THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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SC Court of Appeals

The Hon. Thomas A. Russo, Circuit Court Judge
(The Hon. Tamara C. Curry, Probate Court Judge)

Unpublished Opinion No. 2019-UP-412
Submitted June 3, 2019 – Filed December 31, 2019
Petition for Rehearing Denied May 22, 2020

Jacquelin S. Bennett and Kathleen S. Turner as Personal Representatives of the Estate of Jacquelin K. Stevenson............ *Appellants.*

v.

Estate of James Kelly King and Genevieve S. Felder............ *Respondents.*

PETITION FOR CERTIORARI

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CERTIFICATE OF COUNSEL

Pursuant to Rule 242(d)(1) of the South Carolina Appellate Court Rules, the undersigned counsel for Petitioner certifies that a Motion for Rehearing was made and ruled upon by the South Carolina Court of Appeals.

QUESTIONS FOR REVIEW

1. Whether the Court of Appeals erred in affirming the Probate Court's finding that Testatrix intended all real property passing through the Residuary Estate to pass to each devisee in equal ownership interest shares when such an interpretation runs contrary to the existing decisions of this Court?
2. Whether the Court of Appeals erred in affirming the Probate Court's finding that the Will does not grant Appellants broad discretionary authority with respect to distribution of the Residuary Estate when such a position is contrary both to previous decisions of this Court and the laws of this State?
3. Whether the Court of Appeals erred in affirming the Probate Court's holding that the Personal Representative's proposed distribution was a violation of their fiduciary duty of good faith when such a holding runs contrary to previous decisions of this Court?
4. Whether the Court of Appeals erred in holding that title to property had already passed to the Respondent?
5. Whether the Court of Appeals erred in holding that the Private Family Settlement Agreement divested the Personal Representatives of their discretionary powers and precludes a challenge to the Probate Court's plan of distribution?

STATEMENT OF THE CASE

As is often necessary in any Probate matter, a brief statement of familial history may be beneficial to the Court:

At approximately twenty-four years of age, the Testatrix married her second husband, Mr. Thomas C. Stevenson, Jr. (who also had been previously married). The Testatrix and Thomas C. Stevenson, Jr. each brought one (1) child from their previous marriages with them into the union—the Respondent James Kelly King and the Respondent Genevieve Felder, respectively. Respondent Felder's stepmother, the Testatrix, was approximately twelve (12) years her senior at the time of the marriage. During the course of the marriage, the Testatrix and Mr. Stevenson subsequently had four (4) children together—Thomas C. Stevenson, III and Daniel R. Stevenson ("the Stevenson brothers"); and, Kathleen S. Turner and Jacquelin S. Bennett ("the Appellants"). R. 225.

The Testatrix died testate on or about September 17, 2007. At the time of her passing, the Testatrix was survived by her five children[1] and her stepdaughter, Respondent Felder. Each of the survivors were devisees of the Estate, as evidenced by the October 21, 1996 Last Will & Testament of Jacquelin K. Stevenson ("the Will"), which was admitted to probate in the Charleston County Probate Court in 2007. R. 225. The Will nominated Kathleen Turner and Thomas C. Stevenson, III as Co-Personal Representatives. *Id.* However, Thomas C. Stevenson, III would later be removed from his position, and Jacquelin Bennett would become the successor Co-Personal Representative.

At the time of her demise, Testatrix owned various real properties situated in Charleston County, South Carolina and Henderson County, North Carolina including:[2]

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1 Respondent James Kelly King survived his mother, though he would later pass away during the course of Administration. His Estate was subsequently made a Respondent to the underlying action. However, he is not a party to the present dispute as each of his Estate's claims have resolved by way of a Private Family Agreement.

2 In addition to the properties listed herein, there are also five (5) tracts of marshland located throughout Charleston

1. 2414 Rockland Ave., Town of Rockville, Wadmalaw Island (T.M.S. No. 150-00-00-051) (hereinafter "the Wadmalaw Property");
2. Lot No. 19, Dupree Creek Ln., Town of Mt. Pleasant (T.M.S. No. 617-15-00-020) (hereinafter "the Mt. Pleasant Property"); and,
3. Glascow Island Lane, Edisto Island (T.M.S. No. 013-00-00-041) (hereinafter "the Edisto Property").
4. Lots No. 34, 35, 36 and 37, Lakefront Dr., Henderson County, N.C. (T.M.S. No. 9585.13-03) (hereinafter "the Henderson Property").

R. 41. The Wadmalaw Property and the Henderson Property were both acquired during Testatrix's marriage to Thomas C. Stevenson, Jr. and are included in the Will's specific devises. The remaining properties were purchased after the execution of Testatrix's Will. *Id.*

Testatrix's unequivocal intent, as evidenced by the plain terms of the Will, was to provide a specific pecuniary bequest in the amount of Four Hundred Thousand ($400,000.00) Dollars to the son of her first marriage, Respondent James Kelly King. R. 227. Likewise, the Testatrix made a specific pecuniary bequest also in the amount of Four Hundred Thousand ($400,000.00) Dollars to the daughter of Thomas C. Stevenson, Jr.'s first marriage, Respondent Genevieve Felder. R. 228.

To the children of her marriage to Thomas C. Stevenson, Jr., the Testatrix devised the vacation homes acquired during the course of the marriage, including the Wadmalaw property and the Henderson Property. Testatrix devised these properties to the Appellants and the Stevenson brothers, respectively. R. 227-228.

During the course of Administration, the Estate of Jacquelin K. Stevenson was forced to file suit against the Stevenson brothers. In that suit, the Estate alleged Breach of Fiduciary Duty, Breach

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County, each with an assessed value of roughly Two Hundred ($ 200.00) Dollars, worth collectively One Thousand ($1,000.00) Dollars. The current proposed distribution of these properties is **not** disputed amongst the parties.

of Trust, Conversion, and Fraud. The suit led to the subsequent removal of Thomas C. Stevenson, III as Co-Personal Representative, and appointment of Jacquelin S. Bennett to the same. Further, a judgment was entered in favor of the Estate against Daniel Stevenson in the amount of Ten Million Eight Hundred Ten Thousand Five Hundred Forty-One and no/100 ($ 10,810,541.00) Dollars.

After the approval of Jacquelin S. Bennett as successor Co-Personal Representative, Appellants filed a Petition for Setoff against the Stevenson brothers. On or about February 28, 2011, the Probate Court issued an Order granting the Petition for Setoff, declaring void both the specific devise of the Henderson Property and the Stevenson brothers' Residuary interests, given that their liquidated indebtedness to the Estate of Jacquelin K. Stevenson exceeded the value of their combined interests. Accordingly, the Henderson Property became part of the Residuary Estate.

In March of 2015, the heirs of the Estate of Jacquelin K. Stevenson entered into a Private Family Settlement Agreement (hereinafter the "Private Agreement") which resolved Respondent James Kelly King's claims and allowed for the distribution of all remaining Estate Assets, excluding only the distribution of Residuary Estate assets between Appellants and Respondent Felder. R. 219. The parties' agreement provided that they would return to Charleston County Probate Court for a determination regarding the same in the event a subsequent agreement could not be reached.

On or about May 4, 2015, Appellants filed a Demand for Hearing with the Charleston County Probate Court seeking approval of a proposed distribution of the above-named real properties except for the Wadmalaw property.[3] R. 33. The Probate Court held a hearing with respect to same on or about June 16, 2015. R. 84. At the hearing, Appellants argued the Will granted the Co-Personal Representatives the broad discretion to make distributions of Estate assets in any reasonable manner, provided that such distribution resulted in equal distributions to all devisees. R. 101. In support of same, Appellants offered a proposed plan of distribution prepared by Herb

3 The Wadmalaw property was distributed to Appellants pursuant to the specific bequest mentioned, *supra.*

101. In support of same, Appellants offered a proposed plan of distribution prepared by Herb McGuire, C.P.A., using appraised values of the properties which were agreed to by all parties.

Appellants cited both the Will and the S.C. Probate Code for the proposition that they had the discretionary authority to employ "any reasonable manner" in making distributions, including the use of undivided interests in real property or the use of various combinations of interests in all of the properties, provided that the final distribution resulted in equal values to each devisee. R. 95. Respondent argued instead that each respective devisee should receive an equal ownership percentage in each piece of real property. R. 94. Respondent further contended that the distribution could not be made in a "fair and equitable manner" if the distribution was based "strictly on monetary value." R. 97.

The Probate Court issued an Order on or about July 30, 2015 holding that "it appears the Decedent's intent was to have the Residuary Estate distributed equally between the children." R. 17. The Probate Court ordered Appellants to divide the Henderson, Edisto and Mt. Pleasant Properties "in equity and good faith among the devisees so that each respective devisee receives an equal ownership interest in each piece of real estate." R. 19.

Appellants took exception to the Probate Court's Order and filed a Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP or about August 12, 2015. Appellants asked the Probate Court to reconsider its previous findings and holdings. R. 34. On or about September 10, 2015 the Probate Court denied the Appellants' motion, holding that "based on the plain language and ordinary sense of the words used in the Residuary Estate" all of the real property "should be divided into 'equal shares.'" R. 10–12. The Court further held "the property in dispute here is covered by the language of the Residuary Estate, not the provisions of Article 3 or 4 which control general devises and specific devises…" R. 13.

The Probate Court held the language from Sections 10.1 and 10.6 of the Will "[was] not

controlling of property … 'not effectively disposed of'", but rather any such property would be subject to the Court's interpretation of the Residuary Clause. *Id.* The Court was silent as to S.C. Code § 62-3-715 and nonetheless affirmed its previous Order. *Id.*

These Orders were appealed to the Circuit Court by the Appellants on September 15, 2015. R. 66. On June 3, 2016, the Circuit Court, sitting in its appellate jurisdiction, held oral arguments on the issues with the Hon. Thomas Russo presiding. R. 185. On or about April 18, 2017, the Circuit Court issued an Order affirming the Probate Court's decision. Appellants subsequently appealed the matter to the Court of Appeals. R. 1. The matter was submitted to the Court of Appeals without oral arguments, and an unpublished opinion was entered on December 31, 2019.

The Court of Appeals affirmed the decision of the Probate Court, holding that: (1) the Testatrix intended all real property passing through the Residuary Estate to pass to each devisee in equal ownership interest shares; (2) the Personal Representatives did not have the broad discretionary authority granted to them by the terms of the Will and the laws of this State with respect to distributing assets of the Residuary Estate; (3) Appellants' proposed plan of distribution would be a violation of their fiduciary duties as Personal Representatives; (4) title to the property had already passed to the Respondent; (5) the Private Agreement divested Appellants of any discretionary powers they may have had; and, (6) the Private Agreement precludes any challenge by the Appellants to the Probate Court's proposed plan of distribution. Appellants filed a Petition for Rehearing, with a suggestion for rehearing *en banc,* which was denied by the Court of Appeals on May 22, 2020. Appellants now file the present Petition for Writ.

LEGAL ARGUMENTS

1. The Court of Appeals erred in holding that the Testatrix's intent was that all real property passing through the Residuary Estate ought to pass to each devisee in equal ownership interest shares where the terms of the Will express a contrary intent.

The Probate Court's interpretation of the Residuary Clause, as affirmed by the Court of Appeals, constitutes is a self-admitted disregard for the Testatrix's intent. Further, it fails as a matter of law as there is no evidence to reasonably support the Court's finding and warrants reversal on this ground, as well.[4]

Looking to the text of the Will, there is no provision contained therein which either specifically states, or implies by its verbiage, that the Testatrix intended for the property to be passed in equal ownership shares for each Residuary beneficiary. Rather, the Probate Court substituted their own interpretation for the Testator's intent—thus abandoning the "cardinal rule of will construction... to determine and give effect to the [Testatrix's] intent." *Matter of Clark*, 308 S.C. 328, 330, 417 S.E.2d 856, 857 (1992); *May v. Riley*, 279 S.C. 248, 250, 305 S.E.2d 77, 78 (1983); *Albergotti v. Summers*, 205 S.C. 179, 182, 31 S.E.2d 129, 130 (1944).

The Probate Court held that "[r]egardless of whether [Appellants'] interpretation was actually the testator's intent ... I find ... a pro-rata distribution—to be appropriate in light of the evidence presented." The Probate Court's decision is controlled by a clear error of law when they have explicitly stated that their interpretation is most appropriate **without any regard to the testator's intent**. This

4 A case involving the construction of a will is an action at law. *Epting v. Mayer*, 283 S.C. 517, 323 S.E.2d 797 (Ct. App. 1984). In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings. *Townes Assoc., Ltd v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976); *Dean v. Kilgore*, 313 S.C. 257, 437 S.E.2d 154 (Ct. App. 1993)

is an outright dereliction of the principal duty of the Court to determine the testator's intent in an action to determine the construction of a will.

The Probate Court's own statements indicate that no analysis of evidence to distill the intent of the testator was performed. Instead, the Court based their decision on their own view regarding an "equitable" division of remaining assets. However, reviewing the text of the Will makes the Testatrix's intent abundantly clear. The Residuary Clause of the Will provides that the:

> [R]est, residue and remainder of [the Testatrix's] property and estate, real and personal … including any property before mentioned but not effectively disposed of" should be divided in "equal shares" per *stirpes*, and not per capita amongst the residuary beneficiaries.

R. 230.

The Testatrix then specifically included a setoff provision in the Residuary Estate for monies loaned to both of the Stevenson brothers during her life. *Id.* This provision would **reduce** the Stevenson brother's interest in the Residuary Estate to the extent they still owed monies to the Estate. The Probate Court, however, chose to disregard the setoff provision, holding that it was not relevant to the analysis as the Stevenson brothers were no longer beneficiaries.

Appellants can think of no evidence more unambiguous as to the Testatrix's intent than her inclusion of language in the Residuary Clause which, by its operation, creates **unequal interests in Residuary Estate Assets** to beneficiaries. Testatrix's plainly stated intent was never to provide "equal ownership shares" amongst all children in any certain real property. Rather, she intended that any Residuary Assets should pass in an equitable manner—put otherwise, distribution by equal monetary shares (after adjusting for setoffs resulting from monies owed to the Estate). No Court, to date, has cited any verbiage in the four corners of the document which suggests the Testatrix ever intended for the children to share all property in equal ownership shares.

Appellants, throughout this ordeal, have continuously maintained their position in an attempt to honor the Testatrix's intent, and to distribute the estate in accordance with her final wishes—despite

repeated insinuations of improper dealings by the some of the highest courts of this State.

The Court of Appeals, in affirming the Probate Court, has adopted a position founded upon a clear error of law given the "regardless of the testator's intent" approach adopted by the trial court. Such a holding not only usurps the plainly stated intent of the Testatrix, it is contrary to the holdings of this Court. *See*, *Matter of Clark*, 308 S.C. 328, 330, 417 S.E.2d 856, 857 (1992). It appears the erroneous conclusion reached by the Probate Court that Appellants were attempting to violate their fiduciary duties tainted the decision-making process as there is no other justification, nor evidence, which supports this holding. As such, Appellants request this Court to GRANT their Petition and review the decision of the Court of Appeals in affirming the same.

2. The Court of Appeals' erred in holding that the Testatrix's grant of broad discretionary authority to the Personal Representatives with respect to distributions did not apply to Residuary Estate assets where the terms of the Will, and the laws of this State, express a contrary intent.

A personal representative has the duty to settle and distribute the estate of the decedent in accordance with the terms of a probated and effective will and this code... [They] shall use the authority conferred upon [them] by this code, the terms of the will and any Order in proceedings to which [they are] a party..." S.C. CODE ANN. § 62-3-703. In construing the language of a will, the appellate court must give words their ordinary, plain meaning unless it is clear the testator intended a different sense, or unless such a meaning would lead to an inconsistency with the testator's declared intention. *Buist v. Walton*, 104 S.C. 95, 88 S.E. 357 (1916); *In re Estate of Fabian*, 326 S.C. 349, 353, 483 S.E.2d 474, 476 (Ct.App.1997); *Clark v. Evans,* 308 S.C. 328, 330, 417 S.E.2d 856, 857. A court may not consider the will piecemeal, but must give due weight to all its language and provisions, giving effect to every part when, under a reasonable interpretation, all the provisions may be harmonized with each other and with the will as a whole. *King v. S.C. Tax Commn.*, 253 S.C. 646, 649, 173 S.E.2d 92, 93 (1970); *Wise v. Poston,* 281 S.C. 574, 578, 316 S.E.2d 412, 414 (Ct.App.1984).

It is without question that the Testatrix's declared intent, by the terms of her will, was to "give broad discretion and flexibility to [her] Personal Representatives." R. 234. Testatrix specifically incorporates the statutory authority for same granted by the S.C. Probate Code by reference and states the powers of her Personal Representatives shall include those enumerated in S.C. CODE ANN. § 62-3-715. *Id.*

Appellants were given the broad discretionary authority to "determine what property is covered by general descriptions in this Will" (Section 10.1) and to make distributions in a variety of manners (Section 10.6). Viewing the aforementioned powers in light of the Testatrix's stated intent to "give broad discretion and flexibility" to Appellants, the Personal Representatives' powers ought to extend making distributions of Residuary Assets in any reasonable manner provided that any such distribution results in an equitable distribution to each beneficiary.

The Probate Court's ruling creates an arbitrary mandate in contravention to the Testatrix's plainly stated intent. The language of Section 10.6 empowered Appellants to make the distribution in any reasonable manner including in: "cash **or** in specific [real] property… **or** an undivided interest, **or** partly in cash and partly in such [real] property, **and** to do so without regard to the income tax basis of specific property allocated… **and without making pro-rata distributions of specific assets**." R. 235. (**emphasis added**) .

Reading the will "in the ordinary and grammatical sense of the words employed," the text affirms the broad discretion granted to the Appellants in making distributions. *Clark*, 308 S.C. at 330, 417 S.E.2d at 857. As such, Appellants would be free to distribute the property in the Residuary Estate to satisfy each beneficiary's equal share by distributing to them either: (1) cash; (2) a partial interest in a property; (3) a hybrid of a partial interest in a property and cash; or, (4) an undivided interest in a

5 Further, the specific powers enumerated in Section 10 of the Will track the language of § 62-3-715 nearly verbatim. R. 234-236; *cf.* S.C. CODE ANN. § 62-3-715.

property. Taking into account the remaining conjunctive phrases of the clause, the Appellants, in making any of the aforementioned permissible distributions were **not required** to take into account any tax basis issues, **nor were they required to make pro-rata distributions of any of the properties.**

In light of this broad discretion, there is nothing improper about the Appellants' proposed distribution. The mere fact that it grants interests in certain properties to certain beneficiaries is not forbidden by the Will. Rather, such a distribution is encouraged by the Testator. The authority to make distributions without Respondent's consent is plainly stated by the terms of the Will and by the statutory authority conferred in S.C. CODE ANN. § 62-3-715(23). Conversely, there is **no evidence,** nor **any authority** which Appellants can find which supports the proposition that the powers granted to a Personal Representative by the South Carolina Probate Code operate in a vacuum, and may not be applied to a Residuary Estate. The interpretation championed by the Probate Court vitiates not only the plainly stated testamentary intent, but also disregards the intent of the legislature in enacting S.C. Code Ann. § 62-3-715(23).[6]

The Court of Appeals decision to affirm such a holding, one contrary to the laws of this State, the decisions of this Court, and one which is not supported by any evidence ought to be reviewed by this Court.

3. **The Court of Appeals erred in holding that the Personal Representative's proposed distribution was a violation of their fiduciary duty where the distribution was equal in monetary value amongst all parties.**

The Court of Appeals correctly noted in their Opinion that "[the Court] can correct errors of law, but the [Probate Court's] findings of fact will not be disturbed unless found to be without evidence which reasonably support's the judge's findings." *Estate of Jacquelin K. Stevenson v. Genevieve*

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6 The Reporter's Comments to the South Carolina Probate Code recites that the purpose of enacting § 62-3-715 is "to set forth in some detail the power which a Personal Representative may exercise with respect to the estate and without the necessity of obtaining an order from the Probate Court in order to do so."

Felder, 2019-UP-412 at p. 2 (December 31, 2019) (*citing Blackmon v. Weaver*, 366 S.C. 245, 249, 621 S.E.2d 42, 44 (Ct. App. 2005)). In the present case, there simply is **no** evidence properly before the Court which would reasonably support their holding.

The Court of Appeals referenced extensive case law and statutory authority regarding the special duty imposed upon Personal Representatives as fiduciaries of the Estate—specifically, that Appellants must effect a distribution according to the "terms of a decedent's will and the law" and in a manner consistent with "the best interests of the Estate and the successors of the Estate, and not for [Appellants'] own personal interests." *See, Id.* at 3 (*citing* S.C. CODE ANN. § 62-3-703(a)). Further, Appellants are forbidden from "[using] the [fiduciary] relationship to benefit [their] own interests" or to secure "any profit or advantage at the expense of a person under their influence." *Id.* (*citing Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987)).

The Probate Court erroneously held the **only** appropriate method of distribution which could satisfy this fiduciary duty was a "pro-rata" division. Such a contention appears to have no legal basis in the jurisprudence of this State. R. 9. The Circuit Court, Respondent, and Court of Appeals have each cited cases which state that the Personal Representatives owe a duty of good faith—yet no party or Court, to date, has provided **any** case law or statutory authority which stands for the proposition that the **only** way to satisfy this duty is to distribute real property in the Residuary Estate in equal ownership shares.

Appellants agree that they most certainly have a duty as a fiduciary and must "act in good faith and with due regard" to the other beneficiaries, but Appellants contend this duty requires **only** that each beneficiary receive a distribution of **equal value**. This position is the only one consistent with previous decisions of this Court. *See, Zimmerman v. Marsh*, 618 S.E.2d 898 (S.C. 2005) ("While we find that equitable considerations such as … sentimental attachment to the property may be considered, **the pecuniary interests of all the parties is the determining factor**.") (**emphasis added**); *Wilson*,

320 S.C. 137, 463 S.E. 2d 614 (Ct. App 1995) (The allocation of a preselected tract to one heir was not prejudicial to other heirs unless evidence was presented to demonstrate a tract was **more valuable** than other tracts) (**emphasis added**)

In affirming the Probate Court's holding that Appellants' proposed distribution was an attempt to self-serve, and a violation of their fiduciary duties, the Court of Appeals has adopted a position that gives rise to a dilemma: If Appellants' proposed distribution provides, to the penny, equal monetary shares amongst the beneficiaries, yet violates fiduciary principles, then we are faced with one of only two logical conclusions: (1) The division actually is not equal in value; or, (2) the Appellants must consider **other factors** in determining how to distribute assets.

As to the first possible conclusion, there is no evidence in the Record before this Court that the values of the properties as divided are unequal. In fact, **Respondent consented to the valuations** proposed by Mr. McGuire. R. 42. Any appraised value of a property would, by its nature, reflect factors including a property's potential for rental income, the liquidity of the property, the "desirability" of the property, or the carrying costs associated with owning the same. If one property was so much more "desirable" than the others, or one property had a higher carrying cost, and those factors were not reflected in the appraised value, then Respondent would certainly have had every right to object to the valuation assigned to it.

However, Respondent did not then, and cannot now, point to any evidence properly before this Court reflecting any disparate value between the shares assigned to each beneficiary under the Appellants' proposed distribution scheme. Respondent instead chose to stipulate on the record that the valuation of the properties was correct for purposes of distribution. Appellants provided the accounting report of Herbert McGuire, CPA, who was hired to assist in formulating the proposed distribution scheme. R. 138.

Despite Appellants' vehement objections on the basis of estoppel and issue preservation,

Respondent continues to improperly advance this argument to the Appellate courts. There was no evidence presented at the May 2015 hearing that these properties were in anyway more or less valuable than the figures contained in Appellants' proposal. Accordingly, there is no evidence properly before this Court which would reasonably support the Court of Appeal's decision to override the discretion of the Personal Representatives and the Testatrix's intent.

As to the remaining possible conclusion, if the values are indeed equal, then the Court of Appeals is apparently adopting the position that Personal Representatives have a **fiduciary duty** to take into account **intangible non-economic factors,** including **"sentimental value"** and subjective **"desirability"** of assets when dividing and distributing estates—a position which has no foundation in the laws of this State and serves only to create a very untenable position for **all future Personal Representatives.** In the present matter, Appellants can certainly consider the Respondent's alleged sentimental attachments,[7] but ultimately, the case law of this State requires only that Appellants ensure all parties receive equal monetary distributions.

The Probate Court, Circuit Court and Court of Appeals have insisted there is no "reasonable purpose" for the Appellants' proposed plan for distribution. Appellants maintain their overriding goal and reasonable purpose for their proposed distribution is to satisfy the one requirement the Court's apparently have no interest in fulfilling—**determining and honoring the Testatrix's intent**.

It is **unequivocally clear** that Testatrix's intent was to provide for all of her surviving children and stepchildren, no child was omitted from the Will. However, Testatrix intended to provide for the children each in different ways: As to the older children—the product of Testatrix's and Thomas C. Stevenson, Jr.'s first marriages, respectively—the Testatrix elected to make generous pecuniary

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7 The extent of Respondent's participation and involvement in the Henderson Property, on which the sentimental attachment was allegedly based has been greatly exaggerated. Respondent was already grown, married, and off living with her own family when Testatrix and her husband purchased the Henderson Property. Conversely, Appellants spent a substantial portion of their childhood in that home.

bequests (in equal monetary amounts).

As to the children of her marriage to Thomas C. Stevenson, Jr., Testatrix sought to devise those children the material "fruits" of that marriage–the properties she and Thomas C. Stevenson, Jr. acquired together, as a family. Appellants' reasonable purpose has, and always will be, to honor their mother's clearly stated intent, while ensuring that Respondent Felder is receiving a fair share of the Estate. Absent any evidence that indicates doing so is tantamount to violating their fiduciary duty, the Court should defer to their proposal, and follow the plainly stated intent to keep the Henderson property within the family of Testatrix and Thomas C. Stevenson, Jr.

Appellants reasonable purpose in following the Testatrix's intent clearly supports their proposed distribution, and further, should vindicate any further insinuations of wrongdoing on their part by Respondents or the Courts. Absent an inclination by this Court to adopt a radical new shift in the application of fiduciary principles to Personal Representatives, the Appellants have satisfied their good faith requirements to the other beneficiaries. Accordingly, their Petition should be GRANTED and the decision by the Court of Appeals to the contrary ought be reviewed by this Court.

4. **The Court of Appeals erred in holding that title to property had already passed to the Respondent.**

The Court of Appeals cited to S.C. CODE ANN. § 62-3-101 for the proposition that title to the Property in dispute had already passed to Respondent, and accordingly, the Personal Representatives could not divest her of same. *See*, 2019-UP-412, pp. 3-4. The Court relies only on the first portion of the statute, which states that:

> Upon the death of a person, his real property devolves to the persons to whom it is devised by his last will or to those indicated as substitutes for them in cases involving lapse, renunciation, or other circumstances affecting the devolution of testate estates…

See, S.C. CODE ANN. § 62-3-101. However, the statute, very importantly, continues on "subject to the … purposes of administration, particularly the exercise of the powers of the personal representative…"

Further, the South Carolina Probate Code makes it clear that the Personal Representative retains power over the title to the property, as an absolute owner would, until the completion of administration and the execution of a deed of distribution. *See*, S.C. CODE ANN. §§ 62-3-101; 62-3-710; and 62-3-907. Accordingly, Respondent did not yet have title to the property sufficient to claim that Appellants are divesting her of an interest in same. Appellants, as Personal Representatives, retained power over the title to the real property for purposes of administration. Accordingly, the Court of Appeal's improper application of the applicable law ought to require this Court to GRANT the Petition and review the decision by the Court.

5. **The Court of Appeals erred in holding that the Private Family Settlement Agreement divested the Personal Representatives of their discretionary powers precludes a challenge to the Probate Court's plan of distribution and precludes their present challenge to same.**

The private settlement agreement entered into by all parties' states, in relevant part that:

> [A]ll interested parties have entered into a Private Agreement to resolve all outstanding concerns of the Estate of James Kelly King, and to resolve the majority of the concerns of [Respondent], with the only exception being the allocation of the residuary assets between [Appellants] and [Respondent] [which will either be resolved by a subsequent agreement or will be determined by a later date by the Charleston County Probate Court.

R. 219. The agreement says to the Court, in its most basic terms that, "We, the parties, are either going to settle the matter on our own, or it will be litigated in front of your honor." This agreement is not at all dissimilar from an agreement between parties to voluntarily mediate a case prior to trial. The idea the parties relinquished any say in the process moving forward is incompatible with the Probate Court's decision to allow a hearing with respect to same. If Appellants truly had no more discretion or authority as of the date of an impasse (as the Court of Appeals appears to be suggesting), then it seems puzzling the Probate Court would allow the parties to be heard rather than simply issuing a written Order. Finally, nowhere in the terms of the agreement does it state that any party has relinquished its rights to challenge an Order of the Court; that any such Order is binding and final; or

that no appeal shall be taken therefrom. Certainly, an agreement to voluntarily disavow one's self of a constitutionally protected right to appeal would need to be spelled out in the agreement to be effective.

Appellants requested court approval of their proposed distribution. When the Court decided to disregard the plainly stated intent of the Testatrix in contravention to established case law and to apply new, never before applied, standards in determining how the property ought to be divided, Appellants were completely within their rights to challenge such a ruling. Appellants would submit that given the authority granted to them by the terms of the Will and by statute, the Court ought to have given deference to their proposal. Absent any abuse of their position, the Court ought to have approved the same. Accordingly, Appellants would contend the position adopted by the Court of Appeals with respect to the Private Agreement improperly states the legal effect of same. Accordingly, this Court should GRANT the Petition and review the Court of Appeal's decision.

CONCLUSION

For all of the foregoing reasons stated herein, and in consideration of the logical and legal support thereof, this Court should GRANT the Petition for Writ of Certiorari and review the Appellate Court's decision affirming the Probate Court's holdings.

Respectfully submitted this **22nd** day of **June, 2020.**

By: **SLOTCHIVER & SLOTCHIVER, LLP**

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Hon. Thomas A. Russo, Circuit Court Judge
(The Hon. Tamara C. Curry, Probate Court Judge)

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Jacquelin S. Bennett and Kathleen S. Turner as Personal Representatives of the Estate of Jacquelin K. Stevenson.. *Appellants.*

v.

Estate of James Kelly King and Genevieve S. Felder .... *Respondents.*

PROOF OF SERVICE

I certify that this **22nd** day of **June, 2020**, I have served the **Record on Appeal** on the Respondent, **Genevieve S. Felder**, by electronic mail and by depositing a copy of same in the United States Mail, postage prepaid, addressed to their attorney of record, **George R. McElveen, Esquire**, of the law firm, **McElveen & McElveen**, located at **2229 Bull Street, Columbia, SC 29201.**

Respectfully submitted this **22nd** day of **June, 2020**.

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