

<b>STATE OF SOUTH CAROLINA</b>	)	<b>IN THE COURT OF COMMON PLEAS</b>
	)	
<b>COUNTY OF GREENWOOD</b>	)	<b>CASE NUMBER: 2018-CP-24-00668</b>
	)	
<b>In re: Mary Sue Wallis</b>	)	
	)	
<b>Delores Kernells and Billy R. Hastings,</b>	)	
	)	
<b>Appellants,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>Betty J. Minor, as Personal</b>	)	
<b>Representative Of the Estate, James T.</b>	)	
<b>Minor, Rufus H. Minor, Bonnie S.</b>	)	
<b>Young, Tracy Minor and Angie Gail</b>	)	
<b>Minor,</b>	)	
	)	
<b>Respondents.</b>	)	
	)	

**ORDER**

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 SC Court of Appeals

This matter came before the Honorable Eugene C. Griffith, Jr. upon the Appeal filed by Delores Kernells and Billy R. Hastings (hereinafter referred to as the "Appellants"). Present at the March 5 2019, hearing were: Adam G. Lee, Esq. as counsel for Betty J. Minor (hereinafter referred to as "Respondent"), as Personal Representative of the Estate of Mary Sue Wallis (hereinafter referred to as "Decedent"), and R. Jamison Tinsley, Jr., Esq. as counsel for Appellants. Jurisdiction, venue and notice are proper. The issue before the Court was whether the Greenwood County Probate Court (hereinafter referred to as "Probate Court") erred in dismissing Appellants' Petition where the Petition alleged that the Decedent revoked her Last Will and Testament dated December 31, 1970 (hereinafter referred to as the "Last Will"). Subsequent to the Probate Court dismissing the Appellants' Petition, Appellants' counsel filed a Rule 59(e) Motion to Alter or Amend on May 4, 2018, requesting that the Probate Court

reconsider its Order dismissing Appellant's petition. The Probate Court denied Appellants' Motion to Alter or Amend per its Order Denying Motion for Reconsideration on July 13, 2018.

Respondent was appointed as Personal Representative of the Decedent's estate on May 2, 2017. Respondent filed the Last Will with the Probate Court. The Last Will has was not burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the Decedent. The Last Will complies with all of the South Carolina statutory requirements as set forth in the Code of Laws of South Carolina, Title 62 South Carolina Probate Code. No document revoking the Last Will has ever been submitted to the Probate Court or this Court.

A will is an expression of a testator's intent to dispose of the testator's property after death. A will may be freely modified or revoked by a mentally competent testator, acting of the testator's own volition, until the testator's death. *Lowe v. Fickling*, 207 S.C. 442, 447, 36 S.E.2d 293, 294 (1945); S.C.Code Ann. 62-2-506. When the formal execution of a will is admitted or proved, as it has been in this case, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

The Code of Laws of South Carolina, § 62-2-506, clearly provides that a will or any part thereof can be revoked by executing a subsequent will that revokes the previous will or part expressly or by inconsistency; or by being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it by the testator or by another person in the testator's presence and by the testator's direction. Revocation of a will by an act or by a subsequent instrument must be accompanied by an intention to revoke, and, without the intention, revocation does not take place. *Johnson v. Brailsford*, 11 S.C.L. 272 (1820).

Generally, contestants of a will have the burden of establishing revocation. S.C. Code Ann. § 62-3-407. In this case, Respondent filed the Decedent's validly executed Last Will with the Probate Court, and thus a prima facie case in favor of the will has been established. The facts in this matter clearly show that Decedent did not burn, tear, cancel, obliterate, destroy or revoke the Last Will. Appellants did not provide any subsequent last will and testament for Decedent revoking the Last Will, and Appellants' legal counsel informed the Probate Court and this Court that no such copy of any such subsequent last will and testament for Decedent has been found. Appellants did inform the Probate Court and this Court that witnesses may testify as to the contents of a subsequent last will and testament purportedly executed by Decedent, but it is clear that such evidence would not be sufficient to support the Appellants' Petition to invalidate the Last Will.

South Carolina law clearly requires proof of a revocation of a will by an act or by a subsequent instrument as opposed to a subjective belief, speculation or a mere allegation to avoid the potential for collusion among disinherited or disgruntled family members who wish to dispose of the testator's estate plan and substitute it with one more to their preference. Neither an act of revocation or by a subsequent instrument has been adequately plead in this matter. Given these facts, the Probate Court correctly found, by Order of the Probate Court dated March 13, 2018, that Appellants' Petition, even when considered in the light most favorable to the Appellants, fails to adequately plead a claim for relief under the South Carolina law as to the invalidation of a last will and testament.

Accordingly, this Court denies the Appeal filed by Appellants with prejudice, and hereby affirms the Greenwood County Probate Court's ruling that the Last Will and Testament of the Decedent dated December 31, 1970, is the binding Last Will and Testament for the Decedent.

Further, given the facts and circumstances of this matter, along with the clarity provided by South Carolina law on the requirements to revoke or invalidate a last will and testament, this Court, in order to ensure justice and equity, also awards attorney's fees and costs in the amount of Four Thousand Five Hundred Dollars (\$4,500.00) to Respondent as allowed under South Carolina § 62-1-111.

**IT IS SO ORDERED.**

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The Honorable Eugene C. Griffith, Jr.  
Circuit Court Judge

Date: \_\_\_\_\_, 2019  
Newberry, South Carolina

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Greenwood Common Pleas

**Case Caption:** Delores Kernells , plaintiff, et al VS Betty J. Minor , defendant, et al

**Case Number:** 2018CP2400668

**Type:** Order/Other

It is so ordered

Eugene C. Griffith, Jr. 2154