

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF KERSHAW )

IN THE CIRCUIT COURT  
(Appeal from Probate Court for  
Kershaw County: 2017-ES-28-316)

IN THE MATTER OF: )  
Almeter B. Robinson )  
(Decedent) )

CASE NO.: 2018-CP-28-00726

Laverne Robinson, )  
 )  
Appellant, )

AMENDED  
ORDER AFFIRMING PROBATE  
COURT ORDER

vs. )

Willene Brooks, Mary Greene, Ronnie Robinson, )  
Almeter P. Harrison, Herbert Robinson, James )  
Robinson, Leroy Robinson, and Martha Aiken, )

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Respondents. )

JAN 14 2020

SC Court of Appeals

This matter came before me on the Notice of Intent to Appeal to Circuit Court filed by Appellant on August 17, 2018. A hearing was held on September 23, 2019, attended by John W. Wells, Attorney for Appellant, Leonard R. Jordan, Jr., Attorney for Respondents, Martha Ann Robinson Aiken and Martha Ann Robinson Aiken as Trustee; and Moultrie B. Burns, Attorney for Respondents, Ronnie Randolph Robinson, Almeter Patricia Robinson Harrison and Mary Alice Robinson Green.

This appeal is from an Order issued by the Honorable Debra B. Branham, Kershaw County Probate Judge, which was filed on December 7, 2018. The said Order declared the 2015 Will of Almeter B. Robinson to be invalid due to undue influence by the Plaintiff beneficiary (Appellant).

S.C. Code Ann. §62-3-407 states that the burden of establishing undue influence is on the contestants of a Will. Although this statute is not specifically cited in her Order, a review of Judge Branham's detailed evaluation of the circumstances of the 2015 Will shows that she not only

considered the facts of undue influence presented by Respondents but that she found that Respondents produced sufficient evidence to support a finding of undue influence by Appellant.

Judge Branham's Order discussed individually the following facts: (1) unjust distribution of the rest and residue solely to Appellant; (2) Appellant's total control of his mother, including limiting his siblings' visitation and conversations with their mother; (3) Appellant's confidential or fiduciary relationship with the testatrix; and (4) Appellant's failure to inform the drafter of the Will (Deborah Butcher, Esquire) that all of the property mentioned in the Will was not vested in the testatrix's name. The Order also thoroughly explained Judge Branham's conclusions that, by virtue of his confidential relationship with the testatrix (which raised a presumption of undue influence, which presumption was uncontested), Appellant had the burden to rebut undue influence and that such burden to rebut was not met.

The said Order separately discusses the proof of undue influence by Respondents and the burden on Appellant to rebut the presumption of undue influence. Contrary to Appellant's argument, these legal concepts were not conflated. Judge Branham made a finding of undue influence upon the testamentary act based on factors including: Appellant's control of his mother's person, his control of the information provided to (and withheld from) the Will preparer, his presence at the execution of the Will and the significant changes the Will made to his mother's estate plan. Further, Judge Branham's decision that Appellant failed to meet the burden of overcoming the presumption of undue influence was supported by the evidence and was within the Judge's discretion.

Although the case of *Howard v. Nasser*<sup>1</sup> was not mentioned by name in the Order, it is clear that Judge Branham was aware of, and followed the precedent of, that case, which held:

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<sup>1</sup> 364 S.C. 279, 288, 613 S.E.2d 64, 68-69 (Ct.App. 2005).

We interpret the foregoing to mean that if the contestants of a duly executed will provide evidence that a confidential/fiduciary relationship existed sufficient to raise the presumption, the proponents of the will must offer evidence in rebuttal. We emphasize that although proponents of the will must present evidence in rebuttal, they do not have to affirmatively disprove the existence of undue influence. Instead the contestants of the will still retain the ultimate burden of proof to invalidate the will.

Said case also cited favorably the Restatement (Third) of Property, as follows:

A presumption of undue influence arises if the alleged wrongdoer was in a confidential relationship with the donor and there were suspicious circumstances surrounding the preparation, formulation, or execution of the donative transfer, whether the transfer was by gift, trust, will, will substitute, or a donative transfer of any other type. *The effect of the presumption is to shift to the proponent the burden of going forward with the evidence, not the burden of persuasion. The presumption justifies a judgment for the contestant as a matter of law only if the proponent does not come forward with evidence to rebut the presumption.*

It is noted that *Howard v. Nasser* (at 286-287) cited several cases for the proposition that a deed or will is presumed to be invalid where a confidential or fiduciary relationship existed between a grantor and a grantee or between a testator and a beneficiary and that the proponent of the instrument must affirmatively show the absence of undue influence. Judge Branham directly addressed this issue, finding that the burden to rebut undue influence was not met.

In *Howard v. Nasser* (at 290), the court points out that, not only did the Appellants (the contestants of the Will) show a confidential/fiduciary relationship, but they, among other things, “additionally offered the following evidence in support of their claim of undue influence: “(1) Nasser was physically infirm . . . ; (2) the disposition of Nasser’s estate was significantly different from his two prior wills; (3) Respondent was present at the meetings with the attorneys to discuss the context of the new will; and (4) Nasser’s relationship with his nephews became strained and the frequency of family visits was limited . . . .” These points were quite similar to the findings made by Judge Branham in the present case: (1) Appellant was the primary caretaker of his mother; (2) Appellant had total control of his mother’s person; (3) Appellant excluded or limited his

siblings' visitation and conversations with decedent; (4) the 2015 Will was drafted upon information provided solely by Appellant; and (5) Appellant was to receive the entire rest and residue of the estate instead of its being divided by 9 and 10 children as in previous wills.

I disagree with Appellant's claim that Judge Branham erred in considering the unequal distribution of assets as evidence of undue influence. This is a proper consideration when evaluating whether or not undue influence played a role in the testamentary act.

I also disagree with Appellant's claim that Judge Branham erred in concluding that Appellant had a duty to disclose to the drafter of the Will that the property mentioned in the Will was not vested in Mrs. Robinson. This is a proper consideration since Appellant was a fiduciary of the testatrix.

I also disagree with Appellant's claim that the allowance of testimony involving events, which transpired after the 2015 Will was executed, was improper. Undue influence may be proved by circumstantial evidence. See *Howard v. Nasser* (at 286). Both the 911 command log from March 29, 2016, and the recorded telephone conversation from April 18, 2017, are only cumulative to the evidence of Appellant's control of his mother prior to the execution of the 2015 Will, including the fact of Appellant's misplaced understanding of his authority under the 2014 Power of Attorney, which he prepared.

Based upon the foregoing, I find that the appealed Order should be affirmed.

WHEREFORE, it is

ORDERED that the Order issued by Judge Branham, which was filed on December 7, 2018, be and it is hereby AFFIRMED.

AND IT IS SO ORDERED.



Kershaw Common Pleas

**Case Caption:** Laverne Robinson VS Willene Brooks , defendant, et al

**Case Number:** 2018CP2800726

**Type:** Order/Other

So Ordered

s/ R.E. Hood #2164

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