
7 joined in this proceeding. The rule is you get one  
8 bite of the apple. Ms. Becker was required to  
9 bring all of her claims here. Undue influence and  
10 mental capacity are required counterclaims or  
11 affirmative defenses to a will, they are waived.

12 MR. GAILLIARD: Your Honor, that's a  
13 fight for another day, so I won't respond to that.

14 THE COURT: Okay. Thank you.

15 MR. GAILLIARD: Your Honor, I do not  
16 have any other questions for Ms. Becker.

17 THE COURT: Cross-examination.

18 MR. HALLER: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. HALLER:

21 Q. Ms. Becker, on February 25th, 2011, you  
22 were in Kansas, weren't you?

23 A. Excuse me?

24 Q. On February 25th, 2011, you were in  
25 Kansas, weren't you?

1 A. Yes.

2 MR. HALLER: Thank you. No questions,  
3 Your Honor.

4 THE COURT: Anything further from this  
5 witness?

6 MR. GAILLIARD: No, Your Honor.

7 THE COURT: You can step down.

8 THE WITNESS: Thank you.

9 THE COURT: Thank you. Any other  
10 witnesses, Attorney Gailliard?

11 MR. GAILLIARD: No, Your Honor.

12 THE COURT: Closing remarks?

13 MR. HALLER: Your Honor, would you like  
14 to hear motions?

15 THE COURT: Yes, sir.

16 MR. HALLER: At this point, the  
17 petitioners move for a directed verdict on their  
18 claims and against the claims of the respondents.

19 On our claims, you heard the testimony  
20 of the two witnesses to the will. Ms. Jones  
21 testified and Ms. Belin-Burns both testified that  
22 they heard the testator say that Exhibit 1 was her  
23 will and that they thereafter signed their names to  
24 the document.

25 As to the respondent's petition, we

1 would say that respondents have not met their  
2 burden of proof, even if there was -- even if  
3 petitioner's will was invalid, because there is no  
4 will, no writing signed by the testator as an  
5 exhibit to these proceedings.

6 THE COURT: Repeat that again.

7 MR. HALLER: Yes, ma'am. The will  
8 document that Mr. Gailliard placed before  
9 Ms. Becker to sign -- to testify to was not made as  
10 an exhibit to these proceedings. There was nobody  
11 who testified that the document was actually signed  
12 by Ms. Reagan. None of the witnesses came forward  
13 to testify that they actually saw her sign it.  
14 That is what is required by 62-3-407.

15 One of the witnesses was required to  
16 come and testify that they -- all the same things  
17 that we have been required to testify to, that they  
18 saw Ms. Reagan either sign the will, declare it to  
19 be her will, or declare that to be her signature on  
20 the will. One of the witnesses to the will, to the  
21 will the respondents put forward was  
22 Ms. Belin-Burns, who, as you know, was here  
23 earlier, testified, and with consent of the  
24 respondents was released from her subpoena and was  
25 never asked any questions. Further, the evidence

1 is now closed, and that will is not a part of the  
2 evidence of these proceedings.

3 So as to all of the respondent's claims  
4 as to the validity of the will that is -- the  
5 document that is dated December 29th, 2009, they  
6 have not put any proof forward that there was a  
7 writing signed by the testator, witnessed by two  
8 individuals, under the conditions by the statute.

9 As to the petitioner's February 25th  
10 will, the evidence before Your Honor is  
11 uncontested, that there were two individuals who  
12 saw Ms. Reagan either sign the document or declare  
13 the document, Exhibit 1, to be her will. You have  
14 a writing signed by the testator, witnessed by two  
15 individuals. That complies with 62-2-502.

16 Thank you.

17 THE COURT: Response to his Motion For  
18 Directed Verdict?

19 MR. GAILLIARD: Your Honor, of course  
20 we oppose that. Your Honor, we ask the Court more  
21 reasonably direct the verdict against the  
22 petitioner because they have not met the burden of  
23 62-502.

24 If you recall, the testimony of  
25 Ms. Jones, she says that she is the one that asked

1 the question, and she didn't even get the verbal  
2 response. The statute declares that you either  
3 have to have two people that witness it; if you  
4 don't have that, you have to have at least  
5 acknowledgment by the testator that that's her last  
6 will. I don't know how you're going to acknowledge  
7 something without saying, this is my Last Will and  
8 Testament, and I want you to sign it. You can't  
9 have someone ask you and then give a nonverbal  
10 response and say that that meets the definition of  
11 acknowledgment. You just don't have that, not from  
12 the testimony or from the depositions.

13 With that being the case, you have a  
14 document on its face that came before this Court  
15 with one signature on it, Sara H. Jones. And  
16 Ms. Jones really doesn't know what she was  
17 testifying about. Even today, she can't remember  
18 what it was that went on. She's a most unreliable  
19 witness.

20 That being the case, Your Honor, I  
21 would ask the Court to go ahead and at this point  
22 rule against the document that was submitted,  
23 because they have not met the burden under 62-502..

24 Clearly, Ms. Jones -- Ms. Belin's  
25 testimony was that she was called over there to do

1 one thing and one thing in particular, and that was  
2 to notarize the signature of Sara Jones, and that's  
3 what she did. There was no testimony from her that  
4 Sylvia Reagan ever said to her, this is my Last  
5 Will and Testament, I want you to come over here  
6 and sign it.

7 Even if you say, well, that's not  
8 required, how can the statute change if we have a  
9 self-attesting and self-proving will? None of that  
10 stuff was in the handwritten document, none  
11 whatsoever. There is no way the Court can take and  
12 just throw away all the stuff that's in the statute  
13 and say, okay, well, I'm going to accept that.

14 THE COURT: Any response to your  
15 directed verdict? Any response to his --

16 MR. HALLER: Your Honor, 62-3-406,  
17 which is formal testacy proceedings; contested  
18 cases, testimony of attesting witnesses, subsection  
19 (a) states: If evidence concerning execution of an  
20 attested will which is not self-proved is necessary  
21 in contested cases, the testimony of at least one  
22 of the attesting witnesses is required.

23 Your Honor, we brought both of the  
24 witnesses. Both testified that she told --  
25 Ms. Reagan told them that Exhibit 1 was her will.

1 Both testified that they signed the document.

2 We've made our burden. That is all  
3 that is required under the statute to probate the  
4 will.

5 THE COURT: Okay. What I'm going to do  
6 is to deny the directed verdict. However, do you  
7 all have different arguments for closing, or what  
8 the Court would propose would be proposed orders to  
9 the Court with statutory and case law supporting  
10 your positions filed with the Court within two  
11 weeks.

12 MR. HALLER: Yes, ma'am.

13 MR. GAILLIARD: Thank you very much.  
14 I'd be glad to do that.

15 MR. HALLER: Okay, that would be fine.  
16 Thank you, Your Honor.

17 THE COURT: So two weeks from now, just  
18 to be sure -- because sometimes we have dates mixed  
19 up -- would be the 27th. And the law clerk can  
20 give you his e-mail, and those proposed orders can  
21 be sent to the Court. And we will hopefully have  
22 your orders out within the next two weeks.

23 MR. HALLER: Thank you, Your Honor.

24 MR. GAILLIARD: Thank you very much,  
25 Your Honor.

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(The proceedings were concluded at  
12:56 p.m.)

LAST WILL AND TESTAMENT OF

I, Sylvia J. Rogers, a resident of the STATE OF South Carolina, COUNTY OF Charleston, being of sound mind and memory, do hereby declare that this is my will. My Social Security number is: 251-44-5661

FIRST: I revoke all former wills and codicils that I have previously made. - Sylvia Rogers

SECOND: I give, devise, and bequeath the following money or personal property:

My home + its contents at 1351 Camp Rd. James Island, S.C., my 1992 mercury car, any & all bank, insurance or debts owed to me, any cash, checks or other monies. Any assets not listed. All the above to be held in trust by Ramona Becker & used for K.D. Rashup as she sees fit for living, insurance & only necessary expenses until K.D. has deemed how to handle money on age 25.

TO:

Kayla Dawn Kostup (great grand daughter) residing in Wilkes Co.

In case of her demise before me all of the above here to be given in equal parts to Ramona Becker, Tom Potts & Bernd Potters of state of Missouri

HOWEVER, in the event that the above person or persons predeceases me, I give that same money or personal property to his or her surviving beneficiaries. SK

If there are no surviving beneficiaries, this money or personal property shall go to:

I direct all my just debts and funeral expenses be paid as soon as possible after my death.

FOURTH: I name Ramona Becker as personal representative (or) of this will without bond. If this person or institution shall for any reason fail to qualify or cease as personal representative, I name as personal representative, again without bond, instead.

FIFTH: I hereby empower my Executor to sell property, real or personal, for cash or on time, without an order of Court, at such time and upon such terms and conditions as shall seem best.

I, Alycia Reagan, the testator, sign my name to this will, consisting of 1 pages, this 29 day of December, 2009.

Being duly sworn, I declare to the undersigned authority that I sign this document as my last will, that I sign it willingly, and that I execute it as my free and voluntary act for the purposes therein expressed.

I declare that I am of the age and majority or otherwise legally empowered to make a will, and under no constraint or undue influence.

Alycia Reagan  
(Signed)

We, the witnesses, sign our name to this document, and we declare under penalty of perjury, that the foregoing is true and correct, this 29th day of December, 2009.

Lafayette Peyton Jaylton  
residing at: 1420 Dick Jaylton Rd Ches SC 29412

Wesley D. ...  
residing at: 1355 Camp Road Ches, SC 29412

\_\_\_\_\_ residing at: \_\_\_\_\_

\* FOR NOTARY PUBLIC \*

THE STATE OF SC, COUNTY OF Charleston

Subscribed, sworn to and acknowledged before me by

Wesley D. ..., Wesley Bee Burn, and ..., witnesses, personally known to me (or proved to me on the basis of

... evidence to be the persons),  
day of December, 2009.

SIGNED: Wesley Bee Burn

Notary  
Official Capacity of Officer

# Test Will and Testament

Sylvia J Reagan resident of state of South Carolina, county of Charleston being of sound mind & memory do hereby declare that this is my will -  
my Social Security # 20 251-44-5661

- First; I revoke all former wills that I have previously made
- Second: I give devise and bequeath the following money or personal property:

~~My~~ My house at 1351 Camp Rd James Island S.C. + all contents, my 1992 mercury car to Linda Reagan Shelley. My mortgage on property in Morgan Co Mo with Ann Bishop to Bevil Rector of Missouri  
 Any & all money or other property to Linda Shelley

Third all my just debts be paid promptly.

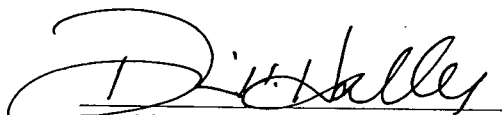
Sylvia Reagan

Jara H. Jones, RN

Sworn before me on February 25, 2011. 148  
 Llorios Belin Burns, Notary Public  
 et cetera - March 23rd, 2017.

CERTIFICATION OF COUNSEL

I certify that the forgoing Record on Appeal contains all material designated by the parties and no other materials.

  
David K. Haller

**RECEIVED**  
APR 01 2014  
**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Kristi Lea Harrington, Circuit Court Judge

Case No. 2012-CP-10-7929  
Appellate Case No. 2013-001817

In Re: Estate of Sylvia J. Reagan

Linda Reagan Shelley..... Appellant.

v.

Ramona D. Becker, individually and as Personal Representative of  
the Estate of Sylvia J. Reagan, Beryl Routon, Kayla Dawn Kastrup,  
and Tom Coats, ..... Defendants

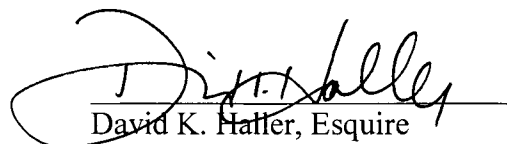
Of Whom

Ramona D. Becker, individually and as Personal Representative of  
the Estate of Sylvia J. Reagan is ..... Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondent's counsel at the  
following address:

Joseph S. Brockington, Esq.  
171 Church Street, Suite 160  
Charleston, SC 29401

  
David K. Haller, Esquire  
115 River Landing Drive, Suite 102  
Charleston, SC 29492  
843-849-1384  
Attorney for Appellant

March 19, 2014

**RECEIVED**

MAR 24 2014

**SC Court of Appeals**