

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
CIRCUIT COURT

Kristi Lea Harrington, Circuit Court Judge

Case No. 2017-CP-10-00398
Appellate Case No. 2018-000562

RECEIVED
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SC Court of Appeals

Mary P. Smith, Maezell Mitchell Jefferson, individually and as personal representative of the Estate of Annabelle Thornton, Shirrese B. Brockington, as special administrator of the Estate of Janine Gourdine, Emma Smalls, Viola Pringle, Cephus Thornton, Arthur Graddick, III, an imprisoned person, Venetra Watson, and any known or unknown persons or entities claiming any interest in the Estates of Lucinda Pringle, Odessa Graddick, Arthur Graddick, Jr., Annabelle Thornton and Janine Gourdine,.....Appellants,

v.

Angus M. Lawton, personal representative of the Estate of Lucinda Pringle, Evelina Brown Moses, Thomas P. Brown, Jr., and Unknown PR Rebecca Patricia Brown,.....Respondents.

RECORD ON APPEAL

VOL. 1

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE # 1999ES10-00689

IN RE:
THE ESTATE OF
LUCINDA PRINGLE,

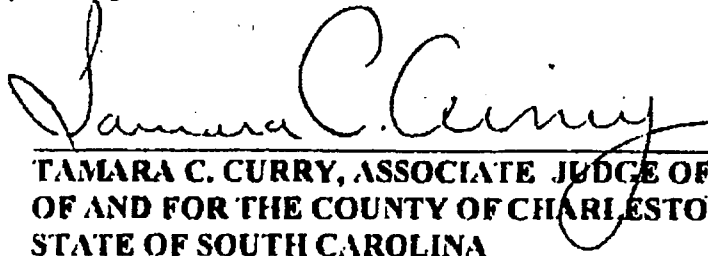
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ORDER

EX PARTE:
IRVIN G. CONDON
JUDGE OF PROBATE

Pursuant to the authority granted unto this Probate Court by and in Probate Court Rule 4, as adopted and made effective by the Supreme Court on March 8, 1983, and upon and after due and appropriate compliance with the purport and purview of Law and Statute herein and hereto relevant and appertaining, the above captioned Case and/or Cause is closed and final discharge entered, with leave to restore upon good cause being shown provided that the subject fiduciary shall be and is fully responsible and liable to the full extent of Law for any and all acts and doings, commissions and/or omissions, prior to the date hereof; but this Order does not alter or release any and all liabilities on and under said Bond prior to the date hereof.

GIVEN under the Hand and Seal of this Probate Court at Charleston, South Carolina, effective the 16TH day of August, 2000.

 (SEAL)
TAMARA C. CURRY, ASSOCIATE JUDGE OF PROBATE
OF AND FOR THE COUNTY OF CHARLESTON,
STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF CHARLESTON

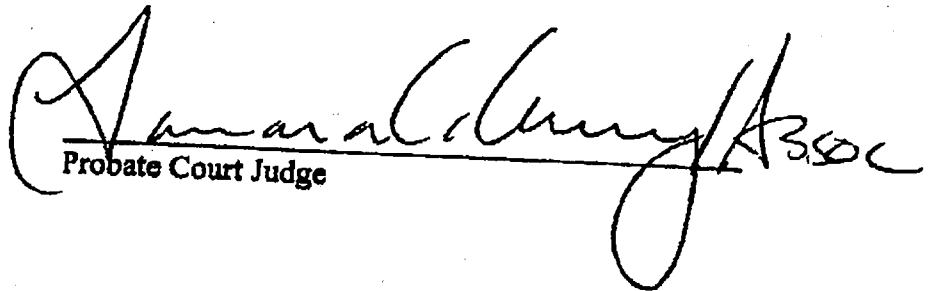
IN THE MATTER OF ESTATE OF LUCINDA PRINGLE

CASE NO.: 1999-ES-10-689-2

ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM (GAL)

I HEREBY APPOINT DAVID L. MICHEL, Esquire, as Guardian ad Litem to represent the interest(s) of REBECCA PATRICIA BROWN in connection with her interest regarding the Petition to be filed for the Recovery of Improper Distributions made by the Estate of Lucinda Pringle.

Executed this 13th day of October, 2005.



Probate Court Judge

*Mailed to Pet
11/15/05
GAL*

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN RE: THE ESTATE OF

LUCINDA PRINGLE

IN THE PROBATE COURT

CASE NO. 1999-ES-10-689

ORDER FOR SPECIAL
ADMINISTRATOR

Hearing Date:

December 15, 2005

Presiding Judge:

Irvin G. Condon

Petitioners:

Evelina Brown Moses

Thomas P. Brown, Jr.

Rebecca Patricia Brown

Petitioner's Attorneys:

Stephen M. Slotchiver, Esq.

Jonathan S. Altman, Esq.

Peters Wilborn

Respondents:

Estate of Lucinda Pringle

Emma Smalls

Mary P. Smith

Estate of Annabelle Thornton

Estate of Janine Gourdine

Odessa Graddick

Arthur Eugene Gradick, Jr.

Viola Pringle

Maezell Mitchell

Cephus Thornton

Other Persons and entities claiming an interest
in the Estate of Lucinda Pringle

Respondent's Attorneys:

Michael R. Daniel, Esq.

Charles Goldberg, Esq.

Edward Guerard, Esq.

This matter comes before this Court on an Application and Petition for Subsequent Administration and for the Appointment of a Special Administrator, filed by Stephen M. Slotchiver, Esquire, on behalf of his clients. Present in the courtroom were attorneys Slotchiver and Altman for Petitioners, and attorneys Daniel, Goldberg, and Guerard for Respondents. Also present were Maezell Mitchell, Viola Pringle, Loretta Richardson, Emma Smalls, Robert Pringle, Cephus Thornton, John Smalls, Arthur Smalls, and Vanetra Watson-Ealey. Some of these

persons were represented by counsel; however most indicated that they had not sought representation at that time.

Petitioners represent several facts to the Court in support of their Petition. Decedent died October 11, 1989, a resident of Charleston County. The estate was administered in the Charleston County Probate Court. Annabell Thornton, the previously appointed Personal Representative, was discharged on June 26, 2001. At the time of the previous administration, it was believed that decedent died intestate. Her assets were distributed in accordance with the laws of intestacy.

On August 4, 2005, Petitioner, Ms. Evelina Brown Moses, filed with this Court a document purporting to be decedent's Last Will and Testament. It is alleged in the Application/Petition for Subsequent Administration that this Will was "concealed" causing the assets to be distributed through intestacy. Appointment of a Special Administrator has been requested to ensure proper and timely administration for the benefit of this estate and to allow for discovery in this matter.

South Carolina Probate Code section 62-3-614 permits the formal appointment of a special administrator upon "finding ... that appointment is necessary to preserve the estate or to secure its proper administration." The Court now appoints, Shirrese B. Brockington, Esquire, to serve as Special Administrator and the Court waives bond for the Special Administrator. Pursuant to S.C. Code Ann. § 62-3-617 (Law Co-op. 1976) the Special Administrator has the power of a general personal representative as applied under the relevant provisions of the South Carolina Probate Code.

This appointment for Special Administrator shall terminate, pursuant to S.C. Code Ann. § 62-3-618 (Law Co-op. 1976), upon the closing of the decedent's Estate. Furthermore, the

 22

Special Administrator shall not be personally liable for claims filed against the Decedent or the expenses incurred by the Decedent before or after her death. However, the Special Administrator shall proceed with the administration of this Estate and apply any and all assets to properly filed claims or judgments against the Estate, as determined by the South Carolina Probate Code, and distribute the remaining assets among the devisees or intestate heirs pursuant to the South Carolina Probate Code.

In addition, Ms. Brockington shall keep records of all her time devoted to this file and submit a bill for her fees at the conclusion of this Estate. These fees shall be paid from the Estate upon Court approval.

IT IS SO ORDERED.



Irvin G. Condon
Judge of Probate

This 4th day of January, 2005.
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL, ESQ.
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, ESQ. as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

IN THE PROBATE COURT

CASE NO. 1999-ES-10-689-2

ORDER

Hearing Date: April 8, 2008
Judge: Irvin G. Condon
Petitioner's Attorneys: S. Alan Medlin, Jonathan S. Altman, and Stephen M. Slotchiver
Respondent's Attorneys: Edward P. Guerard, Jr. and Charles S. Goldberg
Court Reporter: A. William Roberts, Jr. & Associates

INTRODUCTION

Lucinda Pringle died on October 11, 1989 and was vested with an undivided fifty (50) percent ownership in a ten and one-half (10 1/2) acre tract of land located on or near U.S. Highway 17 North in Mount Pleasant, South Carolina.

Lucinda Pringle's surviving heirs were three daughters (Mary Smith, Annabelle Thornton, and Janine Gourdine, the Respondents) and three children of a deceased daughter (Evelina Brown Moses, Thomas P. Brown, Jr., and Rebecca Patricia Brown, the Petitioners). The estate was administered as an intestate estate. An alleged will which devised the property exclusively to the Petitioners, the three children of the deceased daughter, was allegedly withheld until 2005.

This litigation involves the attempt to reopen the estate to probate the alleged will of Lucinda Pringle.

PROCEDURAL HISTORY

This matter comes before me upon the Petitioners' Motion for Vacation of the Order of June 25, 2001 as well as the Respondents' Return to Motion and Motion to Dismiss under Rules 12 and 60(b)(3), SCRPC.

I held a hearing on the Motion on April 8, 2008. Alan Medlin, Esquire, Jonathan Altman, Esquire, and Stephen Slotchiver, Esquire represented the Petitioners. David Michel, Esquire, represented the Petitioner, Rebecca Patricia Brown, as her guardian *ad litem*. Appearing for the Respondents were Edward P. Guerard, Jr. Esquire, and Charles S. Goldberg, Esquire. Shiresse B. Brockington, Esquire, appeared in her capacity as Special Administrator of the Estate of Janie Gourdine. One of the Respondents, Mary P. Smith, recently passed away. By consent of the attorneys, Ms. Smith's daughter, Shirley Haile Howard, was appointed as Special Administrator

of the Estate of Lucinda Pringle, and Ms. Haile-Howard and her brother, Robert Pringle, are Ms. Smith's sole heirs at law and are substituted in Mrs. Smith's place for purposes of this matter.

The Petitioners move under Sections 62-3-412 and 413 of the South Carolina Probate Code, S.C. Code Ann. §§ 62-3-412, 13 (1976). Their basic position is that the Petitioners did not receive a copy of the "order" or any of the required notices in the intestate Estate of Lucinda Pringle, and therefore, the estate is still open to an "appeal" or "formal testacy" allowing Petitioners to have an opportunity to have the alleged original last will and testament of Lucinda Pringle, which was allegedly fraudulently withheld, admitted to probate.

Respondents argue that the ten-year statute of limitations of Section 62-3-108 prevent the probate of any will at this time.

FINDINGS OF FACT

At the time of Lucinda Pringle's death on October 11, 1989, she was vested with a one-half (½) undivided interest in the ten and one-half (10 ½) acre tract of land known as 2517 Old Georgetown Road, Mt. Pleasant, SC 29466, TMS No. 578-00-00-026.

Respondents filed the application for an informal appointment In The Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No. 1999-ES-10-689. The court administered the estate as an informal appointment and intestacy in accordance with § 62-3-301(4), Code of Laws of South Carolina, as amended. The Personal Representative designated the respondents and the petitioners as the heirs at law of Lucinda Pringle.

The estate was probated and a Deed of Distribution dated April 6, 2000, was recorded April 17, 2000, in the RMC Office for Charleston County in Book U369, at Page 558 (copy admitted into evidence).

JPC
3/13

The court issued a Certificate of Discharge on June 26, 2001, closing the estate; though by an oversight, the Court did not issue a formal written order closing the estate.

On September 21, 2001, Thomas Brown, Jr., as an "heir of Lucinda Pringle" executed a Grant of Perpetual Easement for the Commissioner of Public Works of the Town of Mt. Pleasant recorded in the RMC Office for Charleston County in book Y383, at page 484, on October 2, 2001 (certified copy admitted into evidence).

On or about October 20, 2005, Petitioners filed their Summons and Petition for Recovery of Improper Distribution. The parties amended the Petition by Consent Order of October 2, 2007 to properly reflect the parties to the action.

On January 8, 2007, the Petitioners filed their Motion to Vacate the Order of June 25, 2001.

In the October or November of 1989, the parties acknowledged the awareness of at least a copy of the alleged will within several days after the death of Lucinda Pringle. On another occasion about three years later, Thomas Brown, Jr., acknowledged possession of a copy of the will and made various attempts (though legal counsel was not retained) to file the copy of the will in the Probate Court for Charleston County.

Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings Fire and Casualty Insurance Company with reference to damages which resulted to the house she resided in on the decedent's property. As a result of the claim, the insurance company issued a check naming as payees the Petitioners and Emma Smalls as "executors of the estate" of the decedent on January 15, 1990. The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in Lucinda Pringle's will. Ms. Smalls used the monies received from this check to repair the home on the decedent's property in which Ms. Smalls resided.

On or about August 3, 2005, Petitioner Evelina Brown Moses affirmed that she received the original will from Emma Smalls. On August 4, 2005, Petitioner Evelina Brown Moses filed the original will with this Court. Emma Smalls, as well as all of the other Petitioners, now deny knowing of the existence of the will.

In summary, Lucinda Pringle's estate was distributed as if it were an intestate estate. Personal Representative Annabelle Thornton received from this Court a Certificate of Discharge dated June 26, 2001 releasing her from the office as Personal Representative and from liability of bond.

CONCLUSIONS OF LAW

I. SECTION 62-3-108 - ULTIMATE TIME LIMIT

The outcome of this case hinges on the interpretation of S.C. Code Ann. § 62-3-108 (Supp. 2006) which reads in part as follows:

Section 62-3-108. Probate, testacy, and appointment proceedings; ultimate time limit

No informal probate or appointment proceeding...may be commenced more than ten years after the decedent's death. [There are three exceptions stated but none apply to this case. See FNI]¹

If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death... it is incontestable that the decedent left no will and that the decedent's estate passed by intestate succession... (emphasis added)

108 is a derivation of the three-year ultimate time period established by the Code § 3-108. Courts construing this provision uniformly hold that the time

¹ The three exceptions to the 10-year ultimate time limit set forth above are listed as follows and do not apply to our situation

- 1 previous proceeding dismissed because of doubt of fact of decedent's death
- 2 determination of date of death of missing, absent, or disapproved person
- 3 Proceeding to contest an informally probated will may be commenced within the later of 3 months from informal probate or 1 year from decedent's death

period contained therein is not subject to tolling for fraud, estoppel or other exceptions not found within the statute itself.

Because there is no South Carolina case law directly on point this court must look to other jurisdictions for guidance. *In Re Estate of Taylor*, 207 Mont. 400, 675 P.2d 944 (Mont. 1984), held that claims of fraud or estoppel did not toll the "ultimate time limit" in Montana's counterpart to § 62-3-108 because the statute was clear, unambiguous, and provided no exceptions for fraud or estoppel.

The court in *In Re Estate of Buca*, 984 P.2d 782 (N.M.App.1999), agreed. In that case, a claimant properly invoked one of the limited exceptions within New Mexico's counterpart to § 62-3-108 but then sought to recover money damages or approval of a new distribution. The court, applying the statute "directly and without nuance," held that the claimant could not go beyond the limited exception explicitly granted within the statute.

In *In Re Wood*, 147 Ariz.366, 710 P.2d 476 (Ariz.App. 1985), the court held that Arizona's counterpart to § 62-3-108 is not an ordinary statute of limitations which could be waived, but rather a statutory limit on the probate's court's power or jurisdiction to admit the will. Surveying the relevant comments to the Uniform Probate Code, the court reasoned that the ultimate time limit was more than an ordinary statute of limitation and not subject to tolling. It concluded that the statute barred a claim to admit a will that purportedly had not been discovered until after the ultimate time limit had passed.

Likewise, the court in *Martin v. Martin*, 77 Hawaii 251, 883 P.2d 673 (Ct.App. 1994), held that Hawaii's counterpart to § 62-3-108 prevented an heir from probating a will that the heir had found earlier but failed to probate within the time limit. The court held that its result was contrary to the terms of the will, but mandated by the statute.

The comments to the Uniform Probate Code provide

As originally approved and read with 3-102's requirement that wills be probated before being admissible in evidence, this section created a three-year-from-death time period within which proceedings concerning a succession (other than a determination of heirs, or will interpretation or construction) must be commenced. Unless certain limited exceptions were met, an estate became conclusively intestate if no formal or informal estate proceeding was commenced within the three year period, and no administration could be opened in order to generate a deed of distribution for purposes of proving a succession.

Several of the original UPC states rejected the three year bar against late-offered wills and the correlated notion that formal proceedings to determine heirs in previously unadministered estates were necessary to generate title muniments locating inherited land in lawful successors. Critics preferred continued availability of UPC's procedures for appointing p.r.'s whose distributive instruments gave protection to purchasers. The 1987 technical amendment to 3-108 reduced, but failed to eliminate, instances in which original probate and appointment proceedings were barred by the 3 year limitation period.

South Carolina adopted the Uniform Probate Code, in part, to have consistent law around the country.

The South Carolina Court of Appeals ruled in *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81 (Ct. App. 2007) that:

In determining whether the statute of repose was tolled, the South Carolina Supreme Court explored whether the statute of repose is substantive or procedural and distinguished statutes of repose and statutes of limitation. *Id.* At 403-04, 438 S.E.2d at 243. The court stated, "[a] statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Id.* At 404, 438 S.E.2d at 243 (emphasis added). The court in *Langley* additionally declared "[a] statute of repose constitutes a substantive definition of rights rather than a procedural limitation provided by a statute of limitation." *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242 (S.C. 1993); see also *Florence County Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 559 S.E.2d 866, 869 (Ct. App. 2002) (distinguishing statutes of repose from statutes of limitation, determining that a statute of repose involves a substantive right while citing *Langley*).

In *Langley*, the court discussed the purpose of statutes of repose:

Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists. 313 S.C. at 404, 438 S.E.2d at 244.

The court in *Langley* further explained:

Society benefits when claims and causes are laid to rest after having been viable for [a] reasonable time. When causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission. This is not only for the convenience of society, but also due to necessity. At that point, society is secure and stable. 313 S.C. at 404, 438 S.E.2d at 244.

Section 62-3-108 is not an ordinary statute of limitations, but the ultimate statute of limitations which cannot be waived or tolled. It is a statutory limit on the probate court's power or jurisdiction to admit a will. "The underlying purpose and policies of this code are: . . . (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distributions to his successors." S.C. Code Ann. § 62-1-102. "Finality in the administration of estate is implicit in this state purpose. At some point during administration, intestacy must be conclusive." *Matter of Estate of Wood*, 147 Ariz. 366 (Ariz. App. 1985).

As of October 11, 1999, ten years after the death of the decedent, Lucinda Pringle, at which time any rights that the Petitioners had, may have had or might have had beyond that date ceased to exist absolutely and jurisdictionally. Therefore, the decedent's estate would pass by intestate succession as a matter of law. Accordingly, this court, until a South Carolina appellate court finds otherwise, reluctantly follows other UPC states in holding that Section 3-108 is an ultimate time bar on later offered, even if fraudulently withheld, wills.²

² Case law in other non-UPC jurisdictions could support a different conclusion. *Accord Long v. Fohl*, 252 S.W. 327 (Tex. Civ. App. 1923), *trustworthy v. Carter*, 291 S.W. 626 (Tex. Civ. App. 1927). See *Fidler v. Chaffin*, 450 P.2d 113 (Ala. 1969) (holding that the statute of limitations was tolled upon a finding of fraudulent concealment).

II. PETITIONER'S ARGUMENT OF LACK OF NOTICE

The Petitioners allege that they did not receive a copy of the "order" or any required notice of the intestate administration of the Estate of Lucinda Pringle and therefore the estate is still open to probate the alleged will.

Section 62-3-412, formal testacy proceedings; effect of order; vacation; provides substantially as follows:

[S]ubject to vacation..., an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid Will, and to the determination of heirs, except that:

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of the relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under... (2) above must be filed prior to the earlier of the following limits:

i. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.

ii. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by §62-3-108 when it is no longer possible to initiate an original proceeding to probate a Will of the decedent.

iii. Twelve months after the entry of the Order sought to be vacated.

also Second Nat'l Bank & Trust Co. v. First Sec. Nat'l Bank & Trust Co., 398 S.W.2d 50 (Ky. 1965) (holding that affirmative fraud would toll the statute of limitations for probate of wills). But see State ex rel. Rice v. Bigger, 478 S.W.2d 147 (Mo. 1974) (holding that statute not tolled because of fraudulent concealment). See generally E.S. Croff, What circumstances excuse failure to submit will for probate within time limit set by statute, 17 A.T.R. 31 (1961) (1968)

The exceptions set out in subparagraphs (2) and (3) above control. Petitioners were in fact included in the determination of the intestate estate. They were aware of their relationship to the decedent and aware of her death. The deed of distribution and the proofs of delivery are evidence of inclusion and notice, along with the easement.

The record reflects the Petitioners' were named as heirs on the Application For Informal Appointment and were listed as receiving the Information to Heirs and Devisees in the Proof of Delivery filed by then Personal Representative, Janine Gourline and Proof of Delivery for the closing document (the Final Accounting, Proposal for Distribution, Petition for Settlement, and Notice of Right to Demand Hearing) by the Personal Representative Annabelle Thornton. The issue of notice to Rebecca Patricia Brown, an incapacitated person, is covered by S.C. Code Ann § 62-1-403 (Supp. 2007) which provides that "... orders binding a guardian bind the ward if no conservator of his estate has been appointed." Her siblings were acting as her guardian. Furthermore, Petitioner Brown executed an easement as an heir in September 2001.

There is a presumption that the events in the file met the requirements of this court. In the case of *Miles v. Lee*, 319 S.C. 271, 460 S.E.2d 423 (Ct. App. 1995), the court relied upon the United States Supreme Court decision in *Fouche v. Royal Indemnity Co.*, 217 S.C. 147, 60 S.E.2d 73 (1950), in *Fouche*, the Plaintiffs collaterally attacked a prior probate court judgment for lack of jurisdiction over them asserting that the record did not contain a petition and order showing a guardian *ad litem* had been appointed for them during their minority at the time of the probate proceeding.

The Court held that where the record is silent, the presumption is that all necessary jurisdictional facts appear, and no collateral attack can be made upon the judgment, unless it affirmatively appears upon the face of the record that the Court had no jurisdiction of the parties, when the record is silent, the Court will presume that what should have been done was done.

However, regardless of the argument of Petitioners that proper notice was not given to them, they failed to timely file the Motion to Vacate the Order of Discharge as explained above and required by § 62-3-412(2)(3).

In the administration of the Pringle estate, the Petitioners were included as heirs at law for their respective intestate shares in the real estate. They would not have received any greater or lesser share had they actively participated in the intestacy. Personal Representative Annabelle Thornton issued and recorded a Deed of Distribution which recognized the Petitioners' interest. A Deed of Distribution from a Personal Representative is evidence that the distributee has succeeded to the interest of the estate. See S.C. Code Ann. 62-3-908 (Supp.2006) and *Osterneck v. Osterneck*, 649 S.E.2d 127 (S.C.Ct.App. 2007), decided June 27, 2007, arch den Aug 24, 2007)

South Carolina Code Ann. § 62-3-102 denies the use of unprobated wills as evidence. It provides, "Except as provided in § 62-3-1201 [for certain estates less than \$10,000]," to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the court or an adjudication of probate by the court." The Official Comment to this statute aptly notes that, "The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108." In short, § 62-3-102 provides that unprobated wills are not evidence of anything, and confirms that the time limits to start the required proceeding to probate a will are established by § 62-3-108.

Section 62-3-102 thus codifies the general rule that unprobated wills are not admissible. See, e.g., *Somerville v. Randall*, 908 A.2d 1155, 1156 n. 1 (D.C. 2006) treating a case as if the decedent died intestate despite the record evidence of an unprobated will because, "It is commonly accepted that a will has no legal effect until it is probated."

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Martin v. Martin, 883 P.2d 673 (Hawaii 1994), is also directly on point. There, intestate heirs began proceedings for a "Determination and Declaration of Heirs and to Partition" which claimed that the decedent died intestate and sought to divide the intestate shares. One of the heirs disputed that the estate was intestate and sought to admit a purported will into probate to contest the intestacy allegations. The probate court found that the will was a valid will but declined to give it any effect because it was not probated within the time allowed by that state's counterpart to S.C. Code Ann. § 62-3-108. On appeal, the disgruntled heir argued that he was not trying to probate the will but only use it as evidence of his status as the sole heir. The court did not disagree. Citing its counterpart to S.C. Code Ann. § 62-3-102, the court held that the heir was precluded from using the unprobated Will as evidence to defeat the claims for intestate succession.

III. COPY OF THE WILL

S. C. Code Ann. § 62-3-402 provides the method in which a copy of a will in the absence of the original may be submitted to probate. The copy may be attached to the petition stating the contents of the original will and indicate that the original is lost, destroyed, or otherwise unavailable. In this matter, this was not done.

VI. S.C. STAT. ANN. § 62-3-1008 SUBSEQUENT ADMINISTRATION

Petitioners argue that § 62-3-1008 allows that an estate can be reopened for good cause. Clearly, the Petitioners have shown good cause but a claim previously barred cannot be asserted in the subsequent administration. Therefore, § 62-3-108 bars the Petitioners' claim

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V. PETITIONERS ARGUE § 62-3-1006

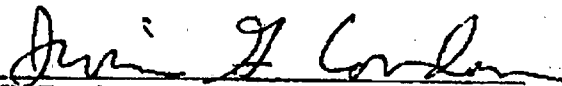
Lastly, it is understood that Petitioners are relying on S.C. Code Ann. § 62-3-1006. This statute applies to claims not "otherwise barred" Petitioners attempt to admit the will is "otherwise barred" by § 62-3-108.

CONCLUSION

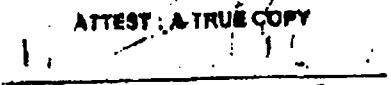
Based upon the material facts in this case and the applicable statutes and cases, this court finds that it has no choice other than to rule that it is incontestable that the decedent left no will, and that the decedent's estate passed by intestate succession.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Vacate and the Petition for Improper Distribution are dismissed.

IT IS SO ORDERED.


Irvin G. Condon
Judge, Charleston County Probate Court

This the 20th day of October, 2008 
Charleston, South Carolina

ATTEST: A TRUE COPY

CLERK PROBATE COURT
CHARLESTON COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Appellants,

VS.

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 08-CP-10-006213

ORDER

2009 JUN 25 AM 10:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Background

This case came before this Court on appeal from a decision by the Honorable Irvin G. Condon in the Charleston County Probate Court, dated October 20, 2008, and I heard oral argument on April 29, 2009. The Appellants were represented by Johnathan S. Altman, Esquire, Alan J. Medlin, Esquire and Stephen M. Slotchiver, Esquire, and the Respondents by Charles S.

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Goldberg, Esquire and Edward P. Guerd, Jr., Esquire.

Facts and Procedural History

Lucinda Pringle, the decedant, died on October 11, 1989, owning a tract of land in Charleston County. Respondents filed an application for informal appointment of a Personal Representative of the Estate of Lucinda Pringle on May 5, 1999. However, no will was offered for Probate within 10 years of Ms. Pringle's death. The Probate Court administered the estate as an informal appointment assuming intestacy in accordance with S.C. Code Ann. 62-3-301(4).

The Personal Representative designated the Respondents and the Appellants as the heirs at law of Lucinda Pringle. A deed of distribution to Appellants and Respondents was issued on April 6, 2001 which evidences that the parties to this litigation are the heirs at law of Lucinda Pringle, deceased by way of intestate succession. A certificate of discharge was issued on June 26, 2001 to the Personal Representative of the Estate of Lucinda Pringle.

Mysteriously, on August 3, 2005, Evelyn Moses was given the alleged last will and testament of Lucinda Pringle by Emma Smalls. Moses filed the will with the Probate Court on August 4, 2005. Emma Smalls, as well as all of the other Respondents deny knowing of the existence of the will. On October 20, 2005, sixteen years after Ms. Pringle's death, Appellants filed their Petition for Recovery of Improper Distribution.

The Respondents filed an Amended Return to Motion and Motions to Dismiss under Rules 12 and 60(b)(3), SCRCP, and the Probate Court ruled for the Respondents as set forth in Judge Condon's Order of October 20, 2008.

The Probate Court had before it the following evidence which was admitted without objection:

1. Lucinda Pringle died on October 11, 1989. (Return, Tab 1)

2. The Respondents filed the application for an informal appointment in The Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No.: 1999-ES-10-689. (Return, Tab 2)

3. Deed of Distribution to Appellants and Respondents dated April 6, 2001 and recorded on April 25, 2001 in the Charleston County RMC Office in Bk U369, page 558, (Return, Tab 21) which evidences that the parties to this litigation are the heirs at law of Lucinda Pringle, deceased by way of intestate succession. (Return, 99-ES-10-00689(2))

4. A Certificate of Discharge was issued on June 26, 2001 to the PR for the Estate of Lucinda Pringle, 99-ES-10-689. (Return, Tab 27)

5. On October 20, 2005, Appellants filed their Summons and Petition for Recovery of Improper Distribution. (Return, Tab 36)

6. On January 8, 2007, Appellants filed their Motion to Vacate the Order of June 25, 2001. (Actual date was June 26, 2001). (Return, Tab 37)

7. The will in question was not filed for Probate with the Probate Court for Charleston County prior to October 11, 1999. (Return)

8. Neither informal probate nor formal testacy proceedings were commenced within 10 years after the decedent's death. (Return)

Question Presented

1. Did the Probate Judge err by granting Respondent's motion to dismiss Appellant's claim for recovery of improper distribution and motion to vacate, where Appellants commenced neither informal probate nor formal testacy proceedings within 10 years of the decedent's death?

Standard of Review

The grounds for appeal from the Order of Judge Condon all address the Appellants interpretation of the Court's application of the Probate Code concerning § 62-3-412, 62-3-403,

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62-3-413, 62-3-400 culminating in § 62-3-108 which defines the ultimate time limit for commencing the probate of a will – 10 years after the date of death of the deceased.

The applicable portion of § 62-3-108 is as follows:

If no informal probate and no formal testacy proceedings are commenced within 10 years after the decedent's death, . . . it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession...

In this case, the Appellants' right to relief is statutory. In *Harvey v. S.C. Dept of Corrections*, 338 S.C. 500, 507, 527 SE2d 765, 769 (Cl. App. 2000), the court held "that where the right to relief is entirely statutory, the action is one at law." The South Carolina Courts have consistently held that "it is the substance of the requested relief that matters regardless of the form in which the request for relief was framed." See *Historic Charleston Holdings, LLC v. Mallon* (2009 SC 0218.44, Op. No. 26601, S.C. Sup. Ct. Feb. 17, 2009).

The Court finds that this is an action at law. Accordingly, "if the proceedings in the Probate Court are in the nature of an action at law, the Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them." *In re Estate of Weeks*, 329 S.C. 251, 495 SE2d 454 (Cl. App. 1997) quoting. *In re Howard*, 315 S.C. 356, 434 SE2d 254 (1993).

Discussion

As stated in *Harrison v. Bevilacqua*, 354 S.C. 129, 580 SE2d 109 (2003) our Supreme Court found that:

[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.

In enacting the 10 year statute of repose of 63-3-108 S.C. Code Ann., the legislature did



not impose any defenses to the statute (i.e. fraud, misrepresentation, incapacity), nor did it provide any tolling mechanism. It is absolute. The Probate Court found that 62-3-108 is a statute of repose and that neither informal probate nor a formal testacy proceeding was commenced within 10 years after the decedent's death.

Based upon a review of the record by this Court, I find that there was substantial evidence to support the rulings of the Probate Court.

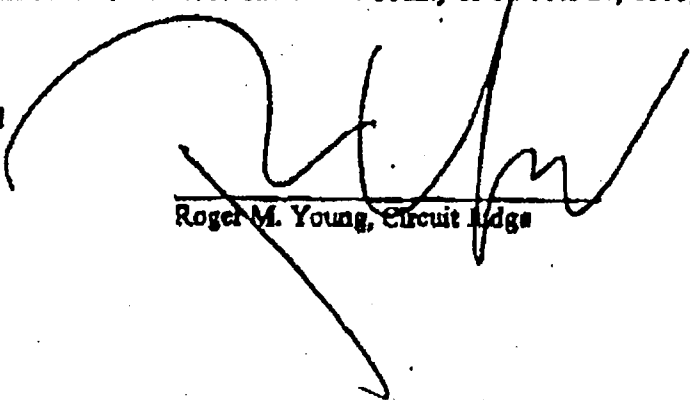
Accordingly, the Probate Court properly applied the applicable law to the evidence in concluding in its Order of October 20, 2008, which states in pertinent part:

As of October 11, 1999, ten years after the death of the decedent, Lucinda Pringle, at which time any rights that the Petitioner had, may have had or might have had beyond that date ceased to exist absolutely and jurisdictionally. Therefore, the decedent's estate would pass by intestate succession as a matter of law. (Page 8 of said Order)

Therefore:

IT IS ORDERED, ADJUDGED AND DECREED that the Appellants' Appeal is dismissed, and the Order of the Probate Court for Charleston County of October 20, 2008, is hereby AFFIRMED.

IT IS SO ORDERED!


Roger M. Young, Circuit Judge

Charleston, SC

 2009

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Evelina Brown Moses, Thomas
P. Brown, Jr., and David L.
Michel, as Guardian ad Litem
for Rebecca Patricia Brown, Appellants,

v.

Shirley Haile-Howard, as
Personal Representative of the
Estate of Mary P. Smith and as
Personal Representative of the
Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as
Personal Representative of the
Estate of Annabelle Thornton,
Shirrese B. Brockington, as
Special Administrator of the
Estate of Janine Gourdine,
Arthur Smalls as Personal
Representative of the Estate of
Emma Smalls, and any known
or unknown persons or entities
claiming any interest in the
Estates of Mary P. Smith,
Lucinda Pringle, Annabelle
Thornton, Janine Gourdine and
Emma Smalls, Respondents.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2011-UP-386
Submitted December 1, 2010 – Filed August 9, 2011

REVERSED AND REMANDED

Jonathan S. Altman and Stephen M. Slotchiver, both
of Charleston, for Appellants.

Edward P. Guerard, Jr. and Charles S. Goldberg, both
of Charleston, for Respondents.

PER CURIAM: Lucinda Pringle (Decedent) passed away on October 11, 1989. Decedent had five daughters: Janine Gourdine; Annabell Thornton; Emma Smalls; Mary P. Smith; and Evelina Brown. Evelina Brown predeceased her mother in 1987. Janine Gourdine filed a petition in the probate court indicating Decedent died with "no will" on May 5, 1999. Subsequently, the probate court issued an order stating "the above captioned Case and/or Cause is closed and final discharge entered, with leave to restore upon good cause being shown" On October 20, 2005, Evelina's children, Appellants Evelina Brown Moses, Thomas Brown, Jr., and Rebecca Patricia Brown, filed a petition for recovery of the improper distribution of Decedent's estate based upon the discovery of an allegedly fraudulently concealed will. The probate court dismissed Appellants' petition, finding section 62-3-108 of the South Carolina Code (2009) operated as an absolute bar to Appellants' claims. The circuit court affirmed. We reverse and remand.¹

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

1. As to Appellants' argument that the probate court and the circuit court erred in failing to reopen the estate, we first find the probate court's unappealed finding of good cause shown is the law of the case. See Harris Teeter, Inc. v. Moore & Van Allen, PLLC, 390 S.C. 275, 282 n.5, 701 S.E.2d 742, 745 n.5 (2010) (noting an unappealed ruling is the law of the case). Further, Appellants have set forth allegations of extrinsic fraud, which constitute good cause to reopen the estate. Decedent was predeceased by one of her five daughters, Evelina Brown, the mother of Appellants. One by one, Decedent's other daughters lived their lives and passed away, until the last surviving daughter confessed to Evelina's children that she and her sisters had hidden the existence of the will in order to live out their lives on the property Decedent intended Appellants to inherit from her last will and testament. Thus, the evidence supports the finding of the probate court that there is good cause to reopen the estate. See Chewning v. Ford Motor Co., 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003) (defining extrinsic fraud as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard"). Second, the Probate Code permits modification or vacation of an order for good cause shown. See S.C. Code Ann. § 62-3-1008 (2009)² ("If other property of the estate is discovered after an estate has been settled and the personal representative discharged or for other good cause, the court upon petition of any interested person and upon notice as it directs may appoint the same or a successor personal representative to administer the subsequently opened estate."); see also S.C. Code Ann. § 62-3-413 (2009) ("For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal."). Third, we interpret section 62-3-108 of the South Carolina Code (2009) to prevent the *commencement* of an action to probate an estate more than ten years after the decedent's death. See S.C. Code Ann. § 62-3-108 ("No informal probate or appointment proceeding . . . may be commenced more than ten years after the decedent's death . . ."); cf. Robinson v. Estate of Harris, 388 S.C. 616, 622-25, 698 S.E.2d 214, 218-19 (2010) (finding section 15-67-90 of the South Carolina Code (2005) is not an absolute bar where there are allegations of extrinsic fraud). Because the law of the case is that Appellants have demonstrated good cause to reopen the

² Section 62-3-1008 was amended effective June 7, 2010. See Act No. 244, 2010 S.C. Acts 1775. The amendments did not substantively change the code section.

estate and the administration of the estate was timely commenced pursuant to section 62-3-108, we reverse and remand to the probate court for further proceedings consistent with this opinion. ✱✱✱

2. As to Appellants' argument that the probate court and circuit court erred in finding submission of the will was not timely where no order closing the estate had been issued, we disagree with Appellants' argument that the estate has not been closed because the court has not issued an order according to section 62-3-1001 of the South Carolina Code (2009).³ We construe the language of section 62-3-1001 as permissive and not mandatory. See S.C. Code Ann. § 62-3-1001(c) (2009) ("[T]he court *may* enter an order or orders, on appropriate conditions, determining testacy, determining the persons entitled to distribution of the estate, and, as circumstances require, approving settlement and directing or approving distribution of the estate, terminating the appointment of the personal representative, and discharging the personal representative from further claim or demand of any interested person.") (emphasis added). Nonetheless, we reverse and remand because Appellants have demonstrated good cause to reopen the estate.

3. As to Appellants' argument that the circuit court applied an incorrect standard of review, we find no error by the circuit court. See In re Estate of Pallister, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("An action to contest a will is an action at law."); Neely v. Thomasson, 365 S.C. 345, 349-50, 618 S.E.2d 884, 886 (2005) ("When a probate court proceeding is an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."); Id. at 350, 618 S.E.2d at 886 ("Questions of law, however, may be decided with no particular deference to the lower court."); In re Campbell, 379 S.C. 593, 599, 666 S.E.2d 908, 910-11 (2008) ("The interpretation of a statute is a question of law for the [c]ourt.").

REVERSED AND REMANDED.

³ Section 62-3-1001 was also amended effective June 7, 2010. See Act No. 244, 2010 S.C. Acts 1774. The amendments rewrote subsection (c) but did not substitute the permissive word "may."

THOMAS, PIEPER, and GEATHERS, JJ., concur.

00502

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas P.)
Brown, Jr., and David L. Michel, as)
Guardian Ad Litem for Rebecca)
Patricia Brown,)
Petitioners)

Vs.)

Shirley Haile-Howard, as Personal)
Representative of the Estate of Mary)
P. Smith and as Personal)
Representative of the Estate of)
Lucinda Pringle, Maezelle Mitchell)
Jefferson, as Personal Representative)
of the Estate of Annabelle Thornton,)
Shirrese B. Brockington, as Special)
Administrator of the Estate of)
Janine Gourdine, Arthur Small, as)
Personal Representative of the Estate)
of Emma Smalls, and any unknown)
persons or entities claiming any)
interest in the Estate of Mary P.)
Thornton, Janine Gourdine and)
Emma Smalls,)
Respondents.)

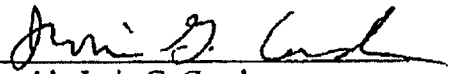
ORDER

On November 9, 2012, a Final Hearing was held on the Estate of Lucinda Pringle. Present at the Hearing were attorneys Stephen M. Slotchiver and Jonathan Altman representing the Petitioners, Charles Goldberg and Edward P. Guerard, Jr. representing Respondents Estate of Emma Smalls, Estate of Annabelle Thornton, and the Estate of Mary Smith, and Shirrese B. Brockington, in her capacity as Special Administrator of the Estate of Janine Gourdine.

After arguments presented by counsel, this Court hereby finds that based on the South Carolina Court of Appeals' decision issued on August 9, 2011, that this Court hereby accepts for Probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988, Petitioners shall submit a Form 300 Application to open the Estate (either formally or informally) with this Court on or before ~~November 30, 2012~~.

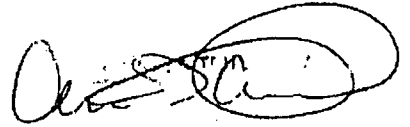
April 15, 2013. (P)

IT IS HEREBY SO ORDERED.


The Honorable Irvin G. Condon
Judge of Probate

Charleston, South Carolina

March 24, 2012
2013 



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas P.)
Brown, Jr., and David L. Michel, as)
Guardian Ad Litem for Rebecca)
Patricia Brown,)

Petitioners,)

vs.)

Shirley Haile-Howard, as Personal)
Representative of the Estate of Mary)
P. Smith and as Personal)
Representative of the Estate of)
Lucinda Pringle, Maezelle Mitchell)
Jefferson, as Personal Representative)
of the Estate of Annabelle Thornton,)
Shirrese B. Brockington, as Special)
Administrator of the Estate of)
Janine Gourdine, Arthur Small, as)
Personal Representative of the Estate)
of Emma Smalls, and any unknown)
persons or entities claiming any)
interest in the Estate of Mary P.)
Thornton, Janine Gourdine and)
Emma Smalls,)

Respondents.)

ORDER

Date of Hearing:	June 26, 2013
Presiding Judge:	Irvin G. Condon
Petitioners' Attorneys:	Jonathan S. Altman, Esquire, and Stephen M. Slotchiver, Esquire
Respondents' Attorneys:	Charles Goldberg, Esquire, and Edward P. Guerard, Esquire
Court Reporter:	Denise Lauder, Carolina Reporting

THIS MATTER came before the Court upon Respondents' Motion to Amend or Alter this Court's Order of March 24, 2013. Present at the hearing were attorney Stephen M. Slotchiver, Esquire, and Jonathan S. Altman, Esquire, representing the Petitioners, and Charles

Goldberg, Esquire, and Edward P. Guerard, Esquire, representing the Respondents, the Estate of Emma Smalls, the Estate of Annabelle Thornton, and the Estate of Mary Smith. Shirrese B. Brockington, Esquire, in her capacity as Special Administrator of the Estate of Janine Gourdine, was also present.

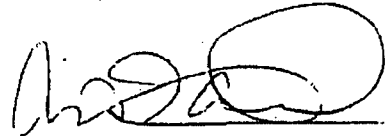
After hearing arguments presented by counsel, this Court hereby denies Respondents' Motion to Amend or Alter this Court's Order of March 24, 2013. Based on the South Carolina Court of Appeals' decision issued on August 9, 2011, this Court is required to accept and probate the Last Will & Testament of Lucinda Pringle dated July 30, 1988. Petitioners shall proceed with the opening of the Estate, either formally or informally.

IT IS SO ORDERED.



IRVIN G. CONDON
Judge of Probate
Charleston County

This 10th day of December, 2013
Charleston, South Carolina.



The South Carolina Court of Appeals

Evelina Brown Moses, Thomas P. Brown, J r., and David
L. Michel, as Guardian ad Litem for Rebecca Patricia
Brown, Respondents,

v.

Shirley Haile-Howard, as Personal Representative of the
Estate of Mary P. Smith and as Personal Representative
of the Estate of Lucinda Pringle, Maezelle Mitchell
Jefferson, as Personal Representative of the Estate of
Annabelle Thorton, Shirrese B. Brockington, as Special
Administrator of the Estate of Janine Gourdine, Arthur
Small, as Personal Representative of the Estate of Emma
Smalls, and any unknown persons or entities claiming
any interest in the Estate of Mary P. Thorton, Janine
Gourdine and Emma Smalls, Appellants.

Appellate Case No. 2014-000108

The Honorable Irvin G. Condon
Charleston County
Trial Court Case No. 1999ES1006892

ORDER

The Appellants wish to withdraw their appeal pursuant to Rule 260 of the South
Carolina Appellate Court Rules (SCACR). Accordingly, this matter is dismissed.
The remittitur will be sent as provided by Rule 221 (b), SCACR

FOR THE COURT

BY V. Claire Allen, Deputy
CLERK

Columbia, South Carolina

cc:

Charles S. Goldberg, Esquire
Shirrese Brown Brockington, Esquire
Jonathan Scott Altman, Esquire
Stephen Michael Slotchiver, Esquire

FILED
3-14-14 JLG

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Evelina Brown Moses, Thomas P.
Brown, Jr., and David L. Michel, as
Guardian Ad Litem for Rebecca
Patricia Brown,)

Petitioners,)

vs.)

Shirley Haile-Howard, as Personal
Representative of the Estate of Mary
P. Smith and as Personal
Representative of the Estate of
Lucinda Pringle, Maczell Mitchell
Jefferson, as Personal Representative
of the Estate of Annabelle Thornton,
Shirrese B. Brockington, as Special
Administrator of the Estate of
Janine Gourdine, Arthur Smalls as
Personal Representative of the Estate
of Emma Smalls, and any unknown
persons or entities claiming any
interest in the Estates of Mary P.
Smith, Lucinda Pringle, Annabelle
Thornton, Janine Gourdine and
Emma Smalls,)

Respondents.)

IN THE PROBATE COURT

CASE NUMBER: 1999-ES-10-689-2

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2008-CP-10-006213

ORDER

Hearing Date:

March 18, 2015

Presiding Judge:

Irvin G. Condon

Petitioners' Attorneys:

Stephen M. Slotchiver, Esq. and Jonathan S. Altman, Esq.

Respondents' Attorneys:

Charles S. Goldberg, Esq., Edward P. Guerard, Jr., Esq.,
and Shirrese B. Brockington, Esq., in her capacity as
Special Administrator of the Estate of Janine Gourdine

Court Reporter:

Trish Rarick, RSA

THIS MATTER comes before the Court upon Respondents' Motion to Dismiss filed on February 20, 2015. Present at the hearing were attorneys Stephen M. Slotchiver, Esq. and Jonathan S.

Altman, Esq. representing the Petitioners, as well as attorneys Charles S. Goldberg, Esq. and Edward P. Guerard, Jr., Esq., who were representing the Respondents. Also present was Shirrese B. Brockington, Esq., in her capacity as Special Administrator of the Estate of Janine Gourdine.

Respondents argue that the matters raised by the South Carolina Court of Appeals are of no effect because this Court lacks subject matter jurisdiction. Respondents argue that because the Petitioners have never tendered a Last Will & Testament of the Decedent, Lucinda Pringle, to this Court through filing of a Petition for Informal or Formal Testacy, this Court never had jurisdiction over the matter.

This Court finds that, by Order dated March 24, 2013, this Court has previously accepted for probate the Last Will & Testament of Lucinda Pringle dated July 30, 1988.

After hearing arguments of counsel, this Court finds that based on the South Carolina Court of Appeals' decision in this matter on August 9, 2011, Respondents' motion is hereby **DENIED**.

Based on the foregoing, it is now, hereby:

ORDERED, ADJUDGED, AND DECREED that Respondents' Motion to Dismiss is hereby **DENIED**; it is further

ORDERED, ADJUDGED, AND DECREED that the appointment of Shirley Haile-Howard as Special Administrator of the Estate of Lucinda Pringle is hereby terminated; it is further

ORDERED, ADJUDGED, AND DECREED that Angus M. Lawton, Esq. is hereby appointed Special Administrator of the Estate of Lucinda Pringle to take all necessary steps to complete administration of the Estate.

IT IS SO ORDERED.

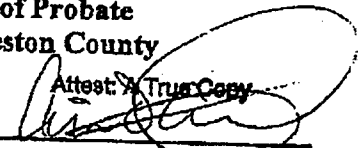
This 28th day of June 2015
Charleston, South Carolina.

Page 2 of 2

00504



IRVING G. CONDON
Judge of Probate
Charleston County

Attest: 

Clerk Probate Court
Charleston County, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

Civil Action No.: 1999-ES-10-689

RE: ESATE OF LUCINDA PRINGLE

MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF -
ANNABELLE THORNTON, AYESHA
WASHINGTON, as Special
Administrator of the ESTATE OF JANINE
GOUDINE, EMMA SMALLS, VIOLA
PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDIC, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or entities
claiming any interest in the ESTATES OF
LUCINDA PRINGLE, ODESSA
GRADDICK, ARTHUR GRADDICK, Jr.,
ANNABELLE THORNTON and JANINE
GOURDINE,

Petitioners,

Vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

Respondents.

ORDER

This matter came before the court on November 9, 2016 for hearing on Petitioners' Petition for Formal Testacy. The procedural history of this case includes the following:

On April 8, 2008 a final hearing was held. In addition to memorandum and briefs filed by the parties, the deposition transcripts of Thomas P. Brown, Jr., Evelina Brown Moses, Viola Pringle, Maezell Mitchell Jefferson, Emma Smalls, Robert Pringle, Cephus Thornton and Mary

P. Smith were entered into evidence by consent. A complete recitation of the record was set forth in the Record on Appeal.

On October 20, 2008 this court issued an order which included the following findings of fact:

1. Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings and Fire Casualty Insurance Company with reference to damages which resulted to the house she resided in on the Decedent's property.
2. As a result of the claim, the insurance company issued a check naming as payees the Respondents and Emma Smalls, as executors of the Estate of the Decedent on January 15, 1990.
3. The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in Lucinda Pringle's Will.
4. Ms. Smalls used the monies received from this check to repair the home on Decedent's property in which Ms. Smalls resided.

Petitioners' sole argument in opposition to Respondents' petition for improper distribution was that the ten-year statute of limitations set forth in SC Code Ann. § 62-3-108 barred the relief sought. This Court found that *"clearly, the Respondents' have shown good cause"* but *"that it has no choice other than to rule that it is incontestable that the decedent left no Will and that the Decedent's estate passed by intestate succession."*

By opinion filed August 9, 2011 the Court of Appeals reversed the court's order of October 20, 2008 and remanded the case for further proceedings consistent with its opinion. The Court of Appeals further found that *"Decedent was pre-deceased by one of her five (5)*

KS
7/6

daughters, Evelina Brown, the mother of Appellants. One by one, Decedent's other daughters lived their lives and passed away, until the last surviving daughter confessed to Evelina's children that she and her sisters had hidden the existence of the will in order to live out their lives on the property Decedent intended Appellants to inherit from her last will and testament."

The Court of Appeals found that *"the probate court's un-appealed finding of good cause shown is the law of the case."*

Petitioners responded to the Court of Appeals' opinion by filing a series of motions to dismiss, the first of which alleged lack of subject matter jurisdiction and was filed on March 13, 2012. A final hearing was held on November 9, 2012. Prior to said hearing, Respondents filed a Memorandum requesting:

1. The issuance of an Order consistent with the Court of Appeals' opinion and:
 - a. Accepting Decedent's last will and testament;
 - b. Appointing Petitioners as Personal Representatives;
 - c. Directing the Personal Representatives to distribute the assets; and
 - d. Voiding the Deed of Distribution previously issued.

By Order of March 24, 2013, this court accepted Decedent's last will and testament for probate.

On April 5, 2013 Petitioners filed a.) a Notice of Intent to Appeal to the Circuit Court under SC Code Ann. § 62-1-308, b.) a Motion to Alter or Amend under Rule 59(c) and c.) another Motion to Dismiss.

On June 26, 2013 a second post remand final hearing was held. On December 20, 2013 this court issued an order denying Petitioner's Motion to Alter/Amend and stated *"this court is required to accept and probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988. Petitioners shall proceed with the opening of the Estate, either formally or informally."*

On March 14, 2014 Respondents withdrew their appeal. On February 20, 2015 Respondents' filed a third motion to dismiss. On June 28, 2015 this court issued an order finding that it had previously accepted for probate the last will and testament of Lucinda Pringle and appointed Angus M. Lawton, Esquire, as special administrator. Mr. Lawton was ordered to *"take all necessary steps to complete the administration of the Estate"*.

On July 14, 2015 Petitioners filed a Motion to Alter/Amend which was withdrawn on September 4, 2015. An application for informal probate and appointment was filed by Respondents which was granted by this Court and effective as of June 28, 2015.

PETITION FOR FORMAL TESTACY

Petitioners have now asked the court to inquire into the validity of Decedent's will and to make findings of fact as to whether there was any fraud committed in its concealment. Petitioners have also asked the court to make findings of fact as to whether this fraud prejudiced Respondents. Petitioners maintain that the validity of the Will was not considered prior to the filing of Petitioners' Petition for Formal Testacy. As set forth herein, the record is contrary to Petitioners' contention.

In this case's considerable history, the only defense raised by Petitioners in response to Respondents' Petition for Recovery of Improper Distribution was that the relief sought was barred by the ten year statute of limitations set forth in SC Code Ann. § 62-3-108. In the five years that have passed since this case was remanded, the Petitioners have filed a series of motions reasserting this defense which has delayed the administration of Decedent's estate.

Respondents maintain that no additional inquiry as to the validity of the will is required in light of the court's prior orders and the Court of Appeals' opinion. Respondents also contend that Petitioners' concealment of the will and the resulting prejudice to Respondents is the law of the case.

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4/16

The court concurs with the position of Respondents. In its order of October 20, 2008, this court detailed specific acts committed by Petitioners to conceal the will. The court found that even after its filing, Emma Smalls and the Petitioners denied any knowledge of the will's existence. In an abundance of caution, the court again considered the issues raised by Petitioners and makes the following findings:

1. Petitioners maintain that Decedent's will was altered and that the beneficiary/executor designations were changed. Respondents contend that if the will was altered, any alteration was committed by Emma Smalls who had possession of it¹. As Petitioners are not questioning Emma Smalls' status as an heir, any such alteration by Ms. Smalls does not preclude Decedent's will from being probated and that further inquiry is unwarranted.
2. Petitioners maintain that inquiry should be conducted as the will is not notarized or self-proved. SC Code Ann. § 62-3-405 and 62-3-406 require one of the attesting witnesses to establish proper execution if the witnesses are within the state and are competent and able to testify. At the hearing of November 9, 2016 counsel for Petitioners and Respondents advised the court that it was their understanding that the witnesses to the will were deceased. In light of the unavailability of the witnesses, the court finds that no further inquiry is required.
3. Petitioners maintain that further inquiry is required as page two (2) of the will refers to a "Lucinda Springer" as opposed to Lucinda Pringle. Decedent's will is three (3) pages in length. Pages one (1) and three (3)

¹ The will reflects Emma Smalls' inclusion as a beneficiary and executor along with Respondents.

identify the document as "The Last Will and Testament of Lucinda Pringle". The nominating provision on page two (2) is identical to the nominating provision on page one (1). It is the finding of the court that the reference to "Lucinda Springer" on page two (2) of the will is a scrivener's error and no further inquiry is warranted.

This court has previously found that Petitioners concealed Decedent's will from Respondents. This court reaffirms this finding and further finds that Petitioners' concealment prejudiced Respondents and prevented Respondents from offering the will for probate. In light of the concealment by Petitioners, the ten year statute of limitations as set for in SC Code Ann. § 62-3-108 does not bar the admission of Decedent's will for probate.

IT IS THEREFORE ORDERED, for the reasons stated above that Petitioners' petition for formal testacy is DENIED and that the Personal Representative is hereby ORDERED to administer the estate as a testate estate.

AND IT IS SO ORDERED.

1/18, 2017 *[Signature]*

[Signature]
Irvin G. Condon, Judge
Charleston County Probate Court

[Signature]
Charleston County Probate Court
Charleston County, South Carolina

[Handwritten initials]
6/6

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-0398

MARY P. SMITH, MAEZELL MITCHELL
JEFFERSON, INDIVIDUALLY AND AS
PERSONAL REPRESENTATIVE OF THE
ESTATE OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, AS
SPECIAL ADMINISTRATOR OF THE
ESTATE OF JANINE GOURDINE, EMMA
SMALLS, VIOLA PRINGLE, CEPHUS
THORNTON, ARTHUR GRADDICK, III,
AN IMPRISONED PERSON, VENETRA
WATSON, AND ANY KNOWN OR
UNKNOWN PERSONS OR ENTITIES
CLAIMING ANY INTEREST IN THE
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON, AND JANINE GOURDINE,

Appellants

vs.

ANGUS M. LAWTON, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
LUCINDA PRINGLE, EVELINA BROWN
MOSES, THOMAS P. BROWN, JR., AND
UNKNOWN PR REBECCA PATRICIA
BROWN,

Respondents.

FILED
2018 MAR 19 PM 4:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

**ORDER ON APPEAL FROM PROBATE
COURT**

THIS MATTER comes before the Circuit Court on an appeal from the Probate Court of Charleston County, the Honorable Judge Irvin G. Condon presiding. An appeal hearing was held on February 1, 2018. Attorney for Appellant T. Jeff Goodwyn and Attorneys for Respondents Jonathan Altman and Stephen Slotchiver filed appellate briefs in the matter. Following a review of the record and arguments made by counsel, this Court affirms the ruling of the Probate Court.

PROCEDURAL HISTORY

The decedent passed away on October 11, 1989. No formal attempt to probate Decedent's estate was made until an application for informal appointment was filed on May 5, 1999. The estate was probated and a Deed of Distribution of the Property at issue was filed April 17, 2000. A Certificate of Discharge was issued on June 26, 2011.

The Respondents filed a Petition for Recovery of Improper Distribution based on their claim that a will had been discovered which left the Property to the Respondents on October 20, 2005. Respondents filed a Motion to Vacate the Order dated June 25, 2001, on January 8, 2007. A hearing on this Motion to Vacate was held on April 8, 2008. The Probate Court found the ten year statute of repose pursuant to S.C. Code § 62-3-108 applied and denied Respondent's Motion to Vacate in an Order dated October 20, 2008.

Respondents appealed the Probate Court's decision. The Court of Appeals issued an Order filed August 9, 2011, reversing the Probate Court's ruling that the ten year statute of repose prevented the court from considering the will in cases where there is evidence that a fraudulent concealment of the will has taken place. The case was remanded to the Probate Court for further findings consistent with this opinion.

The will was not offered to probate after the Court of Appeals issued its decision. On June 25, 2015, the Probate Court issued an order ordering Angus Lawton, Special Administrator of the estate, to file a Petition to Probate the will. The Petition for Appointment and Informal Probate of a Will was filed September 4, 2015. Appellants filed a Petition for Formal Testacy on February 9, 2016, challenging the validity of the will and requesting the court address all issues on remand from the Court of Appeals.

A hearing was held November 9, 2016, by the Probate Court. The Probate Court issued an Order dated January 18, 2017, denying Appellants' Petition and finding that the will was valid and able to be probated.

ARGUMENTS

Appellants raise the following arguments on appeal:

- I. The Probate Court erred as a matter of law in allowing Decedent's will to be probated when the validity of the will was properly raised and no evidence was offered to prove the proper execution of the will.
- II. The Lower Court erred as a matter of law in finding the offered will to be an accurate version of the will of the Decedent when the beneficiary designation portion of the will is clearly altered on its face and there was no Petition to probate something other than the original will and no evidence presented as to how the original will disposed of the decedent's property.
- III. The Probate court erred as a matter of finding that Emma Smalls perpetrated a fraud on Respondents by concealing the will when it is admitted and the court found that the Respondents had possession of a copy of the will within three years of death and failed to timely offer it for probate.

LAW

An appeal from a decree of the probate court may be made to the circuit court in the same county. S.C. Code § 62-1-308. The standard of review applicable to cases originating in probate court is determined by whether the underlying cause of action is at law or in equity. *In re Estate of Hyman*, 362 S.C. 20, 25 (2004). An action to construe a will is an action at law. *Id.* Actions at law are reviewed to correct legal errors of the lower court. *Id.* The Circuit Court may not disturb

the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. *See* S.C. Code 62-1-308(d); *see also* *University of Southern California v. Moran*, 365 S.C. 270 (2005).

ANALYSIS

- I. **Appellant's first argument states, "The Probate Court erred as a matter of law in allowing Decedent's will to be probated when the validity of the will was properly raised and no evidence was offered to prove the proper execution of the will."**

The Appellants argue that the Probate Court failed to inquire into the validity of the will, stating that the Probate Court failed to comply with S.C. Code § 62-3-407. S.C. Code § 62-3-407 states, in pertinent part, "If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate."

Appellant concedes in their Initial Brief that "a ruling on this finding may be moot given the fact that the court did make findings related to the validity of the will." Initial Brief of Appellants, p. 8. The Probate Court made specific findings in regards to the validity of the will and found further inquiry was unwarranted. *See* Order of the Probate Court Dated January 18, 2017, p. 5.

The Appellants further argue that the Probate Court failed to conduct further inquiry into the validity of the will, stating that the will is not notarized or self-proved. S.C. Code § 62-3-406(3) states: "if the will is witnessed pursuant to Section 62-2-502, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify. Proper execution may be established by

other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred."

Both of the witnesses to the will were deceased at the time of the hearing. Appellants' position is that because the case has been in litigation for over ten years; the Respondents had an opportunity to obtain an affidavit of one of the witnesses to the will. Appellants argue that because the burden is on the Respondents, the Respondents have failed to meet their burden to prove the validity of the contested will.

The Probate Court found that the law requires "one of the attesting witnesses to establish proper execution **if** the witnesses are within the state **and** are competent and able to testify." Order of the Probate Court Dated January 18, 2017, p. 5 (*emphasis in original*). As both witnesses were deceased, the Probate Court found no further inquiry was needed. The Appellants have not cited to any rule requiring Respondents to obtain an affidavit in anticipation of circumstances in which live testimony could not be given.

The Appellants further argue that the attestation clause fails to create the rebuttable presumption noted by S.C. Code § 62-3-406, because the attestation clause states the witnesses observed "Lucinda Springer" instead of "Lucinda Pringle" sign the will. The Probate Court found this to be a scrivener's error, but the Appellants argue this was an error by the Probate Court, and without extrinsic evidence to prove this was in fact a "scrivener's error," this would create a method for "unscrupulous heir[s] to create fraudulent will[s] that no one can dispute." The Probate Court found that the nominating provision on page two was identical to the nominating provision on page one of the three-page will. Appellants cite to *Fenzel v. Floyd* for the statement that "extrinsic evidence is admissible to prove and correct a scrivener's error." *Fenzel v. Floyd*, 289 S.C. 495

(1986). The Probate Court did not find extrinsic evidence was required, and Appellants do not claim any evidence which would contradict the Probate Court's finding on this matter.

This Court affirms the Probate Court's findings on these grounds. The Appellants have not demonstrated that the Probate Court made any error of law.

- II. **The Appellants further argue, "The lower court erred as a matter of law in finding the offered will to be an accurate version of the last will of the Decedent when the beneficiary designation portion of the will is clearly altered on its face and there was no Petition to probate something other than the original will and no evidence presented as to how the will disposed of the decedent's property."**

Appellants claim the Probate Court made a finding that because Emma Smalls made the alterations and Appellants are not questioning Emma Smalls's status as an heir, "any such alteration by Ms. Smalls does not preclude Decedent's will from being probated and that further inquiry is unwarranted." Initial Brief of Appellants, p. 15. Based on this statement, the Appellants argue the Respondents failed to comply with the requirements of S.C. Code § 62-3-402, which states, in part, "If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable." Appellants further argue that the court has no basis to determine the testator's intent based on the alterations made to the will.

Respondents challenge Appellants reading of the Probate Court's Order, and argue the Probate Court did not make a finding of alteration. As Respondents argue, the Order of the Probate

Court states: "Petitioners maintained that Decedent's will was altered and that the beneficiary designations were changed. Appellants contend that if the will was altered, any alteration was committed by Emma Smalls who had possession of it." Order of the Probate Court Dated January 18, 2017, p. 5. The record reflects that following Decedent's death, Appellants possessed copies of the will and disseminated it to third parties and family members. These copies were identical to the original will filed by Evelina Brown Moses on August 4, 2005.

This Court finds the Probate Court did not err as a matter of law on these grounds. Sufficient evidence exists in the record to support the Probate Court's findings.

III. The Appellants also argue, "The Probate Court erred as a matter of finding that Emma Smalls perpetrated a fraud on Respondents by concealing the will when it is admitted and the court found that the Respondents had possession of a copy of the will within three years of death and failed to timely offer it for probate."

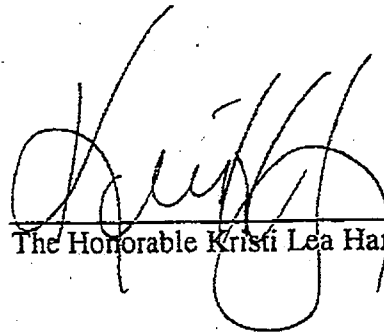
Appellants contend that the Probate Court was capable of making additional findings on this issue at the November 9, 2016 hearing. See Initial Brief of Appellants, p. 20. Appellants do not dispute the finding that Emma Smalls concealed the will, but argue that the concealment did not cause harm to the Respondents. Appellants ask this Court to reverse the Probate Court, find that the statute of repose should not be tolled, and bar the will from admittance to probate based on the Respondents failure to file the will. The Probate Court found that Petitioners' concealment prevented Respondents from offering the will. The record reflects that Respondent Thomas Brown attempted to file a copy of the will, but a copy was not accepted by the Probate Court. Respondents filed the will upon discovery of the fraud.

Appellants have failed to demonstrate any error of law committed by the lower court, and as such, this Court affirms the Probate Court's findings on this issue.

CONCLUSION

Following a review of the record on appeal and the arguments presented at the hearing by counsel, this Court finds no error of law was made by the Probate Court. Therefore, the ruling of the Probate Court is affirmed. The Appeal is dismissed.

IT IS SO ORDERED.


The Honorable Kristi Lea Harrington

March 16, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PROBATE COURT

IN THE MATTER OF (Decedent Name)

CASE NUMBER

APPLICATION FOR

(check any that apply)

PETITION FOR

INFORMAL

☐ PROBATE OF WILL
☐ APPOINTMENT

FORMAL

☐ TESTACY
☐ APPOINTMENT

Applicant/Petitioner:

Address:

Telephone:

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Nature of interest of undersigned:

2. Decedent Information

Name:

Social Security Number:

Date of Birth:

Date of Death:

Age at date of death:

Domicile at date of death:

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:

4a. Names and addresses of devisees, including dates of birth of minors:

Name

Date of Birth

Address

Relationship
to Decedent

(use additional sheet if necessary)

4b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors:

Name

Date of Birth

Address

Relationship
to Decedent

- Angela
Washington
Heidi Pearlman
Ref 9/16

120111

- PAGE 2 OF 5

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

Alex Pringle spouse deceased

Evelyn P. Brown deceased

Evelyn's children:

Thomas Brown

adult lives in Louisiana
2517 Old George town Rd.

Patricia Brown

adult Mt Pleasant S.C. 29464

(Greenway Brown)
Bronx, New York

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:

Jannice Gourdine
2517 Old George town Rd.
Mt Pleasant, S.C. 29464

2 Priority for this appointment is:

- ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
- ☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
- ☐ 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): Daughter _____ or nominee of said heir
- ☐ creditor (Forty-five days after death must have passed) or nominee of creditor
- ☐ other (describe): _____
- ☐ nominee of any of the above

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

Emma Sparks
Jannice Gourdine
Anna Bell Thompson
Mary P. Smith

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 5th day of May, 1999.

Shirley F. Feltner

Notary Public for South Carolina

My Commission Expires: 11-4-2008

Signature: Jannie P. Gourdin
Name: _____

Signature: _____
Name: _____

ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be ☐ GRANTED ☐ DENIED informally this _____ day of _____, 19____.

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 _____, 19____

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 THEREFORE ORDERED, that the Last Will and Testament of the above-named decedent dated _____ be admitted formally to probate.

Executed this _____ day of _____, 19 _____

_____, 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 and appropriate qualification and acceptance.

Executed this _____ day of _____, 19 _____

[Signature]

ASSOC. 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: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

Signature: _____

Name: _____

Address: _____

Telephone (O) _____

(H) _____

Attorney _____

Address _____

Telephone _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 1999-ES-10-689-2

IN THE MATTER OF:
THE ESTATE OF LUCINDA PRINGLE

PETITION FOR APPOINTMENT OF A GUARDIAN AD LITEM

TO THE HONORABLE JUDGE OF THE PROBATE COURT FOR CHARLESTON COUNTY:

1. Lucinda Pringle passed away on October 11, 1989, in Charleston County South Carolina. Her Estate was probated by her children as an intestate Estate.
2. Rebecca Patricia Brown is a granddaughter of Lucinda Pringle.
3. An original Will has now surfaced which names Rebecca Patricia Brown as one of the beneficiaries of the real estate owned by Lucinda Pringle at the time of her demise. An action is in the process of being brought for recovery of improper distributions made by the Estate of Lucinda Pringle.
4. Rebecca Patricia Brown suffers from mental retardation and therefore needs the appointment of a guardian ad litem to represent her interest regarding the Petition to be filed for the Recovery of Improper Distributions.
4. The Petitioner, Thomas P. Brown, Jr., in his capacity as the caregiver of Rebecca Patricia Brown, hereby requests that a Guardian ad Litem be appointed on behalf of Rebecca Patricia Brown.
5. The Petitioner requests that the Court appoint David L. Michel, Esquire as Guardian ad Litem to act on behalf of Rebecca Patricia Brown regarding the action being brought for recovery of improper distributions made by the Estate of Lucinda Pringle.

WHEREFORE, Petitioner prays that this Honorable Court issue its Order appointing David L. Michel, Esquire as Guardian ad Litem for Rebecca Patricia Brown.


Thomas P. Brown, Jr., Petitioner

SWORN to before me this
10th day of September, 2005.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11/20/2013

STATE OF SOUTH CAROLINA

COUNTY OF: CHARLESTON

IN THE MATTER OF: LUCINDA PRINGLE

IN THE PROBATE COURT

APPLICATION/PETITION FOR SUBSEQUENT
ADMINISTRATION

CASE NUMBER: 1999-ES-10-689-2



INFORMAL



FORMAL

Applicant/Petitioner: Stephen M. Slotchiver, attorney for Evelina Brown Moses and
Thomas P. Brown

1. Date of death of Decedent: October 11, 1989
2. Additional property in the above estate has been discovered or previously identified estate property has not been completely administered. A description of the property and its approximate value at the date of decedent's death is provided below.

The Decedent's Will was concealed and therefore the Personal Representative made distributions in accordance with the laws of Intestacy, rather than pursuant to the terms of the Will of the Decedent.
3. Annabell Thornton, the previously appointed Personal Representative(s), was discharged on June 26, 2001.
4. The name(s) and address(es) of the person(s) I apply/petition the Court to appoint as Personal Representative(s) to administer the above property is/are:

Special Administrator

Priority for this appointment is:

- ☐ named as Primary Personal Representative in will or nominee of Primary Personal Representative
- ☐ named as Alternate Personal Representative in will or nominee of Alternate Personal Representative
- ☐ 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): Special Administrator
- ☐ nominee of any of the above

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 19 day of
October, 2005

Shirley M. Warner
Notary Public for South Carolina
My Commission Expires: 2-5-2007

Signature: [Signature]
Name: Stephen M. Slotchiver
Address: 44 State Street
Charleston, SC 29401
Telephone (O): (843) 577-8531
(H): _____

ORDER FOR HEARING

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 date.

Executed this _____ day of _____, 2005.

Probate Court Judge

ORDER FOR SUBSEQUENT ADMINISTRATION

IT IS HEREBY ORDERED that _____ be appointed Personal Representative to administer property not previously administered as indicated in the above application/petition.

Executed this _____ day of _____, 2005.

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: _____

Name: Special Administrator

Address: _____

Telephone (O): _____

(H): _____

Signature: _____

Name: _____

Address: _____

Telephone (O): _____

(H): _____

Attorney: _____

Address: _____

Telephone: _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

EVELINA BROWN MOSES, THOMAS)
P. BROWN, JR., AND DAVID L. MICHEL)
as Guardian Ad Litem for REBECCA)
PATRICIA BROWN,)

Petitioners,)

ESTATE OF LUCINDA PRINGLE,)
EMMA SMALLS, MARY P. SMITH,)
ESTATE OF ANNABELLE THORNTON,)
ESTATE OF JANINE GOURDINE,)
ODESSA GRADDICK, ARTHUR)
EUGENE GRADDICK, JR., VIOLA)
PRINGLE, MAEZELL MITCHELL,)
CEPHUS THORNTON, and any other)
Persons and entities claiming any interest)
in the Estate of LUCINDA PRINGLE.)

Respondents.)

IN THE PROBATE COURT

CASE NUMBER: 1999-ES-10-689-2

05 OCT 20 PM 4:38
PROBATE COURT
CHARLESTON COUNTY

PETITION FOR RECOVERY OF IMPROPER DISTRIBUTION

The Petitioners, complaining of the Respondents, above-named, allege as follows:

General Factual and Jurisdictional Allegations

1. Petitioner Evelina Brown Moses is a daughter of Evelina Brown and a granddaughter of the decedent, Lucinda Pringle (hereinafter referred to as "Decedent"). Petitioner Moses resides in Berkeley County, South Carolina.
2. Petitioner Thomas P. Brown, Jr., is a son of Evelina Brown Moses and a grandson of the Decedent. Petitioner Thomas P. Brown, Jr., resides in Berkeley County, South Carolina.
3. Petitioner Rebecca Patricia Brown is a daughter of Evelina Brown and a granddaughter of

Decedent. Rebecca Patricia Brown resides in Berkeley County, South Carolina. auid L. Michel has been appointed to serve as Guardian Ad Litem of Rebecca Patricia Brown and represent her interest in this litigation.

4. Respondent Emma Smalls is a daughter of Decedent and resides on the property which is the subject of this action at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina 29466. Upon information and belief, Respondent Smalls claims and interest in the property which is the subject of this action.

5. Upon information and belief, Respondent Mary T. Smith is a daughter of Decedent and claims an interest in the property which is the subject of this action.

6. Respondent Estate of Janine Gourdine is named as a party hereto by virtue of Janine Gourdine's status as a daughter of Decedent. Upon information and belief, Janine Gourdine resided on the real property which is the subject of this action at 2517 Old Georgetown Rd. Upon information and belief, Respondent Estate of Gourdine claims an interest in the property which is the subject of this action. Respondent Estate of Gourdine commenced the administration of the estate of Decedent as an intestate estate in May 1999, and served as Personal Representative of Decedent's estate until her death on November 11, 1999.

7. Respondent Estate of Annabelle Thornton, is named a party hereto by virtue of Annabelle Thornton's status as a daughter of decedent, Lucinda Pringle. Upon information and belief, Annabelle Thornton resided on the property which is the subject of this action at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina, until her death on or about October 7, 2004. Annabelle Thornton was appointed Successor Personal Representative of the Estate of Decedent subsequent to the death of Janine Gourdine. Upon information and belief, Respondent Thornton

claims an interest in the property which is the subject of this action.

8. Upon information and belief, Respondents Arthur Eugene Graddick, Jr., and Odessa Graddick are the children of Janine Gourdine and as heirs to her estate and claim an interest in the property which is the subject of this action.

9. Upon information and belief, Respondents Viola Pringle, Maezell Mitchell and Cephus Thornton are the children of Annabelle Thornton and as heirs to her estate and may claim an interest in the property which is the subject of this action.

10. The named and unidentified Respondents, along with all other persons and entities claiming any interest in the estate of Decedent (excluding creditors and tax authorities), are named in this petition as Respondents and Petitioners intend to effect service over all such parties, if any, through publication, having attempted to identify and locate any other heirs or interested parties through reasonable diligence.

11. Decedent Lucinda Pringle died on October 11, 1989. At the time of her death, Decedent was domiciled in Charleston County, South Carolina, and resided at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina, 29466.

12. At the time of Decedent's demise, Respondents Emma Smalls, Janine Gourdine and Annabelle Thornton were in possession of Decedent's Last Will and Testament. Respondents Smalls, Gourdine and Thornton concealed its existence from Petitioners and the Charleston County Probate Court and failed to deliver said Will to the Probate Court as mandated by South Carolina Code Ann. §62-2-901.

13. On or about May 5, 1999, Respondent Janine Gourdine petitioned the Probate Court to open the Estate of Lucinda Pringle as an intestate estate and represented to the Probate Court that

Decedent had "no Will."

14. Petitioners were not notified of the petition filed by Respondent Gourdine. Respondent Gourdine obtained renunciations of rights to administration from Respondents Smalls, Thornton and Smith, but did not obtain renunciations from Petitioners.

15. Respondent Gourdine was appointed Personal Representative of the Estate of Decedent on May 5, 1999.

16. Upon information and belief, Respondent Gourdine died on November 11, 1999. On August 16, 2000, the Honorable Tamara C. Curry, Associate Judge of Probate, issued an order closing Decedent's estate pursuant to Probate Court Rule 4.

17. On March 22, 2001, Respondent Thornton filed a petition seeking to be appointed Successor Personal Representative of the estate of Decedent. Respondent's petition included Renunciations of Right to Administration from Respondents Smith and Smalls. Respondent Thornton did not notify Petitioners of the filing of her petition. On March 22, 2001, Respondent Thornton was appointed Successor Personal Representative of the Estate of Decedent. Throughout this period, Respondents continued to conceal Decedent's Last Will and Testament from Petitioners and the Probate Court and represented to the Court that Decedent had died intestate. Respondents Thornton and Smalls continued to reside on the property which comprised the sole asset of Decedent's estate.

18. On April 17, 2001, Respondent Thornton filed a Deed of Distribution purporting to convey the property which is the subject of this action in the following percentages:

Respondent Annabelle Thornton	1/5
Respondent Emma Smalls	1/5
Respondent Mary P. Smith	1/5
Respondent Estate of Janine Gourdine	1/5
Petitioners Rebecca Brown, Thomas Brown, Jr. and Evelina Brown Moses collectively	1/5

The Deed Affidavit attached to the Deed of Distribution misidentifies said parties as the legal heirs of Decedent. This Deed of Distribution was ultimately recorded in the RMC Office for Charleston County in Book U369 at Page 558 on or about May 7, 2001.

19. On May 25, 2001, Respondent Thornton filed a Petition for Settlement in which she declared that "Decedent died intestate." Thereafter, a Certificate of Discharge was issued on June 26, 2001. Respondent Thornton died on October 7, 2004.

20. On or about August 3, 2005, Petitioners were summoned by Respondent Emma Smalls. Upon arriving at Respondent Smalls' residence, Respondent Smalls produced Decedent's Last Will and Testament and told Respondents that the Will had been concealed so that her sisters Respondents Thornton and Gourdine could continue to live on the property subsequent to Decedent's death.

21. Respondents knowing and intentional concealment of Decedent's Last Will and Testament prevented Petitioners from receiving their devised share of Decedent's property as set forth in the Last Will and Testament.

22. Petitioners are the lawful heirs of Decedent and are named beneficiaries under Decedent's Will. Under the consequence of the foregoing, Decedent died testate and the Petitioners are entitled to reclaim and recover the property wrongfully distributed by and to Respondents in the Deed of Distribution.

23. Petitioners seek and are further entitled to an order reopening the estate of Decedent in order to recover and reclaim assets and real property wrongfully distributed from Decedent's estate, and to distribute the assets to the lawful beneficiaries in accordance with Decedent's Last Will and Testament.

24. Petitioners seek an order nullifying the Deed of Distribution issued on or about April 17,

2001 as ab initio.

25. Petitioners seek and are further entitled to an order from this Court enjoining all Respondents named herein from selling, encumbering, leasing, renting, transferring any of the real property located at 2517 Old Georgetown Road and described as follows

ALL that piece or parcel of land situate in Christ Church Parish, Charleston County, South Carolina, containing Ten and one-half (10.5) acres, more or less, said land known as No. 5 on Plat of Boone Hall and Sea Shore Tracts, and recorded in the RMC Office for Charleston County in Book B, Page 46, on the 28th day of November, 1873.

BEING the same property conveyed to Elizabeth G. Washington and Lucinda Pringle by deed of Steven Graddick, Jr. a/k/a Stephen Graddick, Jr., Rebecca Jefferson, Estelle Capers, Henry Bailem, Jr., Florence Ford, David Green and Harriet Lane, Heirs of September Drayton, dated December 1, 1988, and recorded September 18, 1989, at Book R187, Page 214, in the RMC Office for Charleston County.

TMS# 578-00-00-026

WHEREFORE, Petitioners pray for the relief set forth in their petition, including, but not limited to the following:

1. For an Order compelling the recovery of and return of all improper distributions made;
2. For an Order enjoining and preventing the sale, encumbrance, leasing or renting, any of the property which is the subject of this action; and
5. For such other and further relief as this Court deems just and proper.

DERFNER, ALTMAN & WILBORN, LLC



Jonathan S. Altman
D. Peters Wilborn
40 Calhoun St., Suite 410
Post Office Box 600
Charleston, SC 29402
(843) 723-9804

Stephen M. Slotchiver
44 State Street
Charleston, SC 29401
(843) 577-6531

Attorneys for Petitioners

October 20, 2005
Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

06 FEB 21 PM 2:10

CASE NO. 1999-ES-10-689-2

FILED
CLERK OF COURT
CHARLESTON, S.C.

**EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,**

Petitioners

VS

ANSWER

**ESTATE OF LUCINDA PRINGLE,
EMMA SMALLS, MARY P. SMITH,
ESTATE OF ANNABELLE THORNTON,
ESTATE OF JANINE GOURDINE, ODESSA
GRADDICK, ARTHUR EUGENE GRADDICK,
JR., VIOLA PRINGLE, MAEZELL MITCHELL,
CEPHUS THORNTON, and any other
persons and entities claiming any
interest in the Estate of LUCINDA
PRINGLE,**

Respondents.

**The respondents, Arthur Graddick, Jr., Emma Smalls, Mary
P. Smith, Maezell Mitchell, Viola Pringle, and Cephus Thornton allege:**

FOR A FIRST DEFENSE

**1. They deny each of the allegations of the petition not
hereinafter admitted.**

CB

2. They admit the allegations contained in paragraphs numbered 1,2, 3, 5, 8,9,11,13,15, 16, and 19 upon information and belief.

3. They deny that portion of the allegation contained in paragraph numbered 4 that alleges that Emma Smalls resides on the subject property, and admits the remaining portion of that allegation upon information and belief.

4. Upon information and belief, they admit those portions of the allegation contained in paragraph numbered 6 which alleges that Janine Gourdine was Lucinda Pringle's daughter; that she administered the estate of Janine Gourdine as personal representative until her death on November 11, 1999; that Annabelle Thorton was certified as the successor personal representative of the estate of Janine Gourdine; that a certificate of discharge was issued by the probate court for Charleston County on June 26, 2001. They deny the remaining allegations therein. Further, upon information and belief, no special administrator has been appointed for the estate of Janine Gourdine, and therefore, the estate of Janine Gourdine is improperly named as a respondent.

5. Upon information and belief, they admit only that portion of the allegations contained in paragraph numbered 7 that Janine Gourdine was a daughter of Lucinda Pringle, and admit that her heirs claim her undivided interest in the subject property. They deny the remaining allegations and demand strict proof thereof. Further, no special administrator has been appointed for the estate of Annabelle Thornton; therefore, the estate of Annabelle Thornton is improperly named as a respondent.

6. They deny the allegations contained in paragraph numbered 10, demands strict proof thereof, and further alleges that these allegations contain matters and conclusions of law.

7. They admit, upon information and belief, that portion of the allegation numbered 14 which alleges that Emma Smalls, Annabelle Thornton, and Mary P. Smith renounced their right to administer the estate of Janine Gourdine; that they deny the remaining portion of this allegation and demand strict proof thereof.

8. Upon information and belief, they admit those portions of the allegations contained in paragraph numbered 17 that on or about March 22, 2001, Annabelle Thornton filed to be appointed

successor personal representative of the estate of Lucinda Pringle and was appointed by the probate court; that a certificate of discharge was issued on June 26, 2001. They deny the remaining allegations and demands strict proof thereof.

9.. They deny the portion of the allegations contained in paragraph numbered 18 that the deed of distribution misidentifies the grantees therein as the lawful heirs of the estate of Lucinda Pringle and asserts herein that the deed speaks for itself. Upon information and belief, they admit the remaining portion of said allegation.

10. They deny the allegations contained in paragraphs numbered 20, 21, 22, 23, 24, and 25, and demand strict proof thereof.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

11. Petitioners lack standing to make the claims asserted against this Respondent.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

12. Petitioners are barred as a result of their fraudulent conduct in suppressing the filing of the Will of Lucinda Pringle.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

13.. The claims asserted against the respondents are
barred by the applicable statutes of limitations

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

14. The petitioners' claims are barred by laches.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

15. The petitioners' claims asserted are barred by the
doctrine of unclean hands.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

16. The petitioners have waived and/or are estopped
from asserting the claims set forth in their petition.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

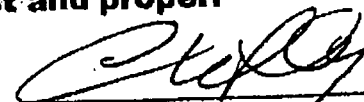
17. Petitioners' claims fail to state facts sufficient to
constitute causes of action against the respondents.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

18. The petitioners have failed to name and properly

join all parties necessary to the disposition of this matter.

**WHEREFORE, these respondents pray that the
petition be dismissed with prejudice; and for such other and further
relief as this court may deem just and proper.**



**Charles S. Goldberg
61 Broad Street, PO Box 9
Charleston, SC 29401
(843) 720-2800
Fax: (843) 722-1190**

And

**Edward P. Guerard, Jr.
1 Carriage Lane, Bldg. H
PO Box 31924
Charleston, SC 29407-1924
(843) 852-4530
Fax: (843) 852-9957
Attorneys for the Respondents
Above named.**

**Charleston, SC
February 21, 2006.**

STATE OF SOUTH CAROLINA

FILED PROBATE CT CHAS CO

PROBATE COURT

COUNTY OF CHARLESTON

IN THE MATTER OF LUCINDA PRINGLE

CASE NUMBER 1999ES10-00689

MOTION FOR EXTENSION

☐
☐
☐
☒

INVENTORY AND APPRAISEMENT
ACCOUNTING/PROPOSAL FOR DISTRIBUTION
PERIOD FOR ACTION ON CLAIMS
OTHER: CLOSING DOCUMENTS

Applicant(s): SHIRRESE B. BROCKINGTON, ESQ.

1. Nature of interest of undersigned: Special Administrator of the above estate.
2. SHIRRESE B. BROCKINGTON, ESQ. is the duly qualified and acting Special Administrator of the above estate.
3. I request an extension of ninety (90) days to allow the Special Administrator to complete and/or file the above-referenced document or action for the following reason(s):

Additional time is requested because the heirs of the estate are involved in litigation

Executed this 15th day of May, 20 06.

Signature:

Name:

Address:

Telephone (O):

(H):

Shirrese Brockington
SHIRRESE B. BROCKINGTON, ESQ.
P.O. Box 31312
Charleston, SC 29417
(843) 571-5000

ORDER FOR EXTENSION

IT IS HEREBY ORDERED that the Personal Representative(s) in the above estate be GRANTED ☒ 90 day extension in this matter. The filing is now due on the 17 day of May, 20 06.

Executed this 17 day of May, 20 06.

Irvin G. Gordon

Probate Court Judge

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

EVELINA BROWN MOSES, THOMAS)

P. BROWN, JR., AND DAVID L. MICHEL)

as Guardian Ad Litem for REBECCA)

PATRICIA BROWN,)

Petitioners,)

ESTATE OF LUCINDA PRINGLE,)

EMMA SMALLS, MARY P. SMITH,)

ESTATE OF ANNABELLE THORNTON,)

ESTATE OF JANINE GOURDINE,)

ODESSA GRADDICK, ARTHUR)

EUGENE GRADDICK, JR., VIOLA)

PRINGLE, MAEZELL MITCHELL,)

CEPHUS THORNTON, and any other)

Persons and entities claiming any interest)

in the Estate of LUCINDA PRINGLE.)

Respondents.)

IN THE PROBATE COURT

CASE NUMBER: 1999-ES-10-689-2

MOTION FOR VACATION OF
ORDER DATED JUNE 20, 2008

07 JUL 2008 AM 10:55
FILED
CLERK OF COURT
CHARLESTON COUNTY

The Petitioners, complaining of the Respondents, above-named, allege as follows:

General Factual and Jurisdictional Allegations

1. Petitioner Evelina Brown Moses is a daughter of Evelina Brown and a granddaughter of the decedent, Lucinda Pringle (hereinafter referred to as "Decedent"). Petitioner Moses resides in Berkeley County, South Carolina.
2. Petitioner Thomas P. Brown, Jr., is a son of Evelina Brown Moses and a grandson of the Decedent. Petitioner Thomas P. Brown, Jr., resides in Berkeley County, South Carolina.

3. Petitioner Rebecca Patricia Brown is a daughter of Evelina Brown and a granddaughter of Decedent. Rebecca Patricia Brown resides in Berkeley County, South Carolina. David L. Michel has been appointed to serve as Guardian Ad Litem of Rebecca Patricia Brown and represent her interest in this litigation.

4. Respondent Emma Smalls is a daughter of Decedent and resides on the property which is the subject of this action at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina 29466. Upon information and belief, Respondent Smalls claims an interest in the property which is the subject of this action.

5. Upon information and belief, Respondent Mary P. Smith is a daughter of Decedent and claims an interest in the property which is the subject of this action.

6. Respondent Estate of Janine Gourdine is named as a party hereto by virtue of Janine Gourdine's status as a daughter of Decedent. Upon information and belief, Janine Gourdine resided on the real property which is the subject of this action at 2517 Old Georgetown Rd. Upon information and belief, Respondent Estate of Gourdine claims an interest in the property which is the subject of this action.

7. Respondent Estate of Annabelle Thornton, is named a party hereto by virtue of Annabelle Thornton's status as a daughter of decedent. Upon information and belief, Annabelle Thornton resided on the property which is the subject of this action at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina, until her death on or about October 7, 2004.

8. Upon information and belief, Respondents Arthur Eugene Graddick, Jr., and Odessa Graddick are the children of Janine Gourdine, and as heirs to her estate, claim an interest in the property which is the subject of this action.

9. Upon information and belief, Respondents Viola Pringle, Maezell Mitchell and Cephus Thornton are the children of Annabelle Thornton, and as heirs to her estate, claim an interest in the property which is the subject of this action,

10. The named and unidentified Respondents, along with all other persons and entities claiming any interest in the estate of Decedent (excluding creditors and tax authorities), are named in this petition as Respondents and Petitioners intend to effect service over all such parties, if any, through publication, having attempted to identify and locate any other heirs or interested parties through reasonable diligence.

11. Decedent Lucinda Pringle died on October 11, 1989. At the time of her death, Decedent was domiciled in Charleston County, South Carolina, and resided at 2517 Old Georgetown Road, Mt. Pleasant, South Carolina, 29466.

12. At the time of Decedent's demise, Respondents Emma Smalls, Janine Gourline and Annabelle Thornton were in possession of Decedent's Last Will and Testament. Respondents Smalls, Gourline and Thornton concealed its existence from Petitioners and the Charleston County Probate Court and failed to deliver said Will to the Probate Court as mandated by South Carolina Code Ann. §62-2-901.

13. On or about May 5, 1999, Respondent Janine Gourline petitioned the Probate Court to open the Estate of Lucinda Pringle as an intestate estate and represented to the Probate Court that Decedent had "no Will."

14. Respondent Janine Gourline obtained renunciations of rights to administration from Respondents Emma Smalls, Annabelle Thornton and Mary P. Smith, but did not obtain renunciations from the Petitioners.

15. Respondent Janine Gourline was appointed Personal Representative of the Estate of Decedent on May 5, 1999.
16. Petitioners were not notified of the Petition submitted by Janine Gourline to open the Decedent's Estate, nor of Janine Gourline's appointment as the Personal Representative of the Estate of the Decedent. Furthermore, the Petitioners were not informed of any action taken by Respondent Janine Gourline as the Personal Representative of the Estate of the Decedent.
17. Upon information and belief, Respondent Janine Gourline died on November 11, 1999. On August 16, 2000, the Honorable Tamara C. Curry, Associate Judge of Probate, issued an order closing Decedent's estate pursuant to Probate Court Rule 4.
18. On March 22, 2001, Respondent Annabelle Thornton filed a Petition seeking to be appointed Successor Personal Representative of the estate of Decedent. Respondent's Petition included Renunciations of Right to Administration from Respondents Mary P. Smith and Emma Smalls, and did not include Renunciation from the Petitioners.
19. On March 22, 2001, Respondent Annabelle Thornton was appointed Successor Personal Representative of the Estate of the Decedent.
20. Respondent Annabelle Thornton did not notify any of the Petitioners of the filing of the Petition to be appointed Successor Personal Representative of the Decedent, nor did she notify any of the Petitioners of her appointment as the Successor Personal Representative of the Decedent's Estate. Furthermore, the Petitioners were not notified of any action taken by Respondent Annabelle Thornton as the Successor Personal Representative of the Estate of the Decedent.
21. Throughout this period, Respondents continued to conceal Decedent's Last Will and Testament from Petitioners and the Probate Court and represented to the Court that Decedent had

died intestate. Respondents Annabelle Thornton and Emma Smalls continued to reside on the property which comprised the sole asset of Decedent's estate.

22. On April 17, 2001, Respondent Thornton filed a Deed of Distribution purporting to convey the property which is the subject of this action in the following percentages:

Respondent Annabelle Thornton	1/5
Respondent Emma Smalls	1/5
Respondent Mary P. Smith	1/5
Respondent Estate of Janine Gourdine	1/5
Petitioners Rebecca Brown, Thomas Brown, Jr. and Evelina Brown Moses collectively	1/5

The Deed Affidavit attached to the Deed of Distribution misidentifies said parties as the legal heirs of Decedent. This Deed of Distribution was ultimately recorded in the RMC Office for Charleston County in Book U369 at Page 558 on or about May 7, 2001.

23. On May 25, 2001, Respondent Annabelle Thornton filed a Petition for Settlement in which she declared that "Decedent died intestate." Thereafter, a Certificate of Discharge was issued on June 26, 2001. Respondent Annabelle Thornton died on October 7, 2004.

24. On or about August 3, 2005, Petitioners were summoned by Respondent Emma Smalls. Upon arriving at Respondent Emma Smalls' residence, Respondent Emma Smalls produced the Decedent's original Last Will and Testament and told Petitioners that the Will had been concealed so that she (Respondent Emma Smalls) and her sisters (Respondents Annabelle Thornton and Janine Gourdine) could continue to live on the property subsequent to Decedent's death.

25. The Petitioners immediately filed the Decedent's original Will with the Probate Court. The Petitioners were unaware of any prior actions in Probate Court regarding the Decedent at the time the Petitioners filed the original Will with the Court.

26. Shortly thereafter, the Petitioners filed an action to Recover Improper Distributions made by the Decedent's Estate. The depositions of Respondents Emma Smalls, Mary P. Smith, Viola Pringle, Maezell Mitchell, Robert Pringle and Cephus Thornton were subsequently taken wherein each of the Respondents denied having any knowledge of the existence of the Last Will and Testament of the Decedent.

27. Shortly after the Decedent's demise, it is the Petitioners' belief and understanding that an insurance claim was filed by Respondent Emma Smalls with the Public Savings Fire & Casualty Insurance Company regarding damages incurred to the property owned by the Decedent as a result from Hurricane Hugo.

28. The check issued by the Public Savings Fire & Casualty Insurance Company on the insurance claim was made payable to "Thomas Brown, Patricia Brown, Evelina Brown, and Emma Smalls, the Executors of the Estate of Lucinda Pringle". (See Exhibit A.)

29. Respondent Emma Smalls contacted each of the Petitioners regarding the insurance claim filed. Respondent Emma Smalls had advised the Petitioners that she was going to forward an insurance company check to them for their signature (on the said check), and on a form which would authorize her (Respondent Emma Smalls) to cash the check for the settlement proceeds from the hurricane loss and divide the proceeds between Thomas Brown, Evelina Brown and Patricia Brown (not Respondent Emma Smalls). (See Exhibit B.)

30. Respondents knowing and intentional concealment of Decedent's Last Will and Testament prevented Petitioners from receiving their devised share of Decedent's property as set forth in the Decedent's Last Will and Testament.

31. Pursuant to the terms of the Decedent's Last Will and Testament, it is the Petitioners belief and understanding that 100% of the Decedent's interest in the real estate located on Old Georgetown Road would have been divided equally between the three Petitioners (i.e.: 33 1/3% each).

32. It is the Petitioners' belief and understanding that Respondent Emma Smalls name was fraudulently added onto the Decedent's Will after the Decedent had executed her Will. This inclusion would decrease each of the Petitioners' interest in the property from 33 1/3% each to 20% each. Under the Deed of Distribution currently recorded (and based on the fraudulent misrepresentation that the Decedent died intestate), the Petitioners have only received a 6.66% interest in the property each.

33. Petitioners are the lawful heirs of Decedent and are named beneficiaries under Decedent's Will. Under the consequence of the foregoing, Decedent died testate and the Petitioners are entitled to reclaim and recover the property wrongfully distributed by and to Respondents in the Deed of Distribution previously issued.

34. Petitioners seek and are further entitled to an Order reopening the estate of Decedent in order to recover and reclaim assets and real property wrongfully distributed from Decedent's estate, and to distribute the assets to the lawful beneficiaries in accordance with Decedent's Last Will and Testament.

35. Petitioners seek and are further entitled to an Order vacating the Court's prior Order dated June 25, 2001, since none of the Petitioners were provided any of the required Notices of the Estate.

36. Petitioners' desire to Appeal the Probate Court's Order dated June 25, 2001, since none of the Petitioner's were provided the required notice of the opening of the Estate, and/or any actions which took place therein.

37. Petitioners seek an Order nullifying the Deed of Distribution issued on or about April 17, 2001, as void ab initio.

38. Petitioners seek and are further entitled to an Order from this Court enjoining all Respondents named herein from selling, encumbering, leasing, renting, transferring any of the real property located at 2517 Old Georgetown Road and described as follows:

ALL that piece or parcel of land situate in Christ Church Parish, Charleston County, South Carolina, containing Ten and one-half (10.5) acres, more or less, said land known as No. 5 on Plat of Boone Hall and Sea Shore Tracts, and recorded in the

RMC Office for Charleston County in Book B, Page 46, on the 28th day of November, 1873.

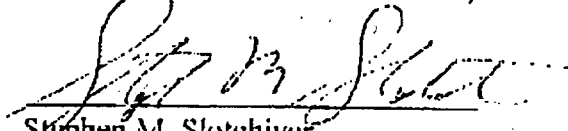
BEING the same property conveyed to Elizabeth G. Washington and Lucinda Pringle by deed of Steven Graddick, Jr. a/k/a Stephen Graddick, Jr., Rebecca Jefferson, Estelle Capers, Henry Bailem, Jr., Florence Ford, David Green and Harriet Lane, Heirs of September Drayton, dated December 1, 1988, and recorded September 18, 1989, at Book R187, Page 214, in the RMC Office for Charleston County.

TMS# 578-00-00-026

WHEREFORE, Petitioners pray for the relief set forth in their petition, including, but not limited to the following:

1. For an Order declaring the Respondents' knowing and intentional concealment of the Decedent's Last Will and Testament fraudulent;
2. For an Order compelling the recovery of and return of all improper distributions made by the Estate;
3. For an Order to declare the Decedent died testate;
4. For an Order nullifying the Deed of Distribution issued on April 17, 2001, as void ab initio;
5. For an Order enjoining and preventing the sale, encumbrance, leasing or renting, any of the property which is the subject of this action; and
6. For such other and further relief as this Court deems just and proper.

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Attorneys for Petitioners

January 17, 2007
Charleston, South Carolina

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

**EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,**

Petitioners

VS

**AMENDED
RETURN TO MOTION &
MOTION TO DISMISS
UNDER RULE 12,
SCRCP and UNDER
RULE 60 (b)(3), SCRCP.**

**ESTATE OF LUCINDA PRINGLE,
EMMA SMALLS, MARY P. SMITH,
ESTATE OF ANNABELLE THORNTON,
ESTATE OF JANINE GOURDINE, ODESSA
GRADDICK, ARTHUR EUGENE GRADDICK,
JR., VIOLA PRINGLE, MAEZELL MITCHELL,
CEPHUS THORNTON, and any other
persons and entities claiming any
interest in the Estate of LUCINDA
PRINGLE,**

Respondents.

**TO JONATHAN S. ALTMAN AND STEPHEN SLOTCHIVER, ATTORNEYS
FOR THE PETITIONERS:**

**The Respondents assume that the order to be vacated is
the Certificate of Discharge issued on June 26, 2001 as is set forth
in paragraph 23 of the Petitioners' motion. The Respondents are**

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PROBATE COURT
CHARLESTON COUNTY

unaware of an order dated June 25, 2001.

NOTICE IS HEREBY GIVEN YOU that the defendants will move before the Probate Judge for Charleston County on July 11, 2007, that petition and the motion to vacate the order of June 25 or 26, 2001 be dismissed on the following grounds.

(1) The Petitioners seek to overturn the Intestate estate of Lucinda Pringle. The sole asset of that estate is real estate. The Petitioners claim there was a Will in which they are the named devisees of a 10 acre tract of land. This land was conveyed out of the intestate estate to the heirs who include the Petitioners by a deed of distribution dated April 6, 2001, and recorded in the RMC Office for Charleston County in Book U-369, page 558. This Court does not have jurisdiction over the real estate which is the subject matter in this action;

(2) The parties named in the caption of the petition and motion are incorrect. There has been no filed estate for Odessa Graddick. She is shown as a party whereas in fact she is dead, thus giving rise to the fact that there maybe unknown heirs who are not named in this action nor has there been a guardian ad litem representing such unknowns who maybe minors, imprisoned persons, persons in the military, and

Incompetents. The caption further names "estates of " certain persons whereas a Special Administrator has been recently appointed and should be substituted as a named respondent for each of those estates, and that she be served and be given an opportunity to respond to the motion and to the original petition. One of the intents of a caption is to give notice to the parties who have an interest in the action.

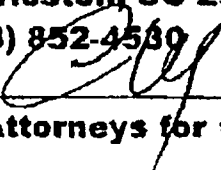
(3) There is insufficiency of process and service of process in that there should be a publication addressed to such unknowns in which the summons, notice of filing, and notice nls are published pursuant to statute. In paragraph 10 of the motion to vacate, the Petitioners state that they "intend to effect service over all such parties, if any, through publication, having attempted to identify and locate any other heirs or interested parties through reasonable diligence." The Respondents know of no such publication to date

(4) A failure to join parties in whose absence complete relief cannot be accorded among those who are already parties i.e., unknown heirs who may not have been named in this action and who have not been served by publication. Should publication

have been completed, the caption does not contain fictitious names such as John Doe and Mary Roe, etc., and would be defective.

It is Respondents' position that the above create jurisdictional defects in Petitioners' petition and motion to vacate, and therefore the petition and motion to vacate should be dismissed.

(5) The Petitioners, in their motion, seek to vacate the "order" dated June 25 or 26, 2001, on the grounds of fraud. Rule 60(b)(3) requires such a motion to be brought "not more than one year after the judgment, order or proceeding was entered or taken." Additionally, no affidavits were attached to the motion. In this case, the Petitioners were mailed the closing documents by the Personal Representative. The closing documents included a proposal for distribution and notice of right to demand hearing. The Petitioners did not object until 4 years later and not reasonably timely. The Certificate of Discharge was thereafter issued on June 26, 2001.

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By: 
Attorneys for the Respondents

June 29, 2007
Charleston, SC

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

**EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,**

Petitioners

**AMENDED
ANSWER**

VS

**MARY P. SMITH, individually and as
Personal Representative of the ESTATE
OF LUCINDA PRINGLE, MAEZELL MITCHELL
JEFFERSON, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE B.
BROCKINGTON, as Special Administrator
of the ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE, CEPHUS
THORNTON, ARTHUR GRADDICK, III,
an imprisoned person, VENETRA WATSON,
and any known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE, ODESSA
GRADDICK, ARTHUR GRADDICK,
JR., ANNABELLE THORNTON and
JANINE GOURDINE,**

Respondents.

The Respondents allege:

FOR A FIRST DEFENSE

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CHARLESTON COUNTY

- 1. They deny each of the allegations of the petition not hereinafter admitted.**
- 2. They admit the allegations contained in paragraphs numbered 1,2, 3, 5, 8,9,11,13,15, 16, and 19 upon information and belief.**
- 3. They deny that portion of the allegation contained in paragraph numbered 4 that alleges that Emma Smalls resides on the subject property, and admits the remaining portion of that allegation upon information and belief.**
- 4. Upon information and belief, they admit those portions of the allegation contained in paragraph numbered 6 which alleges that Janine Gourline was Lucinda Pringle's daughter; that Janine Gourline administered the estate of Lucinda Pringle as personal representative until her death; that Annabelle Thornton was certified as the successor personal representative of the estate of Lucinda Pringle; that a certificate of discharge was issued by the probate court for Charleston County on June 26, 2001. They deny the remaining allegations therein.**
- 5. Upon information and belief, they admit only that**

portion of the allegations contained in paragraph numbered 7 that Janine Gourdin was a daughter of Lucinda Pringle, and admit that her heirs claim her undivided interest in the subject property. They deny the remaining allegations and demand strict proof thereof.

6. They deny the allegations contained in paragraph numbered 10, demand strict proof thereof, and further allege that these allegations contain matters and conclusions of law.

7. They admit, upon information and belief, that the portion of the allegation numbered 14 which alleges that Emma Smalls, Annabelle Thornton, and Mary P. Smith renounced their right to administer the estate of Lucinda Pringle; that they deny the remaining portions of this allegation and demand strict proof thereof.

8. Upon information and belief, they admit those portions of the allegations contained in paragraph numbered 17 that on or about March 22, 2001, Annabelle Thornton filed to be appointed successor personal representative of the estate of Lucinda Pringle and was appointed by the probate court; that a certificate of discharge was issued on June 26, 2001. They deny the remaining allegations and demand strict proof thereof.

9. They deny the portion of the allegations contained in paragraph numbered 18 that the deed of distribution misidentifies the grantees therein as the lawful heirs of the estate of Lucinda Pringle and asserts herein that the deed speaks for itself. Upon information and belief, they admit the remaining portion of said allegation.

10. They deny the allegations contained in paragraphs numbered 20, 21, 22, 23, 24, and 25, and demand strict proof thereof.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

11. Petitioners are barred as a result of their conduct in falling to file of the Will of Lucinda Pringle.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

12. The claims asserted against the Respondents are barred by the applicable statutes of limitations

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

13. The Petitioners' claims are barred by laches.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

14. The Petitioners' claims asserted are barred by the doctrine of unclean hands.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

15. The Petitioners have waived and/or are promissory and judicially estopped from asserting the claims set forth in their petition.

**FURTHER ANSWERING THE PETITION
AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE**

16. Petitioners' claims fail to state facts sufficient to constitute causes of action against the respondents.

WHEREFORE, these respondents pray that the petition be dismissed with prejudice; and for such other and further relief as this court may deem just and proper.



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Attorneys for the Respondents
Above named.

Charleston, SC
April 8, 2008

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT
CASE NO.: 1999-ES-10-689-2

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., and DAVID L. MICHEL
as Guardian Ad Litem for REBECCA
PATRICIA BROWN,

Petitioners,

v.

MARY P. SMITH, individually and as Personal
Representative of the ESTATE OF LUCINDA
PRINGLE, MAEZELL MITCHELL
JEFFERSON, individually and as Personal
Representative of the ESTATE OF ANNABELLE
THORNTON, SHIRRESE B. BROCKINGTON,
as Special Administrator of the ESTATE OF
JANINE GOURDINE, EMMA SMALLS,
VIOLA PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDICK, III, an imprisoned person,
VENETRA WATSON, and any known or
unknown persons or entities claiming any interest
in the ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR GRADDICK,
JR., ANNABELLE THORNTON and JANINE
GOURDINE,

Respondents.

MEMORANDUM IN SUPPORT
OF MOTION TO VACATE

Introduction

Lucinda Pringle, ("Mrs. Pringle") was a model grandparent and raised her grandchildren, Thomas, Evelina, and Rebecca (hereinafter referred to as "Ms. Pringle's grandchildren") as if they were her own. Mrs. Pringle was particularly concerned for the wellbeing of Rebecca who was severely mentally retarded. In an effort to provide for her grandchildren after her demise, Mrs. Pringle executed a will (attached hereto as Exhibit "A") on July 30, 1988 declaring her desire to devise her entire estate to her three grandchildren. However, following her death on October 11, 1989, in order to deny her grandchildren their rightful inheritance, various members of Mrs. Pringle's family commenced an elaborate conspiracy to fraudulently conceal and suppress her will in violation of the statutory duty to deliver a will, a misdemeanor under S.C. Code Ann. § 62-2-901.

In late 1989, Emma Smalls, one of Mrs. Pringle's daughters, provided Mrs. Pringle's altered will to an insurance company in order to obtain homeowners insurance proceeds for damage caused by Hurricane Hugo. These monies were used to repair the home on Mrs. Pringle's property in which Ms. Smalls resided. Other than producing the will in furtherance of this claim, Ms. Smalls concealed the will and denied its existence until 2005. The conspiracy peaked some nine and a half years after Mrs. Pringle's death when another one of her daughters, Janine Gourline, petitioned the Probate Court to open Mrs. Pringle's estate as an intestate estate and represented that Mrs. Pringle died with "no will". Ms. Gourline failed to notify Mrs. Pringle's grandchildren of any pending intestate probate proceedings. Finally, the conspiracy culminated on August 3, 2005 when, after some sixteen years suppressing Mrs. Pringle's will, Emma Smalls confessed the entire scandal and presented the original will to Evelina Brown Moses who immediately filed it with the Probate Court. Now the time has come for Mrs. Pringle's wishes to be honored, and for the Estate of Lucinda Pringle to be distributed pursuant to the terms of her will.

Parties

Victims

Lucinda Pringle: deceased testator;
Thomas P. Brown, Jr.: grandchild of Lucinda Pringle and intended devisee;
Evelina Brown Moses: grandchild of Lucinda Pringle and intended devisee;
Rebecca Patricia Brown: incompetent grandchild of Lucinda Pringle and intended devisee (David L. Michel serves as Rebecca Patricia Brown's Guardian ad Litem).

Conspirators

Emma Smalls: daughter of Lucinda Pringle, resident of property in question, perpetrator of insurance scheme, confessor of fraud;
Janine Gourline: deceased daughter of Lucinda Pringle, late resident of property in question, original perpetrator of fraudulent scheme to probate estate as intestate;
Annabelle Thornton: deceased daughter of Lucinda Pringle, subsequent perpetrator of fraudulent scheme to probate estate as intestate;
Mary Smith: daughter of Lucinda Pringle, beneficiary of fraudulent scheme to probate estate as intestate;

Facts

The sole asset in Mrs. Pringle's estate is a one-half interest in ten acres located at 2517 Old Georgetown Road in Mt. Pleasant, South Carolina. Prior to her death, Mrs. Pringle resided on this land with her granddaughter, Rebecca Patricia Brown, and her daughters, Emma Smalls, Annabelle Thornton, and Janine Gourline who, since her death, have continued to reside on the property. When Mrs. Pringle died, her daughters were in possession of her will and had a legal duty to deliver it to the Probate Court pursuant to S.C. Code Ann. § 62-2-901. Nevertheless, in an effort to maintain their residency on the land, Mrs. Pringle's daughters fraudulently conspired to conceal and suppress the will.

Damage to the property caused by Hurricane Hugo produced evidence confirming that Mrs. Pringle's daughters were in possession of her will. Shortly after Mrs. Pringle's death, Emma Smalls filed an insurance claim with the Public Saving Fire & Casualty Insurance Company. Petitioners were not residing in South Carolina and were not consulted regarding the filing of this claim by their aunt. On January 15, 1990, the Public Savings Fire & Casualty Insurance Company issued and delivered a check to Emma Smalls (attached hereto as Exhibit "B" along with correspondence to Emma Smalls produced by Respondents) in the amount of Three Thousand (\$3,000.00) Dollars made payable to:

"Thomas Brown, Patricia Brown, Evelina Brown, and Emma Smalls
Executors of the Estate of Lucinda Pringle."

Mrs. Pringle's will indeed nominates the Petitioners as executors, and even lists the four individual payees in the same order as listed in the insurance draft, evidencing that Emma Smalls presented Mrs. Pringle's will to the carrier in order to obtain the insurance proceeds. In addition, it is important to note that a cursory review of Mrs. Pringle's will suggests that it was tampered with in order to add Emma Smalls' name as a devisee so as to aid in her efforts to obtain the insurance proceeds, to wit:

- The will has clearly been altered via typewriter erasure to add the name of only one of Mrs. Pringle's daughters, Emma Smalls, as a devisee;
- While Emma Smalls is not appointed co-executor in a complex paragraph where such typewriter erasure is not feasible, she is added in a later paragraph that appoints executors via typewriter erasure.

Upon receipt of the insurance check, Emma Smalls by and through her son and grandson, had Petitioners (including the mark of Rebecca Patricia Brown, an incompetent) endorse the insurance draft. The competent grandchildren, Thomas and Evelina, who had not completed high school, agreed to Emma Smalls' request, as they were unsophisticated in such affairs, unaware of their interest in the property and not wanting to interfere with Emma Smalls' efforts to repair the property. The incompetent grandchild, Rebecca Patricia, was unequipped to comprehend any portion of this transaction.

On May 5, 1999, another of Mrs. Pringle's daughters, Janine Gourdine, petitioned the Probate Court to open the estate of Lucinda Pringle as an intestate estate. In her Petition, Ms. Gourdine fraudulently misrepresented to the Probate Court that Mrs. Pringle had died without a will. Ms. Gourdine notified her sisters of her Petition and obtained renunciations of rights to administration from her sisters. However, she did not notify Petitioners of her actions and failed to seek renunciations of rights to administration from the Petitioners despite the fact that they had rights in the estate under any circumstance. Lucinda Pringle's Probate file confirms that Petitioners did not receive notice of any estate filings. Upon Janine Gourdine's death in late 1999, yet another of Mrs. Pringle's daughters, Annabelle Thornton, successfully obtained successor appointment as Personal Representative and continued the fraud by also denying the existence of the will and failing to notify Mrs. Pringle's grandchildren of estate activity.

On April 18, 2001, Annabelle Thornton filed a Deed of Distribution leaving only 1/5 of Mrs. Pringle's estate to be divided amongst Petitioners, the intended devisees of the estate (1/15th to each grandchild). The remaining 4/5ths of the estate was improperly distributed to Mrs. Pringle's daughters. Closing documents were filed but not provided to Petitioners. Throughout the course of the administration of the Estate, Petitioners had no notice of any estate activity.

By 2005, Emma Smalls and Mary Smith were Mrs. Pringle's remaining surviving daughters. On August 3, 2005, the entire conspiracy was revealed when Emma Smalls produced the will to Evelina Brown Moses and confessed to her that she had concealed Mrs. Pringle's will so that she and her late sisters could continue to live on the property. Evelina Brown immediately filed the will with the Charleston County Probate Court. In an effort to distribute the estate pursuant to Mrs. Pringle's wishes, her competent grandchildren and a guardian ad litem appointed to represent Rebecca promptly filed a Petition for Recovery of the Improper Distribution. Affidavits of Thomas Brown and Evelina Brown Moses are attached hereto as Ex. "C" and "D".

Law

1. The South Carolina Probate Code (SCPC) authorizes the vacation of a formal testacy order, including an order that the decedent left no valid will.

a. SCPC section 62-7-412(1) provides that: "[t]he court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication." Petitioners, two of whom were residing outside of South Carolina, were unaware of the existence of the decedent's original will,¹ which was improperly hidden from them, until the confession of Respondent Emma Smalls in 2005, when she produced the will to Evelina Brown Moses and explained that the will had been concealed from Petitioners so she and her siblings could continue to reside on the property. Moreover, Petitioners were unaware of the earlier probate proceeding of which they had been given no notice. Within a few days of being given the will, Petitioners filed the will with this Court. Thus, Petitioners satisfy the requirements of SCPC section 62-3-412 for vacating a formal order of intestacy.

b. SCPC section 62-3-413 allows the modification or vacation of an order in a formal testacy proceeding for "good cause shown." Petitioners were the victims of a conspiracy by Respondents to withhold information about the decedent's will. Moreover, Petitioners were not properly notified of the probate of the decedent's estate as an intestacy. The conspiracy by Respondents to keep Petitioners uninformed is demonstrated, inter alia, (i) by the failure of the previous personal representatives — two of the Respondents — to deliver any estate filing to

¹ Thomas Brown was unaware of the existence of the original will. Although he had seen a copy of the will, when he asked he was told that there was no original. Evelina Brown Moses and Rebecca Patricia Brown were unaware that a will existed.

Petitioners, including: the Information to Heirs and Devisees, Final Accounting, Proposal for Distribution, Notice of Right to Demand Hearing, and Petitioner for Settlement, (ii) by the failure of Respondents to inform Petitioners about the existence of decedent's will, and (iii) by the presentation of a Hurricane Hugo insurance claim by at least one of Respondents for the property that comprises the primary asset of the estate.

The insurance proceeds check was made payable to Petitioners and to Respondent Emma Smalls as "executors of the estate of Lucinda Pringle" in the exact order as reflected in the will. The designation of payees on the check, procured by Respondent Emma Smalls, is significant because no probate had been commenced at the time the check was issued. Notably, the decedent's will nominates Petitioners and, at least on its face, Respondent Emma Smalls as her executors and devises the subject property to Petitioners and, at least on its face, Respondent Emma Smalls.¹ Evidently, without informing Petitioners, Respondent Emma Smalls presented the will to the insurance company to process the claim. These facts demonstrate that Petitioners have good cause to seek the vacation of the order.

Even if Respondents did not intentionally withhold information from Petitioners, it is undisputed that Petitioners did not have the relevant information, especially as to the existence of the will, until Respondent Emma Smalls advised Evelina Brown Moses about its existence in 2005. This alone constitutes good cause for vacating the order because failing to do so would dishonor the decedent's intentions, which is the primary purpose of probate.

2. Petitioners' motion is timely.

Although they contain certain time limits, SCPC sections 62-3-412, 62-3-413, 62-3-108, or 62-3-1006 do not prevent the vacation of the order. Nor does laches or estoppel or SCRPC Rule 60 bar Petitioners' motion.

a. Section 62-3-412 provides that the time limit is the earlier of three events, which ostensibly have occurred. However, SCPC sections 62-3-1005 and 62-3-1006, dealing with time limits for actions by successors against the personal representative and against distributees, expressly and specifically provide that the time limits do not apply, in actions against the personal representative, "for fraud, misrepresentation, or inadequate disclosure related to the settlement of the decedent's estate," and, in actions against the distributees, for "an action to recover property or value received as the result of fraud." Petitioners' motion to vacate is effectively directed at Respondents, who are distributees and, in the case of two of them, were personal representatives.² Thus, the time limit exemptions provided in sections 62-3-1005 and 62-3-1006 override any time limit otherwise imposed by section 62-3-412.

¹ Petitioners allege that Emma Smalls' name was added as devisee and nominee for executor after the execution of the will.

² See the discussion of Respondents' fraud at c. below.

b. Even if the time limit for vacation of an order under section 62-3-412 has expired, the time limit for vacation under section 62-3-413 has not, in any event. Section 62-3-413 provides that the time to vacate an order for good cause is the time allowed for an appeal.⁵ According to section 62-1-308, the time to file a notice of appeal is "ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court." Because Petitioners have yet to receive a written notice of the order, the time to appeal clearly had not run by the filing of their motion to vacate. Thus, the time limit to vacate an order for good cause under section 62-3-413 has not expired.⁶

c. Section 62-3-108 is not a bar to Petitioners' motion. Although section 62-3-108 prevents the commencement of a formal testacy proceeding more than ten years after a decedent's death, the probate of the decedent's estate, which included the issuance of a formal testacy proceeding, was commenced within ten years of decedent's death. The motion to vacate is a part of the probate that was timely commenced. Petitioners' motion to vacate does not erase or extinguish the commencement of the probate of decedent's estate, which was timely. It merely requests that the final testacy order be vacated or, in essence, corrected. Section 62-3-108 does not place a time limit on when a formal testacy order may be handed down or vacated; it places a time limit only on the commencement of the administration of the estate.⁷

d. Section 62-3-1006 provides time limits for an heir or devisee to recover property improperly distributed. However, as discussed above, these time limits do not apply in the event of fraud.

e. Even if any of these SCPC sections otherwise, standing alone, precluded Petitioner's

⁵ Section 62-3-413 does not require that an appeal be filed, it merely sets its time limit for a motion to vacate or modify as the same time limit applicable to an appeal.

⁶ Even if the section 62-3-413 time limit had otherwise expired, the exemptions under sections 62-3-1005 and 62-3-1006 would override the expiration, as discussed above.

⁷ This policy is supported by the first two exceptions in section 62-3-108 from the ten year time limit. Both exceptions recognize that probate proceedings may be commenced more than ten years after the decedent's death when there is a mistake about the decedent's death, even if it is ultimately determined that the decedent was dead. These two exceptions demonstrate the policy of the section, which is not to create an absolute bar to the commencement of a probate proceeding when the court can rectify a mistake. Granting Petitioners' motion would rectify what is at best a mistake and at worst a fraud.

Moreover, section 62-3-108 provides that "it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession" only if "no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death." In this case, the condition precedent to the incontestable determination of intestacy under the statute has not occurred because the probate of the decedent's estate was commenced within ten years of the decedent's death.

motion being granted, that section or sections would be overridden by the fraud committed by Respondents because the commission of a fraud or an intentional misrepresentation estops Respondents from asserting any statute of limitations. See *R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 710 (S.C. 2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Moreover, even if Respondents did not engage in fraud or make intentional misrepresentations, Respondents are estopped from asserting any statute of limitations because Petitioners reasonably relied on the words and conduct of Respondents in allowing any limitations period to expire. See *Regions Bank v. Schmauch*, 582 S.E.2d 432 (S.C. App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (S.C. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (S.C. 2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (S.C. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (S.C. App. 1997). See generally *Vandegrift v. Lagrone*, 477 So.2d 292 (1985) (persuasive authority where will proponent's failure to file a timely petition to probate the will is occasioned by fraud, the filing of the petition within one year from the time the petitioner discovered fraud is effective as timely filing); *Walters v. Lewis*, 276 Ark. 286, 634 S.W.2d 129 (1982) (persuasive authority in case where personal representative fraudulently failed to notice rightful devisees of probate proceedings, and time bar did not commence until discovery of fraud)

More specifically, SCPC sections 62-1-1005 and 62-3-1006, otherwise providing limitations for remedies by heirs and devisees against personal representatives and distributees, expressly do not bar an action to recover for fraud, misrepresentation, or inadequate disclosure (in the case of personal representatives) and fraud (in the case of distributees.) More generally, SCPC section 62-1-106 creates a fraud-related time period to bring an action, which is two years from the discovery of the fraud. As discussed above, Petitioners promptly filed decedent's will upon discovery of the fraud.

Petitioners are the victims of fraud:

Element 1: A representation. Mrs. Pringle's daughters formally and informally declared that she died intestate.

Element 2: Falsity. Mrs. Pringle validly executed a will on July 30, 1988 devising her estate to her grandchildren.

Element 3: Materiality. The issue of testacy is central to any probate proceeding.

Element 4: Knowledge of falsity. After Hurricane Hugo, Mrs. Pringle's will was produced by Emma Smalls to obtain insurance benefits, thereby confirming knowledge of its existence.

Element 5: Intent that representation be acted upon. Emma Smalls has confessed that she and her sisters intentionally concealed and suppressed Mrs. Pringle's will so as to prevent the grandchildren from pursuing their rightful ownership interests.

Element 6: Ignorance of falsity. Evelina Brown Moses and Rebecca Patricia Brown were

unaware of the existence of the will, Thomas Brown was unaware of the existence of the original, and all of decedent's grandchildren were collectively and purposefully denied notice of the intestacy proceedings.

Element 7: Reliance upon falsity. Evelina Brown Moses did not pursue her rightful ownership interest until after Emma Smalls' confession because she did not know that her grandmother died with a will and she received no notice of intestate probate proceedings. Thomas Brown did not pursue his ownership interest because he received no notice of the intestate probate proceedings and relied upon Respondents' claims that they did not possess the original will.

Element 8: Right to rely on falsity. Until Emma Smalls' confession, Mrs. Pringle's grandchildren who were unsophisticated in such affairs (particularly the incompetent grandchild), trusted and respected Mrs. Pringle's daughters as the residents of the land in question, and were purposefully denied notice of the intestacy proceedings thereby eliminating their opportunity to be heard.

Element 9: Injury. Pursuant to the fraudulently-obtained intestate deed of distribution, Mrs. Pringle's grandchildren were each devised a 1/15 interest of their grandmother's estate instead of the intended 1/3 interest each pursuant to Mrs. Pringle's will. Four of Mrs. Pringle's daughters each improperly distributed a 1/5 interest, respectively.

See generally Kahn Construction Co. v. South Carolina National Bank of Charleston, 275 S.C. 381, 384, 271 S.E.2d 414 (1980). Finally, pursuant to S.C. Code 15-3-530(7), a victim of fraud has three years from the discovery of the facts constituting the fraud to file a cause of action. Evelina Brown Moses filed the original will immediately after it was finally given to him.

Further evidence of Respondents' fraudulent enterprise includes the valuation of the subject property on the inventory and appraisal at \$100, when the property is clearly worth substantially more and their violation of section 62-2-901.

f. Even if any of these SCPC sections otherwise, standing alone, precluded Petitioners' motion being granted, that section or sections would be overridden by public policy considerations. A primary purpose of probate is to honor the decedent's intent. To allow the actions of Respondents, whether intentional or not, to circumvent the probate of decedent's will would dishonor, rather than honor, decedent's intent, in contravention of public policy.

g. Nor does laches or estoppel preclude the grant of Petitioners' motion. Even if laches or estoppel were applicable to a motion of this type, neither applies to the facts of this case. As soon as Petitioners became aware of their rights, they asserted them. Nor are Respondents prejudiced by any delay; rather, they have benefitted by maintaining use of property to which they are not entitled. Significantly, both laches and estoppel are equitable in nature, and this requires clean hands on the part of the party asserting laches or estoppel as defenses. Respondents engaged in a conspiracy to withhold the will from Petitioners and this Court. They certainly have unclean hands, and they are certainly unworthy of any equitable relief. *See Emery v. Smith*, 603 S.E.2d 598 (S.C. App. 2004); *Premium Invest Corp. v. Green*, 324 S.E.2d 12 (S.C.).

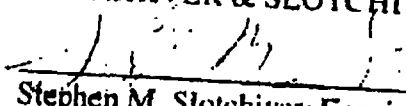
App. 1984).

h. SCRCF Rule 60 is inapplicable to this motion. Rule 60 specifically does not apply to an action "to set aside a judgment for fraud upon the court." The gist of Petitioners' motion is to set aside a judgment that resulted from a fraud upon the court. However, even if that exception did not apply, Rule 60 is inapplicable to this motion in any event. SCPC section 62-1-304 provides that the SCRCF does not apply if the SCPC's provisions are inconsistent. As discussed above, the SCPC contains its own provisions regarding the timing of this motion.

Conclusion

For the reasons set forth herein, Petitioners respectfully request that the Court grant their Motion to Vacate and award the relief requested therein.

SLOTCHIVER & SLOTCHIVER, LLP


Stephen M. Slotchiver, Esquire
44 State Street
Charleston, SC 29401
(843) 577-6531

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S. Alan Medlin, Esquire
1713 Phelps Street
Columbia, SC 29205

Attorneys for Petitioners

April 1, 2008
Charleston, South Carolina

LAST WILL AND TESTAMENT

WILFRED FRIZZLE

of Christ Church Parish, (County Of Charleston)

being of sound

and disposing mind and memory and desiring to make such disposition of my worldly estate as I deem best, DO HEREBY MAKE, PUBLISH AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT, hereby revoking any and all former wills and codicils whatever by me made.

First: I direct that all my just debts and funeral expenses be paid out of my estate as soon after my decease as conveniently may be and to that end charge my whole estate, real and personal, with the same.

Second: I give, devise and bequeath to Thomas Brown, Patricia Brown, Evelina Brown and Anna P. shall my personal belongings and my homes

and

ITEM 3

I give, devise and bequeath all my right, title and interest in and to that certain property.

ITEM 4

I nominate, Constitute and appoint my beloved Grand Childrens, Thomas Brown Patricia Brown and Evelina Brown, Co-Executrices to serve without bond of this my LAST WILL AND TESTAMENT. I authorize and empower my Executrices to hold and retain as investme of my Estate all investments, securities, and other property, real and personal, which shall at time of my death be included in my estate, to sell and dispose of, for the purpose of paying my debts or for any other purpose whatsoever, any or all of such property, either at public or private sale, for such prices and on such terms as my Executrices shall deem proper, and to make, execute and deliver all assignment transfers, and other legal instruments where necessary or convenient for the passing of the title and ownership thereto, without any liability on the purchaser to see to the application money.

Witness my hand and seal this 1st day of May 1911

I nominate and appoint **Thomas Brown, Patricia Brown, Evelina Brown and Emma P. Smalls** to be the executors of this my Last Will and Testament

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testament at Mt. Pleasant, S.C. this 10 day of July, in the year of our Lord One Thousand Nine Hundred and 88

Witnessing marks
Signed, sealed, published and declared by the said *Emilia Springer* (SEAL) as and for her last will and testament in the presence of us who in the presence, at her request and in the presence of one another, all present together, have hereunto subscribed our names as witnesses.

Emilia Springer
William H. Scott
Anna S. Brown
DIRECTIONS: This will is in writing, signed at the end thereof by the party making the same, or if unable so to do, by some other person in his presence and he has expressed his intent and declared by at least two witnesses and being attested thereto in the presence of the testator's presence and the non-subscribing and acknowledging it to be his will. The testator and witnesses must execute this will in the presence of each other in South Carolina wills must be attested by at least three (3) witnesses.

Last Will and Testament
OF

Lucinda Iring

Dated 30 June A. D. 1985

WITNESSES

07 JAN 18 AM 10:55

PUBLIC SAVINGS FIRE & CASUALTY INSURANCE COMPANY

CHECK NO

023234

P.O. BOX 10020 • 304 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29411

(803) 577-9930

NO.	CLAIM NO.	DATE
	705639	01/15/90

ACCT. NO.	POLICY NO.	INSURED, DESCRIPTIONS, OR DEDUCTIONS	AMOUNT
402	007006291	SETTLEMENT OF PUEBICANE LOSS	
TOTAL AMOUNT →			

- NEGOTIABLE

DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.

RECEIPT AND RELEASE

I (we), the undersigned, do hereby acknowledge payment in full for all claims existing under the policy or policies listed on this check, and do hereby release Public Savings Life Insurance Company from any further claim or liability under this policy. This receipt is given in full satisfaction of the claim.

07 JAN 18 AM 10:55

CHARLESTON COUNTY

NON - NEGOTIABLE

DETACH AND RETAIN THIS PORTION FOR YOUR RECORDS.

TOTAL AMOUNT →

3000.00

PUBLIC SAVINGS FIRE & CASUALTY INSURANCE COMPANY

P.O. BOX 10020 • 304 MEETING STREET
CHARLESTON, SOUTH CAROLINA 29411
TEL. (803) 577-9930

023234
SOUTH CAROLINA NATIONAL BANK
CHARLESTON, S.C. CHECK NO.

THREE THOUSAND & NO CENTS

DATE
01/15/90

PAY TO THE ORDER OF

KNOW YOUR
ENDORSE
REQUIRE
IDENTIFICATION

THOMAS BROWN, PATRICIA BROWN,
EVELINA BROWN AND EMMA SMALLS
EXECUTORS OF THE ESTATE OF
LUCINDA PRINGLE

AMOUNT
*****3,000.00
VOID AFTER 90 DAYS

J. F. A.
M. L. C.

023234 10532000191 1003 35256

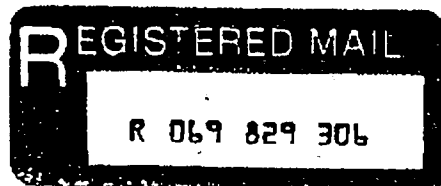
EXHIBIT "A"

FILED

07 JAN 18 AM 10:55

PROBATE COURT
CHARLESTON COUNTY

Mr Darryl Smalls
55 La Salle, St apt 8a
New York, N.Y. 10027



RETURN RECEIPT
REQUESTED

Mrs Emma Smalls
2519 Old George Town Rd
Rt 1 Box 420 - A
Mt Pleasant, S.C. 29469

TO WHOM IT MAY CONCERN:

WE, THE UNDERSIGNED, HAS AUTHORIZED OR GIVEN OUR PERMISSION TO EMMA SMALLS TO CASH THIS SETTLEMENT OF HURRICANE LOSS CHECK TO BE DIVIDED AMONG THE CO-SIGNEES LISTED BELOW.

THOMAS BROWN

Thomas Brown

DATE

3/5/90

EVELINA BROWN

Evelina Brown

DATE

3/5/90

PATRICIA BROWN

x

DATE

3/5/90

WITNESS: Louise Green
WITNESS: Joan Slater

07 JAN 18 AM 10:55
CHARLES COUNTY
PROBATE COURT

Emma M. Smalls
my commission expires
11-10-96

EXHIBIT "B"

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas
P. Brown, Jr., and David L. Michel
as Guardian Ad Litem for Rebecca
Patricia Brown,

Petitioners,

V.

AFFIDAVIT OF THOMAS P. BROWN, JR.

Mary P. Smith, Individually and as Personal
Representative of the Estate of Lucinda
Pringle, Maezell Mitchell
Jefferson, Individually and as Personal
Representative of the Estate of Annabelle
Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of
Janine Gourline, Emma Smalls,
Viola Pringle, Cephus Thornton,
Arthur Graddick, III, an Imprisoned Person,
Venetra Watson, and any Known or
Unknown Persons or Entities Claiming Any
Interest in the Estates of Lucinda Pringle,
Odessa Graddick, Arthur Graddick,
Jr., Annabelle Thornton and Janine
Gourline,

Respondents.

08 APR 16 PM 3:19
CLERK OF COURT
CHARLOTTE, NC

Personally appeared before me, Thomas P. Brown, Jr., who being duly sworn states as follows:

1. I, Thomas P. Brown, Jr., am a Petitioner in the above referenced matter and am providing this Affidavit in support of Petitioners' Motion for Vacation of Order.

2. Along with my two sisters, I was raised by my grandmother, Lucinda Pringle. Our mother was ill and unable to care for us. My sister, Rebecca Patricia Brown, is retarded and has always been unable to care for herself.

3. Our grandmother died on October 11, 1989. At the time of her death, I was unaware that my grandmother had a will and that I, along with my two sisters, were her sole devisees under her will and were to serve as co-executors of her estate.

4. Following my grandmother's funeral, I was shown a document by my aunt, Annabelle Thornton, that appeared to be a copy of my grandmother's will. I requested that I be given the original. My request was denied.

5. In late 1989, I was contacted by my aunt, Emma Smalls, her son James Smalls, and her grandson, Darryl Smalls, regarding an insurance claim arising from damage to my grandmother's property that had occurred during Hurricane Hugo. My aunt, her son and grandson requested that I, along with my sisters,

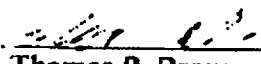
endorse an insurance check from the insurance carrier. I honored this request and again asked that I be provided the original Will. I was told by Emma Smalls that she did not know of its whereabouts.

6. Several years later, I again asked Emma Smalls and her daughter, Viola Pringle, about my grandmother's will. They again denied having any knowledge of the location of the original, but provided me a copy. I attempted to file this copy of the will with the Probate Court, but was told that the original was necessary. As my efforts to obtain the original from my aunts had been unsuccessful, I believed that there was nothing that I could do to probate my grandmother's estate.

7. Since the commencement of this action, I have learned that my aunts undertook to probate my grandmother's estate as an intestate estate in 1999. Their actions were improper in that they misrepresented to the court that my grandmother had died without a will. I received no notice of any filing relative to my grandmother's estate.

8. If I had received notice of any estate activity, I would have taken action to inquire as to what was transpiring with my grandmother's estate and advised the Court that my grandmother had a Will at the time of her death.

FURTHER AFFIANT SAYETH NOTHING.


Thomas P. Brown, Jr.

Subscribed and sworn
to before me on this
16th day of April, 2008.


Notary Republic

My Commission Expires: 04/16/2013

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas
P. Brown, Jr., and David L. Michel
as Guardian Ad Litem for Rebecca
Patricia Brown,

Petitioners,

V.

AFFIDAVIT OF EVELINA BROWN MOSES

Mary P. Smith, Individually and as Personal
Representative of the Estate of Lucinda
Pringle, Maezell Mitchell
Jefferson, Individually and as Personal
Representative of the Estate of Annabelle
Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of
Janine Gourdine, Emma Smalls,
Viola Pringle, Cephus Thornton,
Arthur Graddick, III, an Imprisoned Person,
Venetra Watson, and any Known or
Unknown Persons or Entities Claiming Any
Interest in the Estates of Lucinda Pringle,
Odessa Graddick, Arthur Graddick,
Jr., Annabelle Thornton and Janine
Gourdine,

Respondents.

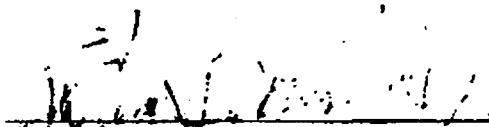
FILED
CLERK OF COURT
08 APR 16 PM 3:19

Personally appeared before me, Evelina Brown Moses, who being duly sworn states as follows:

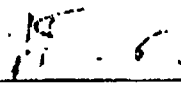
1. I, Evelina Brown Moses, am a Petitioner in the above referenced matter and am providing this Affidavit in support of Petitioners' Motion for Vacation of Order.
2. Along with my sister, Rebecca Patricia Brown, and my brother, Thomas P. Brown, Jr., I was raised by my grandmother Lucinda Pringle. Our mother was ill and unable to care for us. My sister, Rebecca, is retarded and has always been unable to care for herself.
3. Our grandmother died on October 11, 1989. I was unaware that she had a will and that I, along with my siblings, were her sole devisees under her will and were to serve as co-executors of her estate. I did not learn of the existence of her will until August 2005.
4. In late 1989, I was contacted by my aunt, Emma Smalls, her son, James Smalls, and her grandson, Darryl Smalls. Their calls involved an insurance claim relating to damage to the home in which my aunt resided on my grandmother's property. This damage had occurred during Hurricane Hugo. I was told that I, along with my sister and brother, needed to endorse a check so that repairs could be made. I honored this request and signed this check.

5. In 1999, I returned to South Carolina from New York and began residing in Summerville. In August 2005, I received a telephone call from my aunt, Emma Smalls, who indicated that she had something to tell me and asked me to visit her. Emma Smalls was still residing on my grandmother's property. I visited my aunt who advised me that she had something for me and handed me my grandmother's will. Thereafter, I filed my grandmother's will with the Probate Court and met with lawyers to understand my rights. I later learned that my aunts had attempted to probate my grandmother's estate as an intestate estate beginning in 1999. Their actions were improper in that they misrepresented to the probate court that my grandmother had died without a will. I received no notice of any filings with the Probate Court.

FURTHER AFFIANT SAYETH NOTHING.


Evelina Brown Moses

Subscribed and sworn
to before me on this
16th day of April, 2008.



Notary Republic

My Commission Expires: 11/16/2011

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

RETURN TO MOTION AND
BRIEF OF RESPONDENTS

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLETHORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

FACTUAL AND PLEADING
BACKGROUND

The Petitioners seek to probate a purported Will of Lucinda Pringle dated July 30, 1988. The Estate of Lucinda Pringle was opened and thereafter discharged on June 26, 2001. The

Estate included a deed of distribution which was issued to the heirs at law and recorded.

The sequence of events was essentially as follows:

At the time of the death of Lucinda Pringle on October 11, 1989, she was vested with a one-half (½) undivided interest in the 10 ½ acre tract of land known as 2517 Old Georgetown Road, Mt. Pleasant, SC 29466, TMS No. 578-00-00-026.

At the deposition of Thomas Brown, Jr., one of the Petitioners, he testified as follows:

Page 7, lines 13-18 Q All right, sir. And did you attend her funeral?

(October, 1989) A Yes, I did.

Q And when you came to Charleston to attend her funeral, where did you stay?

A At the house where Lucinda Pringle stay in.

Page 7, lines 23-25 Q Who was there at the house at the time? At Ms. Pringle's house, who else was staying there?

A Patricia and, uh, Annebelle.

Page 8, lines 6-15 Q And then, at that time, if you would tell me about the money. You said somebody had found it and brought it to you.

A Yeah. Because, uh, Annabelle Thornton and, uh, Mary P. Smith, they had the money in their hand in a piece of rag. They say "This what your grandmother leave for uh, and the will, too"

Q You said and the will, too. So they had the will and the money?

A Yes.

Page 9, lines 2-20 Q but I thought you said that at the time they gave you the money, you also saw the will.

A Yeah, that's right

Q This document right here, a copy, this is a copy of that will that you saw at that time.

A Yes.

Q And we're talking about 1989?

A '89 when she passed away.

Q Now, based on that, did you ever ask them any more about the will?

A Yeah. I asked them. I tried to get it. I asked them about the will.

Q Who did you ask?

A I ask Emma Smalls about the will.

Q When did you ask her that?

A A lot of times. When I came from - - When I moved back here I really - - When I, uh, when I came back to South Carolina, to live here, I asked her more than one time.

Page 13, lines 5-14

Q[D]id you ever go to an attorney to do anything about it?

A Yes. We had my job attorney. Because, uh, when we went to probation court, they say they can't do nothing with the copy, they need the deed.

Q That's when you tried to file the copy here?

A Yeah.

Q In 2005?

A Yeah. About 2000 - - Yeah, probably about 2005.

Page 13, lines 17-25

Q Go ahead.

A I said I did go one time, but they tell me they can't

do anything with the copy.

Q Where did you go and who told you that?

A I went to the probate place. I went there and show them the paper where we got this. "Nothing we can do with this copy."

Q How did you get the copy?

A I got a copy from Viola. But when I took the

Page 14, lines 1-15 A copy, I found the copy wasn't no good, really wasn't no good to me. They say I need the original. And that's when I went to other places to try to get it.

Q So when Viola gave you the \$9,000 - -

A No. Viola didn't give me the \$9,000.

Q Excuse me. When did Viola give you a copy of the will?

A About, let me see, about three years after the will.

Q I'm sorry?

(1992)

A About three years after the death. They give me the copy, you know. I took it down to the probate court, and nothing they could do, so I just leave it alone. And I went back again, they tell me again, no, nothing they can do, unless I have the original. Emphasis added.

Copy of deposition attached.

The petition for informal appointment was filed in The Matter of the Estate of Lucinda Pringle on March 30, 1999, in the Probate Court for Charleston County, Case No. 99-ES-10-689, and the parties herein were designated as the heirs at law of Lucinda Pringle.

The estate has been probated and a Deed of Distribution dated April 6, 2000 was recorded

April 17, 2000, in the RMC Office for Charleston County in Book U369, at Page 558 (copy attached).

An Order of Discharge was issued June 26, 2001.

On September 21, 2001, Thomas Brown, Jr executed a Grant of Perpetual Easement for the Com. of Pub. Works of the Town of Mt. Pleasant recorded in the RMC Office for Charleston County in Book Y383, at Page 484, as an "heir of Lucinda Pringle" on October 2, 2001 (certified copy attached).

On or about October 20, 2005, *Petitioners filed their Summons and Petition for Recovery of Improper Distribution*. The caption to the Petition was amended by Consent Order of October 2, 2007.

The Petitioners filed their Motion for Vacation of Order dated June 25, 2001, on July 7, 2007.

The Respondents filed their amended Answer to the Amended Petition on April 9, 2008.

The Respondents have pending Motions under their Amended Return to Motion and Motions to Dismiss Under Rule 12, SCRPC and under Rule 60(b)(3), SCRPC.

LEGAL ANALYSIS

The intestate administration was concluded with a Certificate of Discharge on June 26, 2001. The within action was filed on October 20, 2005. The Motion to Vacate was filed on July 7, 2007.

Furthermore, §62-3-412, formal testacy proceedings; effect of order; vacation; provides substantially as follows:

[S]ubject to vacation..., an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning

the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid Will, and to the determination of heirs, except that:

- (2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of the relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.
- (3) A petition for vacation under...(2) above must be filed prior to the earlier of the following limits:
 - i. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.
 - ii. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by §62-3-108 when it is no longer possible to initiate an original proceeding to probate a Will of the decedent.
 - iii. Twelve months after the entry of the Order sought to be vacated.

Respondents contend that Petitioners were in fact included in the determination of the intestate estate. The deed of distribution and the proofs of delivery are evidence of inclusion.

The record reflects the Petitioners' were named as heirs in the application for probate.

There is a presumption that the events in the file met the requirements of this Court.

In the case of *Miles v. Lee*, 319 S.C. 271, 460 S.E.2d 423 (Ct. App.1995), the Court relied upon the Supreme Court decision in *Fouche v. Royal Indemnity Co.*, 217 S.C. 147, 60 S.E.2d 73 (1950), in *Fouche*, the Plaintiffs collaterally attacked a prior probate court judgment for lack of jurisdiction over them asserting that the record did not contain a Petition and Order showing a guardian ad litem had been appointed for them during their minority at the time of the probate proceeding.

The Court held that where the record is silent, the presumption is that all necessary jurisdictional facts appear, and no collateral attack can be made upon the judgment, unless it affirmatively

appears upon the face of the record that the Court had no jurisdiction of the parties, when the record is silent, the Court will presume that what should have been done was done.

However, regardless of the argument of Petitioners that proper notice was not given to them, they failed to timely file the Motion to Vacate the Order of Discharge as explained above and required by § 62-3-412(2)(3).

Furthermore, in *Fouche supra*, the Court held that the plaintiffs (even though GALs were not appointed for them during their minorities) were parties to the proceedings in the probate court, and were thereby divested of all their interest in the premises.

As hereto stated, the record in the probate court of Orangeburg County does not affirmatively disclose that the court was without jurisdiction of these appellants, hence their collateral attack on the judgment cannot succeed, and the order of discharge is binding upon them.

In the administration of the Pringle Estate, the Petitioners were included as heirs at law for their respective intestate shares in the real estate. They would not have received any greater or lesser share had they actively participated in the intestacy. The deed of distribution that was issued and recorded expressly recognized the interest of the Petitioners. A deed of distribution from a personal representative is evidence that the distributee has succeeded to the interest of the estate. See S.C. Code Ann. 62-3-908 (Supp.2006) and *Osterneck v. Osterneck*, 649 S.E.2d 127 (S.C.Ct.App. 2007), decided June 27, 2007, reh. den. Aug 24, 2007)

If the Petitioners did not receive "notice" (which they did) they were treated no differently than had they appeared.

The Petitioners argue that they were not given notice and were prejudiced because had they been given notice, they would have filed the "will."

S.C. Code Ann. § 62-3-102 blocks the use of unprobated wills as evidence. It provides, "Except as provided in § 62-3-1201 [for certain estates less than \$10,000]," to be effective to prove the transfer of any property or to nominate as executor, a will must be declared to be valid by an order of informal probate by the court or an adjudication of probate by the court." The Official Comment to this statute aptly notes that, "The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108." In short, § 62-3-102 provides that unprobated wills are not evidence of anything, and confirms that the time limits to start the required proceeding to probate a will is established by § 62-3-108 (10 years).

Section 62-3-102 thus codifies the general rule that unprobated wills are not admissible. See, e.g., *Somerville v. Randall*, 908 A.2d 1155, 1156 n. 1 (D.C. 2006) (treating a case as if the decedent died intestate despite the record evidence of an unprobated will because, "It is commonly accepted that a will has no legal effect until it is probated.").

Martin v. Martin, 883 P.2d 673 (Hawaii 1994), is also dead on point. There, intestate heirs began proceedings for a "Determination and Declaration of Heirs and to Partition". They claimed that the decedent died intestate and sought to divvy up the intestate shares. One of the heirs disputed that the estate was intestate and sought to admit a purported will into probate to contest the intestacy allegations. The probate court found that the Will was a valid Will but declined to give it any effect because it was not probated within the time allowed by that state's counterpart to S.C. Code Ann. § 62-3-108. On appeal, the disgruntled heir argued that he was not trying to probate the will but only use it as evidence of his status as the sole heir. The Court did not buy it. Citing its counterpart to S.C. Code Ann. § 62-3-102, the Court held that the heir was precluded from using the unprobated Will as evidence to defeat the claims for intestate

succession.

The Petitioners argue that the Respondents fraudulently suppressed the Will which prevented its being probated. However, the deposition testimony totally belies these assertions. The awareness of the Will was acknowledged within several days after the death of Lucinda Pringle in October-November 1989 and on another occasion about three years later, acknowledged possession of a copy of the Will, contacting an attorney and making various attempts to file the copy of the Will in the Probate Court for Charleston County.

Section 62-3-402 provides the method in which a copy of a will in the absence of the original may be submitted to probate. The copy may be attached to the petition stating the contents of the original will and indicate that the original is lost, destroyed or otherwise unavailable. This was not done. The "will" has not been admitted to probate nor is it entitled to be admitted.

Section 62-3-412 provides that in order to attack the intestacy proceeding, a petition for vacation must be filed prior to the earlier of the following time limits as within subsection (3)(i)(ii)(iii).

Under subsection (3)(i), the Petition for Discharge of the intestate Estate of Lucinda Pringle was filed June 26, 2001. The Petition to Vacate said order was filed July 7, 2007.

Subsection (3)(ii), provides whether or not a personal representative has been appointed, or the time prescribed by § 62-3-108 (10 years from date of death of decedent) when it is no longer possible to initiate an original proceeding to probate a Will of the decedent. The decedent died on October 11, 1989, and the 10 years expired October 11, 1999, at which time it was no longer possible to initiate an original proceeding to probate a Will.

This action for improper distribution was initiated October 20, 2005, and the Motion to Vacate on July 7, 2007.

Subsection (3)(iii) requires the Motion to Vacate to be filed within 12 months after entry of the Order sought to be vacated. The Order of Discharge was filed June 26, 2001 and the Motion to Vacate July 7, 2007.

The earlier of the time limits was the expiration of the 10 year ultimate statute of limitations prescribed in § 62-3-108 which was October 11, 1999. However, none of the time limits were met.

Section 62-3-108. Probate, testacy, and appointment proceedings; ultimate time limit.

No informal probate or appointment proceeding...may be commenced more than ten years after the decedent's death. [There are three exceptions stated but none apply to this case. See FN1]¹

If no informal probate and no formal testacy proceeding's are commenced within ten years after the decedent's death....it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession...(emphasis added).

Section 62-3-108 is a derivation of the 3 year ultimate time period established by the Uniform Probate Code § 3-108. Courts construing this provision uniformly hold that the time period contained therein is not subject to tolling for fraud, estoppel or other exceptions not found

¹ The three exceptions to the 10-year ultimate time limit set forth above are listed as follow and do not apply to our situation:

- (1) previous proceeding dismissed because of doubt of fact of decedent's death
- (2) determination of date of death of missing, absent or disapproved person
- (3) Proceeding to contest an informally probated will may be commenced within the later of 3 months from informal probate or 1 year from decedent's death

within the statute itself.

In Re Estate of Taylor, 207 Mont. 400, 675 P.2d 944 (Mont. 1984), is on point. In that case, the Court held that claims of fraud or estoppel did not toll the "ultimate time limit" in its State's counterpart to § 62-3-108 because the statute was clear, unambiguous, and provides no exceptions for fraud or estoppel.

The Court in *In Re Chavez*, 984 P.2d 782 (N.M.App.1999), agreed. In that case, a claimant properly invoked one of the limited exceptions within that State's counterpart to § 62-3-108 but then sought to recover money damages or approval of a new distribution. The Court, applying the statute "directly and without nuance," held that the claimant could not go beyond the limited exception explicitly granted within the statute.

The New Mexico court rendered a similar decision in a lost will case. In *In Re Wood*, 147 Ariz.366, 710 P.2d 476 (Ariz.App. 1985), the Court held that its state's counterpart to § 62-3-108 is not an ordinary statute of limitation which could be waived, but rather a statutory limit on the probate court's power or jurisdiction to admit the will. Surveying the relevant comments to the Uniform Code, the Court reasoned that the ultimate time limit was more than an ordinary statute of limitation and thus not subject to tolling. It concluded that the statute barred a claim to admit a will that it purportedly had not discovered until after the ultimate time limit had passed.

Likewise, the Court in *Martin v. Martin*, supra, held that its counterpart to § 62-3-108 prevented an heir from probating a will that the heir had found earlier but failed to probate within the time limit. The Court held that its result was contrary to the terms of the will, but mandated by the statute.

Lastly, it is understood that opposing counsel is relying on S.C. Code Ann. § 62-3-1006.

This statute applies to claims not "otherwise barred" Petitioners attempt to admit the will is "otherwise barred" by § 62-3-108.

CONCLUSION

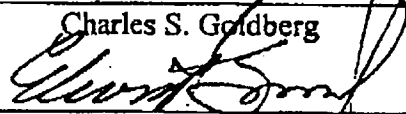
Based upon the material facts in this case and the applicable statutes and cases, it is incontestable that the decedent left no will, and the decedent's estate passes by intestate succession.

Section 62-3-108 is not an ordinary statute of limitations - it is the ultimate statute of limitations - and cannot be waived or tolled. It is a statutory limit on the probate court's power or jurisdiction to admit a will.

Accordingly, the Motion to Vacate and the Petition for Improper Distribution must be dismissed with prejudice.



Charles S. Goldberg



Edward P. Guerard, Jr.
Attorneys for the Respondents

Charleston, SC

April 18, 2008

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
 : NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) Case No. 99-ES-10-689-2

EVELINA BROWN MOSES, THOMAS P.
 BROWN, JR. and DAVID L. MICHEL
 as Guardian ad Litem for
 REBECCA PATRICIA BROWN,

Petitioners,

-vs-

ESTATE OF LUCINDA PRINGLE,
 EMMA SMALLS, MARY P. SMITH,
 ESTATE OF ANNEBELLE THORNTON,
 ESTATE OF JANINE GOURDINE,
 ODESSA GRADDICK, ARTHUR
 EUGENE GRADDICK, JR., VIOLA
 PRINGLE, MAEZELL MITCHELL,
 CEPHUS THORNTON, and any other
 Persons and entities claiming any
 interest in the Estate of
 LUCINDA PRINGLE,

Respondents.

DEPOSITION OF:

THOMAS BROWN, JR.

COPY

Given before G. Michael Alexander, Notary
 Public and Registered Professional Reporter, at the law
 offices of the Steinberg Law Firm, 61 Broad Street,
 Charleston, South Carolina, on Thursday, June 15, 2006,
 commencing at 11:30 o'clock, a.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA
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A P P E A R A N C E S

For the Petitioners: Johathan Altman
Stephen Slotchiver
Attorneys at Law
40 Calhoun Street, Suite 410
Charleston, SC 29401

For the Respondents: STEINBERG LAW FIRM
By: Charles Goldberg
Attorney at Law
61 Broad Street
Charleston, SC 29401

Edward P. Guerard, Jr.
Attorney at Law
1 Carriage Lane
Charleston, SC 29407

Also Present: Emma Smalls
Maezell Mitchell
Evelina Moses

I N D E X T O E X A M I N A T I O N (S)

Direct Examination by Mr. Guerard
Certificate

Page
3
16

I N D E X T O E X H I B I T (S)

Petitioners':

(No exhibits were proffered.)

Respondents':

1 Last will and testament

6

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1 It was stipulated by and between counsel
2 for the parties that the deponent was explained
3 his right to read and sign the deposition and
4 did waive that right.

5 (THOMAS P. BROWN, JR.), having been duly
6 sworn, testified as follows:)

7 DIRECT EXAMINATION BY MR. GUERARD:

8 Q Mr. Brown, you've been here while Evelina
9 testified?

10 A Yes, I were.

11 Q And have you had a chance to look at this? If
12 you would just, that's Respondent's No. 1, Exhibit No. 1.

13 A Uh-huh. Yeah, I remember the check.

14 Q Excuse me?

15 A I remember the check.

16 Q Tell me what you recall about it, as to how it
17 got to you, and what was involved.

18 A How the check got to me, how I know about it,
19 because it was an insurance check for the house, and the
20 check didn't be cashed, but all these signatures were on
21 it.

22 Q But everybody had to sign it.

23 A Yeah. They send the check to New York with her
24 grandson. I signed it, you know. But I didn't think
25 about it gonna come to this, you know. I give it back

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1 to -- because James Smalls bring it to me. James Smalls
2 bring it to me, her son. And I signed it and sent it
3 back.

4 Q Tell me who he was, now.

5 A James Smalls brought it to me.

6 Q Okay. Now, who was me?

7 A James Smalls is Emma Smalls' son.

8 Q When you say he brought it to you, it was in
9 New York?

10 A Yeah, in New York.

11 Q Where did he live?

12 A During that time, I don't know, he used to live
13 in Manet in the projects. He might of been back home. I
14 can't remember what happened, you know. If he was in New
15 York or in South Carolina during the time. He might of
16 been in New York, he might of been in South Carolina.

17 Q How about Daryl Smalls?

18 A Daryl Smalls? That's Emma Smalls's grandson.

19 Q Okay. Is that who you're talking about?

20 A No, I talking about James Smalls.

21 Q Okay. So that's your signature on the
22 signature page?

23 A On the back here?

24 Q Yes, sir. If you would, flip back one more.

25 A Yeah, that's my signature.

1 Q Okay. And so your recollection is you gave the
2 check to James Smalls.

3 A No, I didn't say that.

4 Q Okay. Then I'm sorry.

5 A I say James Smalls brought the check to me.

6 Q He brought it to you.

7 A For me to sign it.

8 Q Okay. Then after you and Ms. Moses signed the
9 check, what did you do with it?

10 A I didn't do anything. I sign it and give it
11 back to James Smalls, I let him keep it. I sign it, he
12 took it.

13 Q What happened after that? Did you get any
14 money from this check?

15 A No, no, no. No, sir. I didn't get no money
16 from that check, no.

17 Q Did you get any money from your grandmother's
18 estate?

19 A Yeah. Because they had some money in the
20 house.

21 Q And explain that to me. You say there was
22 money in the house.

23 A Yeah. \$9,000 in Mary P. Smith, and Annebelle
24 Thornton find it, and show it to me. And they give me
25 the money, the \$9,000.

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1 Q Why did they give it to you?

2 A I really don't know why they give to it
3 me. They say my grandmother leave it to us, leave it to
4 Patricia, Evelina, and Thomas Brown.

5 MR. ALTMAN: Relax here.

6 THE WITNESS: Yeah.

7 Q Take a deep breath and relax. Now, when
8 they -- Who told you that?

9 A Told me what?

10 Q Excuse me. About your grandmother had left you
11 this money, you and Patricia --

12 A Me and Patricia and Annebelle Thornton was in
13 the house, they show it to me. Then they give me the
14 \$9,000, like I say before.

15 Q When you say they showed it to you, you're
16 talking about the \$9,000 or they showed you the will?

17 A The will.

18 Q When did you know that that money would be
19 yours and Evelina's and Patricia's and Emma's.

20 A Now I know. But the will, they ask about the
21 will, they wasn't one.

22 Q Let's go back to the beginning.

23 MR. GUERARD: Has the will itself been put
24 in?

25 (LAST WILL AND TESTAMENT MARKED RESPONDENTS)

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1 EXHIBIT 1 FOR I.D.)

2 (The questions and answers were read by
3 the reporter.)

4 Q If you would, take a look at what's been marked
5 as, actually this would be No. 2, if you would, please
6 take a look at this, which has been marked as
7 Respondent's Exhibit No. 1 to your deposition.

8 A (Witness did as directed.) Okay. Yeah, said
9 some what going on. Yeah, I've seen it.

10 Q Okay. Now, when Lucinda Pringle died, when she
11 passed away, where were you living at that time?

12 A In Bronx, New York.

13 Q All right, sir. And did you attend her
14 funeral?

15 A Yes, I did.

16 Q And when you came to Charleston to attend her
17 funeral, where did you stay?

18 A At the house where Lucinda Pringle stay in.

19 Q And who else was there, that you recall, as far
20 as family members?

21 A In the house at the time or who was living
22 there?

23 Q Who was there at the house at the time? At
24 Ms. Pringle's house, who else was staying there?

25 A Patricia and, uh, Annebelle.

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1 Q Tell me again about the money. At that
2 time -- Well, it was after the funeral?

3 A Uh-huh.

4 Q But the family was still there.

5 A Yeah.

6 Q And then, at that time, if you would tell me
7 about the money. You said somebody had found it and
8 brought it to you.

9 A Yeah. Because, uh, Annebelle Thornton and, uh,
10 Mary P. Smith, they had the money in their hand in a
11 piece of rag. They say "This what your grandmother leave
12 for uh, and the will, too."

13 Q You said and the will, too. So they had the
14 will and the money?

15 A Yes.

16 Q And they were showing you in the will that
17 y'all were to take it, and that's why they were giving
18 you the money.

19 A No. They give me the money because they say my
20 grandmother leave that money for me and my two sisters.

21 Q Right. Under her will.

22 A Not under her will. Grandmother say from word
23 to mouth. Ain't say no money in the will.

24 Q Let me back up. I thought that you said, and
25 correct me if I'm wrong

1 A Yeah.

2 Q -- but I thought you said that at the time they
3 gave you the money, you also saw the will.

4 A Yeah, that's right.

5 Q This document right here, a copy, this is a
6 copy of that will that you saw at that time.

7 A Yes.

8 Q And we're talking about 1989?

9 A '89 when she passed away.

10 Q Now, based on that, did you ever ask them any
11 more about the will?

12 A Yeah. I asked them. I tried to get it. I
13 asked them about the will.

14 Q Who did you ask?

15 A I ask Emma Smalls about the will.

16 Q When did you ask her that?

17 A A lot of times. When I came from -- When I
18 moved back here I really -- When I, uh, when I came back
19 to South Carolina, to live here, I asked her more than
20 one time.

21 THE REPORTER: I'm sorry. You did what?

22 THE WITNESS: I asked her more than one
23 time.

24 Q Did you ask Annebelle or Emma for the will when
25 they gave you the money?

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1 A No. Because -- No, I didn't ask for no will,
2 but I seen it.
3 Q Okay. When did you move back to South
4 Carolina?
5 A Five years ago. It was 2000 or 2001. I don't
6 know exactly the year. 2000 or 2001, one or the other.
7 Q From the time you first saw the will --
8 A Uh-huh.
9 Q -- when you got the money --
10 A Uh-huh.
11 Q -- did you talk with anybody else in your
12 family about your grandmother's will?
13 A Yeah.
14 Q Who did you talk with and when?
15 A I told, uh, her son, Emma Smalls's son, about
16 the will that my grandmother left me.
17 Q Thomas Smalls?
18 A No, no, Emma Smalls's son. He asked me about
19 the will. I say, "Yes, they a will, and your mother got
20 it." I asked her, she say she don't know nothing about
21 no will. So I -- I went -- Go ahead. Yeah, okay.
22 MR. ALTMAN: Finish your answer, Tom.
23 Q When did you talk to Emma Smalls's son about
24 the will?
25 A It was recently. It wasn't that long. Because

1 when I talked to him about the will, when I talked to him
2 about the will, he said, uh, "Well, why she left it to
3 you?" I say, "I don't know." I asked her about it, she
4 say she ain't got it. She wasn't going to give it to me.

5 Q And this was when? When did you have that
6 conversation?

7 A About maybe about two or three years ago.

8 Q Okay. Now, again, go back to your
9 grandmother's funeral.

10 A Yes.

11 Q Did you talk, at that point, did you talk with
12 anybody? Did you talk to Evelina about, and I'm talking
13 about in 1989, when you were here at Lucinda Pringle's
14 house after her funeral.

15 A Uh-huh.

16 Q You got the \$9,000.

17 A Uh-huh.

18 Q And you saw the will.

19 A Uh-huh.

20 Q Did you say anything to Evelina?

21 A About the will?

22 Q About the money and the will?

23 A I tell her about the money. The will was,
24 uh -- No, I didn't talk to them about the will, I talk to
25 them about the money.

1 Q When they showed you the will, at that time,
2 did you read it?

3 A I saw my name up there. I saw Patricia name up
4 there. Rebecca, Patricia, and my sister name was there.
5 And I didn't see no other name up there but the name up
6 there now. I really didn't see it. I really might been
7 looking for it, once my aunt tell me this what my
8 grandmother leave her. I say, "Well, okay." You know?

9 Q I'm not sure. Look at it again and tell me
10 what you're concerned about. I'm not sure I'm following
11 you. I want to make sure I understand.

12 A What you don't understand?

13 Q You were talking about there was a name you
14 didn't see before?

15 A No. Emma Smalls's name?

16 Q Yes.

17 A I didn't see that on there. It probably was
18 but I didn't see it. That's what I'm talking about.

19 Q You just don't recall whether it was on there
20 at the time or not?

21 A Yeah, yeah. I just don't recall it. I'm not
22 saying it wasn't. Once I seen me and Patricia name

23 Q You quit reading?

24 A I quit reading. Yeah. Yeah.

25 Q Did you understand, when you looked at the

1 will, did you understand that y'all would get the real
2 estate and the house from your grandmother?

3 A Yeah. Yeah. I thought that she -- like she
4 will it to us, I thought we supposed to get it.

5 Q Okay. Now, after you saw the will, and you
6 made that assumption, did you ever go to an attorney to
7 do anything about it?

8 A Yes. We had my job attorney. Because, uh,
9 when we went to probate court, they say they can't do
10 nothing with the copy, they need the deed.

11 Q That's when you tried to file the copy here?

12 A Yeah.

13 Q In 2005?

14 A Yeah. About 2000 -- Yeah, probably about 2005.

15 Q Okay.

16 A Because I did go -- Go ahead.

17 Q Go ahead.

18 A I said I did go one time, but they tell me they
19 can't do anything with the copy.

20 Q Where did you go and who told you that?

21 A I went to the probate place. I went there and
22 show them the paper where we got this. "Nothing we can
23 do with this copy."

24 Q How did you get the copy?

25 A I got a copy from Viola. But when I took the

1 copy, I found the copy wasn't no good, really wasn't no
2 good to me. They say I need the original. And that's
3 when I went to other places to try to get it.

4 Q So when Viola gave you the \$9,000 --

5 A No. Viola didn't give me the \$9,000.

6 Q Excuse me. When did Viola give you a copy of
7 the will?

8 A About, let me see, about three years after the
9 will.

10 Q I'm sorry?

11 A About three years after the death. They give
12 me the copy, you know. I took it down to the probate
13 court, and nothing they could do, so I just leave it
14 alone. And I went back again, they tell me again, no,
15 nothing they can do, unless I have the original.

16 Q Now, in regard to the money that you were
17 given, what did you do with that?

18 A Well, I take it to New York, it belonged to me
19 and my sister, and, uh, I give my sister the \$9,000. And
20 I took a thousand dollars out to me. I bought a car. I
21 got another thousand dollars to take it down to South
22 Carolina to Annebelle.

23 Q And what, you gave the rest of it to Evelina?

24 A Yeah.

25 Q She said she recalled she thought she got

1 \$7,000.

2 A That's what she got, 7,000.

3 Q So then you kept a thousand and you gave a
4 thousand to Patricia?

5 A Annebelle.

6 Q Well, gave it to Annebelle.

7 A Yeah.

8 MR. GUERARD: Excuse me one movement.

9 (Recess taken.)

10 MR. GUERARD: That concludes any questions
11 we've got.

12 MR. ALTMAN: You're done.

13 (The deposition concluded at 11:57 a.m.)

14 * * *

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) C-E-R-T-I-F-I-C-A-T-E

3
4 I, G. Michael Alexander, Registered
5 Professional Reporter and Notary Public, certify that I
6 did have THOMAS P. BROWN, JR. to appear before me at
7 11:30 a.m. on the 15th day of June, 2006, at the law
8 offices of the Steinberg Law Firm, 61 Broad Street,
9 Charleston, South Carolina; that the witness was duly
10 sworn and cautioned to tell the truth, the whole truth,
11 and nothing but the truth; that the foregoing pages
12 constitute a true and accurate transcript of his
13 testimony, given at that time and place.

14 I further certify that I am not of counsel
15 or kin to any of the parties to this cause of action, nor
16 am I interested in any manner in its outcome.

17 IN WITNESS WHEREOF I have hereunto set my
18 hand and seal this 28th day of June, 2006.

19
20
21
22
23 G. Michael Alexander, RPR/CSR
24 Notary Public for South Carolina
25 My Commission Expires May 24, 2016

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FORM 6100-LASER REPORTERS PAPER & MFG. CO. 800-825-6313

I, Lucinda Pringle, of Christ Church Parish, (County Of Charleston), being of sound and disposing mind and memory and desiring to make such disposition of my worldly estate as I deem best, DO HEREBY MAKE, PUBLISH AND DECLARE THIS TO BE MY LAST WILL AND TESTAMENT, hereby revoking any and all former wills and codicils whatever by me made.

First: I direct that all my just debts and funeral expenses be paid out of my estate as soon after my decease as conveniently may be and to that end charge my whole estate, real and personal, with the same.

Second: I give, devise and bequeath to Thomas Brown, Patricia Brown, Evelyn Brown, and Emma Ed Shalls my personal belongings and my homes.

ITEM 3

I give, devise and bequeath all my right, title and interest in and to that certain property.

ITEM 4

I nominate, constitute and appoint my beloved Grand Childrens, Thomas Brown Patricia Brown and Evelyn Brown, Co-Executrices to serve without bond of this my LAST WILL AND TESTAMENT. I authorize and empower my Executrices to hold and retain as investments of my Estate all investments, securities, and other property, real and personal, which shall at time of my death be included in my estate, to sell and dispose of, for the purpose of paying my debts or for any other purpose whatsoever, any or all of such property, either at public or private sale, for such prices and on such terms as my Executrices shall deem proper, and to make, execute and deliver all assignments, transfers, and other legal instruments where necessary or convenient for the passing of the title and ownership thereto, without any liability on the purchaser to see to the application money.

Attest: A True Copy

Walter E. Hillenburgh
Deputy Clerk Probate Court
Charleston County, South Carolina

RESPONDENT'S
EXHIBIT

1 12/15/94
F. Brown

I nominate and appoint Thomas Brown, Patricia Brown, Evelyn Brown and
Emma P. Smalls
to be the executors of this my Last Will and Testament

IN WITNESS WHEREOF, I have hereunto set my hand and seal to this my Last Will and Testa-
ment at Mt. Pleasant, S.C.
this 20 day of July, in the year of our
Lord One Thousand Nine Hundred and 88

Witness hereto marks (SEAL)
Lucinda Springer

Signed, sealed, published and declared by the said
at and for her last will and testament in the presence of us,
who in the presence, at her request and in the presence of her another, all present together,
have hereunto subscribed our names as witnesses.

Wm. M. Smith
Wm. M. Smith
Wm. M. Smith

DISPOSITION: Will must be in writing, signed at the end thereof by the party making the same, or if unable to do so, by some other person in his presence and by his request, witnessed by at least two witnesses (in some states three) in the testator's presence and in the presence of each other. The testator and witnesses must subscribe their names to the will in the presence of each other. In South Carolina, wills must be attested by at least three (3) witnesses.

Last Will and Testament
OF

Lucinda Pringle
Dated 30 July A. D. 1988

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

GRANT OF PERPETUAL
 EASEMENT

Whereas the COMMISSIONERS OF PUBLIC WORKS OF THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, (hereinafter called the Commission) is a body politic and corporate under the laws of the State of South Carolina and requires the easements hereinafter described and granted in connection with the construction of water distribution and sewage collection, treatment and disposal facilities; and

Whereas HEIRS OF ELIZABETH G. WASHINGTON and HEIRS OF LUCINDA PRINGLE, (hereinafter called the Grantors) is minded to grant such easement to the Commission for the consideration and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Grantors, in consideration of the sum of ~~\$5.00~~ ^{\$5,000.00} to them in hand paid for the perpetual easement granted hereunder, at and before the sealing and delivery of these presents, by the Commission, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the Commission, its successors and assigns forever, the following easement:

1. An exclusive perpetual easement for the construction, location, installation, operation, maintenance, repair and replacement of one or more underground sewer lines and/or one or more underground water lines over, under and upon the following described property:

ALL that strip of land located in the Town of Mount Pleasant, County of Charleston, State of South Carolina, designated as Parcel 1636 and described as follows: A thirty feet wide general utility easement lying adjacent to and parallel with, and to the southeast of the northwestern boundary of Grantor's property, which is also the southeastern boundary of the right-of-way of Old Georgetown Road (S-1808).

Said strip of land contains 10,675.40 square feet and is more fully shown on a plat prepared by G.

Robert George & Associates, Inc. entitled "PLAT OF GENERAL EASEMENTS TO BE ACQUIRED BY THE COMMISSIONERS OF PUBLIC WORKS OF THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA (MPW) LOCATED IN THE TOWN OF MOUNT PLEASANT AND CHARLESTON COUNTY, SOUTH CAROLINA", dated August 14, 2000, revised October 25, 2000, a copy of which is recorded in the RMC Office for Charleston County in Plat Book EE, Page 694 and which is made a part hereof and incorporated herein by reference.

TMS#: 578-00-00-026

TOGETHER with the right of ingress thereto and egress therefrom over and upon the remaining property of the Grantors.

IT IS UNDERSTOOD AND AGREED that the easement above described is granted and accepted upon the following terms and conditions, to wit:

(a) The Grantors will make no use of the area occupied by said easement which is inconsistent with the uses and the purposes for which the easement has been granted, and without limiting the generality of this provision, the Grantors agree that no permanent structures such as buildings, sheds and other structures shall be placed upon the easement area. In addition, the Grantors will not grant additional easements over, under, or upon the easement area without the prior written consent of the Commission and will not alter or modify the finished contours or physical makeup of the easement area, either by the placement or removal of materials, without the prior written consent of the Commission.

(b) The Commission agrees that upon completion of construction, the surface of the easement area will, to the extent practicable, be restored to its condition prior to construction, and further that, in the event that it becomes necessary in the future to disturb the surface in order to effect maintenance, repair or replacement, it will promptly restore the surface, to the extent practicable, including leveling the surface and reseeding the grass; but nothing herein contained shall be construed to require the Commission to replace any shrubbery or trees.

TO HAVE AND TO HOLD, all and singular, the easement rights and privileges above described unto the COMMISSIONERS OF PUBLIC WORKS OF THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, its successors and assigns.

And the Grantors do hereby bind themselves and their successors, heirs, administrators and executors to warrant and forever defend all and singular the said premises unto the said COMMISSIONERS OF PUBLIC WORKS OF THE TOWN OF MOUNT PLEASANT, SOUTH CAROLINA, its successors and assigns against him and his successors, heirs, administrators and executors and against every person whosoever lawfully claiming or to claim the same or any part thereof.

IN WITNESS WHEREOF, the Grantors have hereunto set their Hands and Seals, this 21st day of September, 2001.

WITNESS

[Signature]
SA Spann

[Signature]
 Alma M. Washington, an Heir of
 Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Alma M. Washington, an Heir of Elizabeth G. Washington, sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)
 Notary Public for South Carolina

My commission expires: NOVEMBER 27, 2006
 NOTARY PUBLIC FOR SOUTH CAROLINA

WITNESS:

L. R. Spann
SA Spann

Ethel Wright
 Ethel Wright, an Heir of
 Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Ethel Wright, an Heir of Elizabeth G. Washington, sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

L. R. Spann

SWORN to before me this

21st day of September, 2001

Michael J. Spann (SEAL)
 Notary Public for South Carolina

My commission expires November 27, 2006

WITNESS:

L. Russ
SG Spann

Isaac Washington
Isaac Washington, an Heir of
Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Isaac Washington, an Heir of Elizabeth G. Washington, sign, seal and, as his act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

L. Russ

SWORN to before me this

2nd day of September, 2001

William A. Pinner (SEAL)

Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: November 27, 2006

WITNESS:

[Signature]
SA Spann

David Washington
 David Washington, an Heir of
 Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named David Washington, an Heir of Elizabeth G. Washington, sign, seal and, as his act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)
 Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires November 27, 2006

WITNESS:

[Signature]

SA Spann

Rosalee Coaxum

Rosalee Coaxum, an Heir of
Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Rosalee Coaxum, an Heir of Elizabeth G. Washington, sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)

Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires November 27, 2008

My commission expires: _____

WITNESS:

L. R. R.
SA Spann

Leola Wright
 Leola Wright, an Heir of
 Elizabeth G. Washington

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw
 the within named Leola Wright, an Heir of Elizabeth G. Washington
 sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other
 witness witnessed the execution and delivery thereof.

L. R. R.

SWORN to before me this

21ST day of September, 2001

[Signature] (SEAL)
 Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA
 My commission expires: My commission expires November 27, 2006

WITNESS:

L. Ann
B. Spann

Annabell Thornton
Annabell Thornton, an Heir of
Lucinda Pringle

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Annabell Thornton, an Heir of Lucinda Pringle, sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

L. Ann

SWORN to before me this

21st day of September, 2001

Michael D. Prew (SEAL)
Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: My commission expires November 22, 2006

WITNESS:

L. Lund
SA Spann

Emma Smalls
Emma Smalls, an Heir of
Lucinda Pringle

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Emma Smalls, an Heir of Lucinda Pringle, sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

L. Lund

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)

Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: November 21, 2002

WITNESS:

[Signature]
S.A. Spann

Mary P. Smith
MARY P. SMITH, an Heir of
Lucinda Pringle

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named MARY P. Smith, an Heir of Lucinda Pringle sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)

Notary Public for South Carolina

My commission expires:

NOTARY PUBLIC FOR SOUTH CAROLINA
my commission expires November 27, 2006

WITNESS:

[Signature]
Sgt Spann

Thomas Brown Jr.
 THOMAS BROWN JR., an Heir of
 Lucinda Pringle

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Thomas Brown Jr., an Heir of Lucinda Pringle sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21 day of September, 2001

[Signature] (SEAL)
 Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: My commission expires November 27, 2006

WITNESS

[Signature]
SA Spann

Arthur Eugene Braddick
 Arthur Eugene Braddick an Heir of
 Lucinda Pringle.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw
 the within named Arthur Eugene Braddick, an Heir of Lucinda Pringle,
 sign, seal and, as her act and deed, deliver the within written instrument; and that (s)he with the other
 witness witnessed the execution and delivery thereof.

[Signature]

SWORN to before me this

21st day of September, 2001

[Signature] (SEAL)

Notary Public for South Carolina

NOTARY PUBLIC FOR SOUTH CAROLINA

My commission expires: November 27, 2006

BK # Y383PG498

ROSEN, ROSEN & HAGOOD

FILED

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Y383-484

2001 OCT -2 PM 1:15

CHARLIE LY GRAND
REGISTER
CHARLESTON COUNTY SC

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

SUPPLEMENTAL
BRIEF IN SUPPORT OF
PROPOSED ORDER OF
RESPONDENTS

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

Subsequent to trial and argument and the submission of a proposed order to the Court on
May 16, 2008, our Court of Appeals ruled in *Nash v. Tindall Crop.*, 375 S.C. 36, 650 S.E.2d 81
(Ct. App. 2007). This case was decided August 2, 2007, rehearing denied September 20, 2007,
and certiorari was denied on June 26, 2008.

The threshold issue in the Pringle Estate is the application of Section 62-3-108 of the Probate Code:

~~If no informal probate and no formal estate proceedings are commenced within ten years after the decedent's death, it is incontestable that the decedent left no will, and that the decedent's estate passes by intestate succession.~~

In *Nash*, supra, the Court held:

In determining whether the statute of repose was tolled, the South Carolina Supreme Court explored whether the statute of repose is substantive or procedural and distinguished statutes of repose and statutes of limitation. *Id.* at 403-04, 438 S.E.2d at 243. The court stated, "[a] statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Id.* at 404, 438 S.E.2d at 243 (emphasis added). The court in *Langley* additionally declared "[a] statute of repose constitutes a substantive definition of rights rather than a procedural limitation provided by a statute of limitation." *Id.*; see also *Florence County Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 453, 559 S.E.2d 866, 869 (Cl. App. 2002) (the court distinguished statutes of repose from statutes of limitation, determining that a statute of repose involves a substantive right while citing *Langley*).

In *Langley*, the court discussed the purpose of statutes of repose. "Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists." 313 S.C. at 404, 438 S.E.2d at 244.

The court in *Langley* further explained:

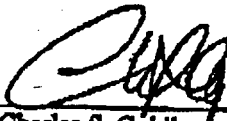
Society benefits when claims and causes are laid to rest after having been viable for [a] reasonable time. When causes of action are extinguished after such time, society generally may continue its business and personal

relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission. This is not only for the convenience of society but also due to necessity. At that point, society is secure and stable.

As set forth in Respondents' Proposed Order, "Section 62-3-108 is not an ordinary statute of limitations - it is the ultimate statute of limitations - and cannot be waived or tolled. It is a statutory limit on the probate court's power or jurisdiction to admit a will." It is a statute of repose.

As of October 11, 1999, ten years after the death of decedent, Lucinda Pringle, at which time any rights that the Petitioners had, may have had or might have had beyond that date ceased to exist absolutely and jurisdictionally. The decedent's estate passed by intestate succession as a matter of law.

Accordingly, the Petition should be dismissed.



Charles S. Goldberg
61 Broad Street
Charleston, SC 29401
(843) 720-2800

and

Edward P. Guerard, Jr.
1 Carriage Lane, Building H
Charleston, SC 29407
(843) 852-4530
Attorneys for the Respondents

Charleston, SC
August 12, 2008

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF CHARLESTON) CASE NO.: 1999-ES-10-689-2

EVELINA BROWN MOSES, THOMAS P.
BROWN, JR., and DAVID L. MICHEL
as Guardian Ad Litem for REBECCA
PATRICIA BROWN,

Petitioners,

v.

MARY P. SMITH, individually and as Personal
Representative of the ESTATE OF LUCINDA
PRINGLE, MAEZELL MITCHELL
JEFFERSON, individually and as Personal
Representative of the ESTATE OF ANNABELLE
THORNTON, SHIRRESE B. BROCKINGTON,
as Special Administrator of the ESTATE OF
JANINE GOURDINE, EMMA SMALLS,
VIOLA PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDICK, III, an imprisoned person,
VENETRA WATSON, and any known or
unknown persons or entities claiming any interest
in the ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR GRADDICK,
JR., ANNABELLE THORNTON and JANINE
GOURDINE,

Respondents.

ORDER

Memorandum

Hearing Date: April 18, 2008
Judge: The Honorable Irvin G. Condon
Petitioner's Attorneys: S. Alan Medlin, Jonathan S. Altman, and Stephen M. Slotchiver
Respondent's Attorneys: Edward P. Guerard, Jr. and Charles S. Goldberg
Court Reporter: A. William Roberts, Jr. & Associates

This matter comes before me pursuant to the filing of a Petition by Thomas P. Brown, Jr., Evelina Brown Moses and Rebecca Patricia Brown. Jurisdiction has been established and venue is proper. Counsel for the parties advised the Court that all parties have been properly served and timely responses have been made to all pleadings. A Hearing was set for April 8, 2008.

Prior to the Hearing, all evidentiary documents were entered into evidence by agreement, including but limited to, depositions taken of the parties. Based on the arguments of counsel, I make the following Findings of Facts and Conclusion of Law:

Finding of Facts

The Decedent, Lucinda Pringle, died on October 11, 1989. She was survived by all of her children, except for her daughter, Evelina Brown, who had predeceased her. The Decedent's daughter, Evelina Brown, had three children, namely Thomas P. Brown, Jr., Evelina Brown Moses and Rebecca Patricia Brown, all of whom are still currently alive and which the Decedent raised as if they were her own children. Rebecca Patricia Brown is incompetent and has been so her entire life. She is represented in this action by David L. Michel as her Guardian ad Litem.

On July 30, 1988, the Decedent executed a document purporting to be her Will (the "Will"), declaring her desire to devise her entire estate to her three grandchildren (Thomas P. Brown, Jr., Evelina Brown Moses, and Rebecca Patricia Brown), the Petitioners. However, that Will has never been formally probated, although the Petitioners delivered and filed the original Will with this Court on August 4, 2005. Three of the Decedent's other children have passed away between the Decedent's demise in 1989 and the date of this Hearing. Respondents are the surviving children and the issue of the deceased children of the Decedent (other than the Petitioners).

Approximately one month prior to the Decedent's demise, Charleston, South Carolina was devastated by Hurricane Hugo. Shortly after Decedent's death, Emma Smalls presented a claim to the Public Savings Fire and Casualty Insurance Company with reference to damage sustained in Hugo to the house in which she resided in on the Decedent's property. In settlement of the claim, the insurance company issued a check naming as payees the Petitioners and Emma Smalls as "executors of the Estate" of the Decedent on January 15, 1990. The payees on the insurance check matched the apparent nomination of the executors in one section of the Decedent's Will. The monies received were used by Ms. Smalls to repair the home on the Decedent's property in which Ms. Smalls resided.

Approximately nine and a half years later, Respondent Janine Gourline (now deceased), petitioned the Court to open the Decedent's Estate as an intestate estate and represented that the Decedent died with "no Will". She was appointed to serve as Personal Representative. Approximately six months thereafter, Ms. Gourline passed away wherein Respondent Annabelle Thornton (now deceased) was appointed as successor Personal Representative. Petitioners received no notice of either of the probate proceedings.

The sole asset reported in the Decedent's Estate is a one-half interest in approximately ten acres of land located at 2517 Old Georgetown Road in Mt. Pleasant, South Carolina. Prior to the Decedent's death, the Decedent resided on this land with her granddaughter, Rebecca Patricia Brown and her daughters, Emma Smalls, Annabelle Thornton, and Janine Gourline, who, following the Decedent's death, continued to reside on the property.

On April 18, 2001, Ms. Thornton, in her capacity as the Personal Representative of her mother's Estate, filed a Deed of Distribution leaving only one-fifth of the Decedent's Estate to be divided amongst the Petitioners, the devisees under the Will (one-fifteenth to each Petitioner). The remaining four-fifths of the Estate were distributed to the Decedent's four daughters (all of whom were alive at the time of the Decedent's demise). The Petitioners were not notified of the issuance of this Deed.

On or about August 3, 2005, Petitioner Evelina Brown Moses affirms that she received the original Will from Emma Smalls. On August 4, 2005, Petitioner Evelina Brown Moses filed the original Will with the Court. Emma Smalls, as well as all of the other Petitioners, deny having any knowledge of the existence of the Will.

Conclusion of Law

The Petitioners seek to vacate any order determining that the decedent died intestate. However, such an order has not been issued. Consequently, based on the Petitioners' delivery and filing of the will, it would be inappropriate at this time to issue an order that the decedent died intestate. Rather, the will may be offered by Petitioners for either informal or formal probate and dealt with accordingly. SCPC section 62-3-108 is not a time bar to Petitioners probating the will because the probate of the will would be a part of the ongoing probate proceeding, which was timely commenced.

Even if an order determining that the decedent died intestate had been issued, there are grounds to vacate such an order.² Moreover, there would be no time bar to such a vacation of that order.

SCPC section 62-7-412(1) allows a court to consider a petition to vacate an order if those seeking vacation of the order demonstrate either that (1) they were unaware of a later-offered will, or (2) they were unaware of the earlier proceeding and received no notice other than by publication. Petitioners satisfy both requirements, although only satisfaction of one is necessary under that statute.³ Moreover, SCPC section 62-3-413 allows the modification or vacation of an order in a formal testacy proceeding for "good cause shown." Good cause is shown here because the Petitioners were unaware of the ongoing probate proceeding and the existence of the original will. It is also problematic that, in the aftermath of Hurricane Hugo, Respondent Emma Smalls obtained an insurance proceeds check issued to Petitioners and Emma Smalls as "executors of the estate" of the decedent, long before the commencement of the probate of the decedent's estate. The payees on the insurance check match the apparent nomination of the executors at one

² Petitioners also effectively seek the recovery of the property distributed by the Deed of Distribution pursuant to SCPC sections 62-3-1005, 62-3-1006, and 62-3-909.

³ Petitioner Thomas Brown was unaware of the existence of an original will. He testified that, although he had seen a copy of the will, he was told that there was no original. Petitioners Evelina Brown Moses and Rebecca Patricia Brown were unaware of the existence of any will. Petitioner Rebecca Patricia Brown is incapable of receiving notice individually due to her unrefuted mental incapacity.

place in the document delivered and filed by Petitioners purporting to be the decedent's last will. This fact leads to the inescapable conclusion that Emma Smalls was aware of the document purporting to be the decedent's last will, yet she failed to present it for probate and denied awareness of the existence of this document in her deposition.

Another issue constituting good cause for vacating such an order is that the failure to do so would deprive Petitioners of the opportunity to prove the decedent's intentions, which is a primary purpose of the probate process.

I find that several grounds exist to grant Petitioners' motion to vacate any such order, any one of which would suffice to grant the motion.

I further find that the Petitioners' motion to vacate such an order is not barred by any statutory or equitable limitation. The SCPC contains no provision that would prevent the vacation of such an order. Nor would laches or estoppel or SCRPC Rule 60 bar Petitioners' motion.

Section 62-3-413 provides that the time to vacate an order for good cause is the time allowed for an appeal.⁴ According to section 62-1-308, the time to file a notice of appeal is "ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court." Because Petitioners have not been provided with a written notice of any such order, the time to appeal clearly could not have run by the filing of their motion to vacate. Thus, the time limit to vacate an order for good cause under section 62-3-413 has not expired.

Section 62-3-108 is not a bar to Petitioners' motion to vacate such an order. Although section 62-3-108 prevents the commencement of a formal testacy proceeding more than ten years after a decedent's death, the probate of the decedent's estate by the Respondents, was commenced within ten years of decedent's death. Petitioners' motion to vacate does not erase or extinguish the Respondent's commencement of the probate of decedent's estate within ten years from the date of the Decedent's demise; it merely requests that such a final testacy order⁵ be vacated or, in essence, corrected. ~~Section 62-3-108 does not place a time limit on when a formal testacy order may be handed down or vacated, it places a time limit only on the commencement of the administration of the estate.~~

Case law supports the conclusion that Petitioners motion to vacate any such order is timely. Respondents are estopped from asserting any statute of limitations because Petitioners reasonably relied on the words and conduct of Respondents in allowing any limitations period to expire. See *Regions Bank v. Schmauch*, 582 S.E.2d 432 (S.C. App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (S.C. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (S.C. 2000); *Harvey v. South Carolina Dept of*

⁴ Section 62-3-413 does not require that an appeal be filed, it merely sets its time limit for a motion to vacate or modify as the same time limit applicable to an appeal.

⁵ SCPC section 62-3-401 defines a formal testacy proceeding as "litigation to determine whether a decedent left a valid will." An order determining that a decedent died intestate would be part of a formal testacy proceeding.

Corrections, 527 S.E.2d 765 (S.C. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (S.C. App. 1997).

Laches or estoppel do not preclude the grant of Petitioners' motion. Even if laches or estoppel were applicable to a motion of this type, neither applies to the facts of this case. As soon as Petitioners became aware of their rights, they asserted them. Respondents are not prejudiced by any delay; rather, they have benefited by maintaining use of the Decedent's property. Significantly, both laches and estoppel are equitable in nature, and this requires clean hands on the part of the party asserting laches or estoppel as defenses. See *Emery v. Smith*, 603 S.E.2d 598 (S.C. App. 2004); *Premium Invest Corp. v. Green*, 324 S.E.2d 72 (S.C. App. 1984).

South Carolina Rules of Civil Procedure (SCRCP) 60 is inapplicable to Petitioners' motion. SCPC section 62-1-304 provides that the SCRCP does not apply if the SCPC's provisions are inconsistent. As discussed above, the SCPC contains its own provisions regarding the timing of Petitioners' motion.

Public policy considerations support the grant of Petitioners' motion and the offering for probate of the document purporting to be the decedent's last will. A primary purpose of probate is to honor the decedent's intent. Allowing Petitioners the opportunity to prove that document is the decedent's last will furthers that purpose.

Ordered, Judged and Decreed

It is hereby Ordered, Judged and Decreed that the Decedent's Estate shall be probated in accordance with the document purporting to be her Last Will and Testament dated July 30, 1988.

It is further Ordered that all parties shall be enjoined and prevented from selling, encumbering, leasing or renting any of the property located at 2517 Old Georgetown Road, and known as TMS No. 578-00-00-026 pending further order of this Court.

It is further Ordered that any prior finding declaring this Estate to be an intestate estate is hereby vacated.

It is so ordered this ____ day of ____, 2008.

Irving G. Condon
Judge, Charleston County Probate Court

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
CASE NO.: 08-CP-10- 10213

IN THE MATTER OF THE ESTATE OF
LUCINDA PRINGLE

PROBATE COURT CASE NO.: 1999-ES-10-689-2

APPEAL FROM CHARLESTON COUNTY
PROBATE COURT

IRVIN G. CONDON, PROBATE COURT JUDGE

PROBATE COURT CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas P. Brown, Jr., and David Michel, Esq., as Guardian ad Litem for
Rebecca Patricia Brown.....Appellants,

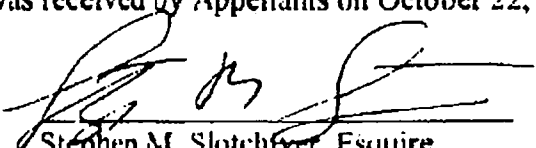
v.

Mary P. Smith, Individually and as Personal Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, Individually and as Personal Representative of the Estate of
Annabelle Thornton, Shirrese B. Brockington, Esq. as Special Administrator of the Estate of
Janine Gourdine, Emma Smalls, Viola Pringle, Cephus Thornton, Arthur Graddick, III, an
Imprisoned Person, Venetra Watson, and any Known or Unknown Persons or Entities Claiming
Any Interest in the Estates of Lucinda Pringle, Odessa Graddick, Arthur Graddick, Jr., Annabelle
Thornton and Janine Gourdine,.....Respondents.

NOTICE OF APPEAL

Evelina Brown Moses, Thomas P. Brown, Jr., and David Michel, Esq., as Guardian ad Litem for
Rebecca Patricia Brown, through their attorneys Stephen M. Slotchiver, Jonathan S. Altman, and
S. Alan Medlin, appeal the Order of the Honorable Irvin G. Condon dated October 20, 2008, a
copy of which is attached hereto, which was received by Appellants on October 22, 2008.

October 30, 2008


Stephen M. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, LLP
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(843) 577-6531

and

DERFNER, ALTMAN & WILBORN, LLC

Jonathan S. Altman
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Post Office Box 600
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(843) 723-9804

S. Alan Medlin, Esquire
1713 Phelps Street
Columbia, SC 29205
(803) 777-7465

ATTORNEYS FOR APPELLANTS

Other Counsel of Record:

Edward P. Guerard, Jr., Esquire
Charles S. Goldberg, Esquire
Shirrese B. Brockington, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL, ESQ.
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, ESQ. as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

IN THE PROBATE COURT

CASE NO. 1999-ES-10-689-2

ORDER

Hearing Date: April 8, 2008
Judge: Irvin G. Condon
Petitioner's Attorneys: S. Alan Medlin, Jonathan S. Altman, and Stephen M. Slotchiver
Respondent's Attorneys: Edward P. Guerard, Jr. and Charles S. Goldberg
Court Reporter: A. William Roberts, Jr. & Associates

INTRODUCTION

Lucinda Pringle died on October 11, 1989 and was vested with an undivided fifty (50) percent ownership in a ten and one-half (10 1/2) acre tract of land located on or near U.S. Highway 17 North in Mount Pleasant, South Carolina.

Lucinda Pringle's surviving heirs were three daughters (Mary Smith, Annabelle Thornton, and Janine Gourdine, the Respondents) and three children of a deceased daughter (Evelina Brown Moses, Thomas P. Brown, Jr., and Rebecca Patricia Brown, the Petitioners). The estate was administered as an intestate estate. An alleged will which devised the property exclusively to the Petitioners, the three children of the deceased daughter, was allegedly withheld until 2005.

This litigation involves the attempt to reopen the estate to probate the alleged will of Lucinda Pringle.

PROCEDURAL HISTORY

This matter comes before me upon the Petitioners' Motion for Vacation of the Order of June 25, 2001 as well as the Respondents' Return to Motion and Motion to Dismiss under Rules 12 and 60(b)(3), SCRPC.

I held a hearing on the Motion on April 8, 2008. Alan Medlin, Esquire, Jonathan Altman, Esquire, and Stephen Slotchiver, Esquire represented the Petitioners. David Michel, Esquire, represented the Petitioner, Rebecca Patricia Brown, as her guardian *ad litem*. Appearing for the Respondents were Edward P. Guerard, Jr, Esquire, and Charles S. Goldberg, Esquire. Shiresse B. Brockington, Esquire, appeared in her capacity as Special Administrator of the Estate of Janie Gourdine. One of the Respondents, Mary P. Smith, recently passed away. By consent of the attorneys, Ms. Smith's daughter, Shirley Haile-Howard, was appointed as Special Administrator

of the Estate of Lucinda Pringle, and Ms. Haile-Howard and her brother, Robert Pringle, are Ms. Smith's sole heirs at law and are substituted in Mrs. Smith's place for purposes of this matter.

The Petitioners move under Sections 62-3-412 and 413 of the South Carolina Probate Code, S.C. Code Ann. §§ 62-3-412, 13 (1976). Their basic position is that the Petitioners did not receive a copy of the "order" or any of the required notices in the intestate Estate of Lucinda Pringle, and therefore, the estate is still open to an "appeal" or "formal testacy" allowing Petitioners to have an opportunity to have the alleged original last will and testament of Lucinda Pringle, which was allegedly fraudulently withheld, admitted to probate.

Respondents argue that the ten-year statute of limitations of Section 62-3-108 prevent the probate of any will at this time.

FINDINGS OF FACT

At the time of Lucinda Pringle's death on October 11, 1989, she was vested with a one-half (1/2) undivided interest in the ten and one-half (10 1/2) acre tract of land known as 2517 Old Georgetown Road, Mt. Pleasant, SC 29466, TMS No. 578-00-00-026.

Respondents filed the application for an informal appointment In The Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No. 1999-ES-10-689. The court administered the estate as an informal appointment and intestacy in accordance with § 62-3-301(4), Code of Laws of South Carolina, as amended. The Personal Representative designated the respondents and the petitioners as the heirs at law of Lucinda Pringle.

The estate was probated and a Deed of Distribution dated April 6, 2000, was recorded April 17, 2000, in the RMC Office for Charleston County in Book U369, at Page 558 (copy admitted into evidence).

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The court issued a Certificate of Discharge on June 26, 2001, closing the estate; though by an oversight, the Court did not issue a formal written order closing the estate.

On September 21, 2001, Thomas Brown, Jr., as an "heir of Lucinda Pringle" executed a Grant of Perpetual Easement for the Commissioner of Public Works of the Town of Mt. Pleasant recorded in the RMC Office for Charleston County in book Y383, at page 484, on October 2, 2001 (certified copy admitted into evidence).

On or about October 20, 2005, Petitioners filed their Summons and Petition for Recovery of Improper Distribution. The parties amended the Petition by Consent Order of October 2, 2007 to properly reflect the parties to the action.

On January 8, 2007, the Petitioners filed their Motion to Vacate the Order of June 25, 2001.

In the October or November of 1989, the parties acknowledged the awareness of at least a copy of the alleged will within several days after the death of Lucinda Pringle. On another occasion about three years later, Thomas Brown, Jr., acknowledged possession of a copy of the will and made various attempts (though legal counsel was not retained) to file the copy of the will in the Probate Court for Charleston County.

Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings Fire and Casualty Insurance Company with reference to damages which resulted to the house she resided in on the decedent's property. As a result of the claim, the insurance company issued a check naming as payees the Petitioners and Emma Smalls as "executors of the estate" of the decedent on January 15, 1990. The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in Lucinda Pringle's will. Ms. Smalls used the monies received from this check to repair the home on the decedent's property in which Ms. Smalls resided.

On or about August 3, 2005, Petitioner Evelina Brown Moses affirmed that she received the original will from Emma Smalls. On August 4, 2005, Petitioner Evelina Brown Moses filed the original will with this Court. Emma Smalls, as well as all of the other Petitioners, now deny knowing of the existence of the will.

In summary, Lucinda Pringle's estate was distributed as if it were an intestate estate. Personal Representative Annabelle Thornton received from this Court a Certificate of Discharge dated June 26, 2001 releasing her from the office as Personal Representative and from liability of bond.

CONCLUSIONS OF LAW

I. SECTION 62-3-108 - ULTIMATE TIME LIMIT

The outcome of this case hinges on the interpretation of S.C. Code Ann. § 62-3-108 (Supp. 2006) which reads in part as follows:

Section 62-3-108. Probate, testacy, and appointment proceedings; ultimate time limit

No informal probate or appointment proceeding...may be commenced more than ten years after the decedent's death. [There are three exceptions stated but none apply to this case. See FN1]¹

~~If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death... it is incontestable that the decedent left no will and that the decedent's estate passed by intestate succession... (emphasis added)~~

Section 62-3-108 is a derivation of the three-year ultimate time period established by the Uniform Probate Code § 3-108. Courts construing this provision uniformly hold that the time

¹ The three exceptions to the 10-year ultimate time limit set forth above are listed as follows and do not apply to our situation

- 1 previous proceeding dismissed because of doubt of fact of decedent's death.
- 2 determination of date of death of missing, absent, or disapproved person.
- 3 Proceeding to contest an informally probated will may be commenced within the later of 3 months from informal probate or 1 year from decedent's death.

period contained therein is not subject to tolling for fraud, estoppel or other exceptions not found within the statute itself.

Because there is no South Carolina case law directly on point this court must look to other jurisdictions for guidance. *In Re Estate of Taylor*, 207 Mont. 400, 675 P.2d 944 (Mont. 1984), held that claims of fraud or estoppel did not toll the "ultimate time limit" in Montana's counterpart to § 62-3-108 because the statute was clear, unambiguous, and provided no exceptions for fraud or estoppel.

The court in *In Re Estate of Baca*, 984 P.2d 782 (N.M.App.1999), agreed. In that case, a claimant properly invoked one of the limited exceptions within New Mexico's counterpart to § 62-3-108 but then sought to recover money damages or approval of a new distribution. The court, applying the statute "directly and without nuance," held that the claimant could not go beyond the limited exception explicitly granted within the statute.

In *In Re Wood*, 147 Ariz.366, 710 P.2d 476 (Ariz.App. 1985), the court held that Arizona's counterpart to § 62-3-108 is not an ordinary statute of limitations which could be waived, but rather a statutory limit on the probate's court's power or jurisdiction to admit the will. Surveying the relevant comments to the Uniform Probate Code, the court reasoned that the ultimate time limit was more than an ordinary statute of limitation and not subject to tolling. It concluded that the statute barred a claim to admit a will that purportedly had not been discovered until after the ultimate time limit had passed.

Likewise, the court in *Martin v. Martin*, 77 Hawaii 251, 883 P.2d 673 (Ct.App. 1994), held that Hawaii's counterpart to § 62-3-108 prevented an heir from probating a will that the heir had found earlier but failed to probate within the time limit. The court held that its result was contrary to the terms of the will, but mandated by the statute.

The comments to the Uniform Probate Code provide:

As originally approved and read with 3-102's requirement that wills be probated before being admissible in evidence, this section created a three-year-from-death time period within which proceedings concerning a succession (other than a determination of heirs, or will interpretation or construction) must be commenced. Unless certain limited exceptions were met, an estate became conclusively intestate if no formal or informal estate proceeding was commenced within the three year period, and no administration could be opened in order to generate a deed of distribution for purposes of proving a succession.

Several of the original UPC states rejected the three year bar against late-offered wills and the correlated notion that formal proceedings to determine heirs in previously unadministered estates were necessary to generate title muniments locating inherited land in lawful successors. Critics preferred continued availability of UPC's procedures for appointing p.r.'s whose distributive instruments gave protection to purchasers. The 1987 technical amendment to 3-108 reduced, but failed to eliminate, instances in which original probate and appointment proceedings were barred by the 3 year limitation period.

South Carolina adopted the Uniform Probate Code, in part, to have consistent law around the country.

The South Carolina Court of Appeals ruled in *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81 (Ct. App. 2007) that:

In determining whether the statute of repose was tolled, the South Carolina Supreme Court explored whether the statute of repose is substantive or procedural and distinguished statutes of repose and statutes of limitation. *Id.* At 403-04, 438 S.E.2d at 243. The court stated, "[a] statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Id.* At 404, 438 S.E.2d at 243 (emphasis added). The court in *Langley* additionally declared "[a] statute of repose constitutes a substantive definition of rights rather than a procedural limitation provided by a statute of limitation." *Langley v. Pierce*, 313 S.C. 401, 438 S.E.2d 242 (S.C. 1993); see also *Florence County Sch. Dist. v. Interkal, Inc.*, 348 S.C. 446, 559 S.E.2d 866, 869 (Ct. App. 2002) (distinguishing statutes of repose from statutes of limitation, determining that a statute of repose involves a substantive right while citing *Langley*).

In *Langley*, the court discussed the purpose of statutes of repose:

Statutes of repose are based upon considerations of the economic best interests of the public as a whole and are substantive grants of immunity based upon a legislative balance of the respective rights of potential plaintiffs and defendants struck by determining a time limit beyond which liability no longer exists. 313 S.C. at 404, 438 S.E.2d at 244.

The court in *Langley* further explained:

Society benefits when claims and causes are laid to rest after having been viable for [a] reasonable time. When causes of action are extinguished after such time, society generally may continue its business and personal relationships in peace, without worry that some cause of action may arise to haunt it because of some long-forgotten act or omission. This is not only for the convenience of society, but also due to necessity. At that point, society is secure and stable. 313 S.C. at 404, 438 S.E.2d at 244.

Section 62-3-108 is not an ordinary statute of limitations, but the ultimate statute of limitations which cannot be waived or tolled. It is a statutory limit on the probate court's power or jurisdiction to admit a will. "The underlying purpose and policies of this code are: . . . (3) to promote a speedy and efficient system for liquidating the estate of the decedent and making distributions to his successors." S.C. Code Ann. § 62-1-102. "Finality in the administration of estate is implicit in this state purpose. At some point during administration, intestacy must be conclusive." *Matter of Estate of Wood*, 147 Ariz. 366 (Ariz. App. 1985).

As of October 11, 1999, ten years after the death of the decedent, Lucinda Pringle, at which time any rights that the Petitioners had, may have had or might have had beyond that date ceased to exist absolutely and jurisdictionally. Therefore, the decedent's estate would pass by intestate succession as a matter of law. Accordingly, this court, until a South Carolina appellate court finds otherwise, reluctantly follows other UPC states in holding that Section 3-108 is an ultimate time bar on later offered, even if fraudulently withheld, wills.²

² Case law in other non-UPC jurisdictions could support a different conclusion. *Accord Long v. Todd*, 252 S.W. 117 (Tex. Civ. App. 1923); *Armstrong v. Carter*, 291 S.W. 626 (Tex. Civ. App. 1927). See *Fuller v. Qualls*, 4 So. 2d 418 (Ala. 1941) (holding that the statute of limitations was tolled upon a finding of fraudulent concealment). See

II. PETITIONER'S ARGUMENT OF LACK OF NOTICE

The Petitioners allege that they did not receive a copy of the "order" or any required notice of the intestate administration of the Estate of Lucinda Pringle and therefore the estate is still open to probate the alleged will.

Section 62-3-412, formal testacy proceedings; effect of order; vacation; provides substantially as follows:

[S]ubject to vacation..., an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid Will, and to the determination of heirs, except that:

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of the relationship to the decedent, were unaware of his death or were given no notice of any proceeding concerning his estate, except by publication.

(3) A petition for vacation under... (2) above must be filed prior to the earlier of the following limits:

i. If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.

ii. Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by §62-3-108 when it is no longer possible to initiate an original proceeding to probate a Will of the decedent.

iii. Twelve months after the entry of the Order sought to be vacated.

also *Second Nat'l Bank & Trust Co. v. First Sec. Nat. Bank & Trust Co.*, 393 S.W.2d 50 (Ky. 1965) (holding that affirmative fraud would toll the statute of limitations for probate of wills). But see *State ex rel. Bier v. Bigger*, 173 S.W.2d 347 (Mo. 1944) (holding that statute not tolled because of fraudulent concealment). See generally I.S. Groff, *What circumstances excuse failure to submit will for probate within time limit set by statute*, 17 A.T.R. 31 (1968).

The exceptions set out in subparagraphs (2) and (3) above control. Petitioners were in fact included in the determination of the intestate estate. They were aware of their relationship to the decedent and aware of her death. The deed of distribution and the proofs of delivery are evidence of inclusion and notice, along with the easement.

The record reflects the Petitioners' were named as heirs on the Application For Informal Appointment and were listed as receiving the Information to Heirs and Devisees in the Proof of Delivery filed by then Personal Representative, Janine Gourdine and Proof of Delivery for the closing document (the Final Accounting, Proposal for Distribution, Petition for Settlement, and Notice of Right to Demand Hearing) by the Personal Representative Annabelle Thornton. The issue of notice to Rebecca Patricia Brown, an incapacitated person, is covered by S.C. Code Ann § 62-1-403 (Supp. 2007) which provides that "... orders binding a guardian bind the ward if no conservator of his estate has been appointed." Her siblings were acting as her guardian. Furthermore, Petitioner Brown executed an easement as an heir in September 2001.

~~There is a presumption that the events in the file met the requirements of this court.~~ In the case of *Miles v. Lee*, 319 S.C. 271, 460 S.E.2d 423 (Ct. App. 1995), the court relied upon the United States Supreme Court decision in *Fouche v. Royal Indemnity Co.*, 217 S.C. 147, 60 S.E.2d 73 (1950), in *Fouche*, the Plaintiffs collaterally attacked a prior probate court judgment for lack of jurisdiction over them asserting that the record did not contain a petition and order showing a guardian *ad litem* had been appointed for them during their minority at the time of the probate proceeding.

The Court held that where the record is silent, the presumption is that all necessary jurisdictional facts appear, and no collateral attack can be made upon the judgment, unless it affirmatively appears upon the face of the record that the Court had no jurisdiction of the parties, when the record is silent, the Court will presume that what should have been done was done.

However, regardless of the argument of Petitioners that proper notice was not given to them, they failed to timely file the Motion to Vacate the Order of Discharge as explained above and required by § 62-3-412(2)(3).

In the administration of the Pringle estate, the Petitioners were included as heirs at law for their respective intestate shares in the real estate. They would not have received any greater or lesser share had they actively participated in the intestacy. ~~Personal Representative Annabelle Thornton issued and recorded a Deed of Distribution which recognized the Petitioners' interest.~~ A Deed of Distribution from a Personal Representative is evidence that the distributee has succeeded to the interest of the estate. See S.C. Code Ann. 62-3-908 (Supp.2006) and *Osterneck v. Osterneck*, 649 S.E.2d 127 (S.C.Ct.App. 2007), decided June 27, 2007, arch den Aug 24, 2007)

South Carolina Code Ann. § 62-3-102 ~~denies the use of unprobated wills as evidence.~~ It provides, "Except as provided in § 62-3-1201 [for certain estates less than \$10,000]," to be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the court or an adjudication of probate by the court." The Official Comment to this statute aptly notes that, "The time limitations on probate proceedings to establish testacy are stated in Section 62-3-108." In short, § 62-3-102 provides that unprobated wills are not evidence of anything, and confirms that the time limits to start the required proceeding to probate a will are established by § 62-3-108.

Section 62-3-102 ~~thus codifies the general rule that unprobated wills are not admissible.~~ See, e.g., *Somerville v. Randall*, 908 A.2d 1155, 1156 n. 1 (D.C. 2006) treating a case as if the decedent died intestate despite the record evidence of an unprobated will because, "It is commonly accepted that a will has no legal effect until it is probated."

Martin v. Martin, 883 P.2d 673 (Hawaii 1994), is also directly on point. There, intestate heirs began proceedings for a "Determination and Declaration of Heirs and to Partition" which claimed that the decedent died intestate and sought to divide the intestate shares. One of the heirs disputed that the estate was intestate and sought to admit a purported will into probate to contest the intestacy allegations. The probate court found that the will was a valid will but declined to give it any effect because it was not probated within the time allowed by that state's counterpart to S.C. Code Ann. § 62-3-108. On appeal, the disgruntled heir argued that he was not trying to probate the will but only use it as evidence of his status as the sole heir. The court did not disagree. Citing its counterpart to S.C. Code Ann. § 62-3-102, the court held that the heir was precluded from using the unprobated Will as evidence to defeat the claims for intestate succession.

III. COPY OF THE WILL

S. C. Code Ann. § 62-3-402 provides the method in which a copy of a will in the absence of the original may be submitted to probate. The copy may be attached to the petition stating the contents of the original will and indicate that the original is lost, destroyed, or otherwise unavailable. In this matter, this was not done.

VI. S.C. STAT. ANN. § 62-3-1008 SUBSEQUENT ADMINISTRATION

Petitioners argue that § 62-3-1008 allows that an estate can be reopened for good cause. Clearly, the Petitioners have shown good cause but their previously barred claim has asserted in the subsequent administration. Therefore, § 62-3-1008 bars the Petitioners' claim.

V. PETITIONERS ARGUE § 62-3-1006

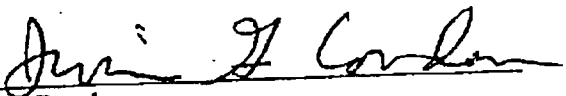
Lastly, it is understood that Petitioners are relying on S.C. Code Ann. § 62-3-1006. This statute applies to claims not "otherwise barred" Petitioners attempt to admit the will is "otherwise barred" by § 62-3-108.

CONCLUSION

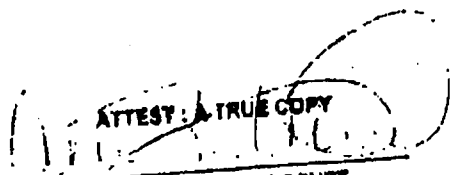
Based upon the material facts in this case and the applicable statutes and cases, this court finds that it has no choice other than to rule that it is incontestable that the decedent left no will, and that the decedent's estate passed by intestate succession.

NOW THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Vacate and the Petition for Improper Distribution are dismissed.

IT IS SO ORDERED.


Irvin G. Condon
Judge, Charleston County Probate Court

This the 20th day of October, 2008 
Charleston, South Carolina


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CHARLESTON COUNTY, SOUTH CAROLINA

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT AND THE
COURT OF COMMON PLEAS
CASE NUMBER: 1999-ES-10-689-2
CASE NUMBER: 2008-CP-10-6213

IN RE:)
ESTATE OF LUCINDA PRINGLE)
EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., AND)
DAVID L. MICHEL as Guardian Ad)
Litem for REBECCA PATRICIA)
BROWN,)

Appellants,)

vs.)

MARY P. SMITH, individually and)
as Personal Representative of the)
Estate of Lucinda Pringle,)
MAEZELL MITCHELL)
JEFFERSON, individually and as)
Personal Representative of the)
Estate of Annabelle Thornton,)
SHIRRESE B. BROCKINGTON, as)
Special Administrator of the Estate)
of JANINE GOURDINE, EMMA)
SMALLS, VIOLA PRINGLE,)
CEPHUS THORNTON, ARTHUR)
GRADDICK, III, and any known or)
unknown persons or entities claiming)
any interest in the Estates of)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR)
GRADDICK, JR., ANNABELLE)
THORNTON and JANINE)
GOURDINE,)
Respondents.)

GROUND FOR APPEAL

Evelina Brown Moses, Thomas P. Brown, and David L. Michel, Esq. as Guardian ad Litem for Rebecca Patricia Brown (hereinafter collectively referred to as "Appellants") state

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JULIE J. ARMSTRONG
CLERK OF COURT

FILED

their grounds of appeal from the Order of the Probate Court in the above matter, which Order was dated October 20, 2008.

1. **The trial court erred by holding that Appellants' time to petition to vacate had expired under SCPC § 62-3-412.**

In its order, the trial court focuses on the Appellants having constructive notice of the intestate administration of decedent's estate and relies on SCPC § 62-3-412 (2) to dismiss Appellants' argument. The trial court's reliance on SCPC § 62-3-412 (2) was misplaced in so much as that subsection is predicated on the issuance of an order of intestacy. No such order was ever issued by the court in this case¹.

2. **The trial court mistakenly held that Appellant Rebecca Patricia Brown, whose incompetence was acknowledged to by the parties, received notice of the prior estate administration because "her siblings were acting as her guardian" and thus she was bound by the notice to her siblings pursuant to SCPC § 62-1-403.**

Appellant Rebecca Patricia Brown's siblings have at no time been appointed as her legal guardian. The general definitional section of the SCPC defines a guardian as "a person who is qualified as a guardian of an incapacitated person pursuant to testamentary or court appointment." Accordingly, Appellant Rebecca Patricia Brown could not have received notice of the administration of decedent's estate under SCPC § 62-3-412 (2). The trial court's error is further evidenced by its appointment of David L. Michel as Guardian ad Litem for this Appellant. If Appellant Rebecca Patricia Brown was already represented by her siblings, no need for the appointment of Attorney Michel would have existed. Thus, even if an order of intestacy had been issued, which it was not, Appellant Rebecca Patricia Brown did not receive

¹ It is axiomatic that no order of intestacy was issued because, under the SCPC, the only way to issue an order of intestacy is through a formal probate. Decedent's estate was being administered informally by Respondents.

the required notice of said order and she, as an acknowledged incompetent, satisfies the requirements of the SCPC § 62-3-412 (2) and (3), mandating the vacation of that nonexistent order.

3. **The trial court erred by failing to apply SCPC § 62-3-413, which allows for the modification or vacation of an order in a formal testacy proceeding for "good cause shown."**

In its order, the trial court affirms that good cause exists in this case, but fails to utilize the remedies available to it, including SCPC § 62-3-413, which allows for the modification or vacation of an order in a testacy proceeding for "good cause shown." SCPC § 62-3-413 sets forth a time limit within which to modify or vacate an order "within the time allowed for appeal." In this case, Appellants are within the time allowed for appeal. SCPC § 62-1-306 states that the trigger for the commencement of the running of the time period within which Appellants must appeal is the receipt of the written order. In the present case, no written order was ever issued. Even if such an order existed, Appellant Rebecca Patricia Brown's incompetency renders her incapable of receiving notice under any circumstance.

4. **The trial court erred by holding that SCPC § 62-3-108 precluded the probate of the will proffered by Appellants.**

In its order, the trial court stated that "it had no choice but to preclude the probate of the decedent's will." Unable to find any applicable South Carolina law to support this position, the trial court relied on cases from other jurisdictions as precedent for its determination that SCPC § 62-3-108 creates an absolute bar to probating a will after ten (10) years from the decedent's death. The cases cited by the trial court are inapposite because they do not deal with the facts sub judice. The cited cases did not address attempts to probate a will while the timely

commenced administration of an estate was ongoing. In particular, the trial court cites *Martin v. Martin*, 883 P.2d 673 (Hawaii 1994), as "directly on point" for the propositions that (1) it is too late to probate a will after the applicable time limit, even if an intestacy proceeding was ongoing, and (2) that a nonprobated will can not be used as evidence to defeat the claims for intestate succession. Again, *Martin* is inapposite. It does not deal with an attempt to introduce a will as part of an ongoing probate intestacy administration that was timely commenced. Rather, *Martin* deal with a nonprobate proceeding for determination of intestate heirs and partition commenced after a time period to probate a will had expired. The case at issue involves an attempt to probate a will while the timely-commenced administration of the estate was ongoing.

Nor does *Martin* stand as applicable precedent that a court should always refuse to allow the introduction of a nonprobated will as evidence. Appellants herein attempted to introduce the will only as evidence of, inter alia, the fraud perpetrated by some of the Respondents and to ultimately advise the probate court of its validity. *Martin* simply stands for the proposition that a nonprobated will cannot be used to establish ownership.

The trial court similarly misapprehends the application of SCPC § 62-3-102, which the trial court states "denies the use of unprobated wills as evidence." SCPC § 62-3-102 merely precludes a nonprobated will from being "effective to prove the transfer of any property or to nominate an executor." Nothing in that section prevents a will from being used as evidence for other purposes, and it certainly does not prevent a will from being offered for probate to establish the transfer of property. Moreover, the trial court cites but disregards precedent from other jurisdictions that would toll the statute of limitations to probate a will.

5. SCPC § 62-3-108 is not a bar to Appellants' motion.

Although SCPC § 62-3-108 prevents the commencement of a formal testacy proceeding more than ten years after decedent's death, the probate of the decedent's estate, which included the issuance of a formal testacy proceeding, was commenced within ten years of decedent's death. Appellants' motion to vacate is part of the probate that was timely commenced within the time period set forth in SCPC § 62-3-108. Appellants' motion to vacate did not seek to erase or extinguish the commencement of the probate of decedent's estate, which again, was commenced timely. Appellants' merely requested that the final testacy order, which has yet to be issued, be issued correctly. SCPC § 62-3-108 does not place a time limit on when a formal testacy order may be handed down or vacated; it solely places a time limit only on the commencement of the administration of the estate.²

6. The trial court erred by disregarding public policy considerations.

The primary purpose of probate is to honor decedent's intent. To affirm the actions of Respondents would contravene public policy by allowing Respondents to circumvent the probate of decedent's will and dishonor decedent's intent while rewarding wrongdoing.

7. The trial court erred by holding that Appellants did not satisfy the requirements of SCPC § 62-3-402 for timely probating a copy of the will.

The trial court ruled that Appellants did not comply with requirements of SCPC § 62-3-

² This policy is supported by the first two exceptions in SCPC § 62-3-108 from the ten year time limit. Both exceptions recognize that probate proceedings may be commenced more than ten years after the decedent's death when there is a mistake about the decedent's death, even if it is ultimately determined that the decedent was dead. These two exceptions demonstrate the policy of the section, which is not to create an absolute bar to the commencement of a probate proceeding when the court can rectify a mistake. Granting Appellants' motion would rectify what is at best a mistake and at worse a fraud.

Moreover, SCPC § 62-3-108 provides that "it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession" only if "no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death." In this case, the condition precedent to the incontestable determination of intestacy under the statute has not occurred because the probate of the decedent's estate was commenced within ten years of the decedent's death.

402 relative to the probating of a copy of the will. The uncontradicted testimony of Appellant Thomas Brown was that he timely attempted to file a copy of the will with the probate court but was told by the court that it would not accept a copy. It is clearly against public policy to penalize Appellants for relying on an improper and inaccurate statement from the court itself. Had the court provided Appellant Thomas Brown the correct information, decedent's intent would have been honored.

Respectfully submitted,

Date: 12.1.108


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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO. 08-CP-10-006213

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Appellants

VS

BRIEF OF RESPONDENTS

MARY P. SMITH, individually and as
Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
individually and as Personal
Representative of the ESTATE
OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the
ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or
entities claiming any interest in the
ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR
GRADDICK, JR., ANNABELLE
THORNTON and JANINE GOURDINE,

Respondents.

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UNCONTRADICTED FINDINGS OF FACTS

The operative facts of this case which follow are uncontradicted:

1. Lucinda Pringle died on October 11, 1989. (Return, Tab 1)
2. The Respondents filed the application for an informal appointment in The

Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No.: 1999-ES-10-689. (Return, Tab 2)

3. Deed of Distribution to Appellants and Respondents dated April 6, 2001 and recorded on April 25, 2001 in the Charleston County RMC Office in Bk U369, page 558. (Return, Tab 21)

4. The parties to this litigation are her heirs at law. (Return, 99-ES-10-00689(2))

5. A Certificate of Discharge was issued on June 26, 2001 to the PR for the Estate of Lucinda Pringle, 99-ES-10-689. (Return, Tab 27)

6. On October 20, 2005, Appellants filed their Summons and Petition for Recovery of Improper Distribution. (Return, Tab 36)

7. On January 8, 2007, Appellants filed their Motion to Vacate the Order of June 25, 2001. (Actually date was June 26, 2001). (Return, Tab 57)

8. The will in question was not filed for Probate with the Probate Court for Charleston County prior to October 11, 1999. (Return)

9. No action of any kind was initiated by the Appellants prior to October 20, 2005. (Return)

STANDARD OF REVIEW

The grounds for appeal from the Order of Judge Condon all address the Appellants interpretation of the Court's application of the Probate Code concerning § 62-3-412, 62-1-403, 62-3-413, 62-3-400 culminating in § 62-3-108 which is the ultimate 10 year time limit under this statute of repose which defines the subject matter jurisdiction, i.e. 10 years after the date of death of the deceased.

The applicable portion of § 62-3-108 is as follows:

“ If no informal probate and no formal testacy proceedings are commenced within 10 years after the decedent’s death, ...it is incontestable that the decedent left no will and that the decedent’s estate passes by intestate succession....” (emphasis added).

In this case, the Appellants’ right to relief is statutory. In *Harvey v. S.C. Dept of Corrections*, 338 S.C. 500, 507, 527 SE2d 765, 769 (Ct. App. 2000), the court held “that where the right to relief is entirely statutory, the action is one at law.”

The South Carolina Courts have consistently held that “it is the substance of the requested relief that matters regardless of the form in which the request for relief was framed.” See *Historic Charleston Holdings, LLC v. Mallon* (2009 SC 0218.44, Op. No. 26601, S.C. Sup. Ct. Feb. 17, 2009).

The Respondents asserted a Motion to Dismiss for lack of subject matter jurisdiction upon the grounds that no will was filed within 10 years of the death of Lucinda Pringle as required pursuant to § 62-3-108, Probate, testacy and appointment proceedings; ultimate time limit. (emphasis added).

As set forth in *Murphy v. Owens-Corning Fiberglass Corp*, 346 S.C. 37, 550 SE2d 589 (Ct. App. 2001), the Court held:

This is an appeal from the grant of a motion to dismiss for lack of subject matter jurisdiction. The question of subject matter jurisdiction is a question of law for the Court.

As set forth above, this is an action at law. “If the proceedings in the Probate Court is in the nature of an action of law, the Circuit Court may not disturb the Probate Court’s findings of fact unless a review of the record discloses there is no evidence to support them. *In re Estate of Weeks*, 329 S.C. 251, 495 SE2d 454(Ct. App. 1997) quoting. *In re Howard*, 315 S.C. 356, 434 SE2d 254 (1993).

ARGUMENT

As stated in *Harrison v. Bevilacqua*, 354 S.C. 129, 580 SE2d 109 (2003) our Supreme Court found that:

[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.

In enacting the 10 year statute of repose, the legislature did not impose any defenses to the statute i.e. fraud, misrepresentation, incapacity, etc nor did it provide any tolling mechanism for minorities, etc. It is absolute - no exceptions.

Based upon the operative facts in this case, the Court properly applied the applicable law in concluding in its Order of October 20, 2008:

As of October 11, 1999, ten years after the death of the decedent, Lucinda Pringle, at which time any rights that the Petitioner had, may have had or might have had beyond that date ceased to exist absolutely and jurisdictionally. Therefore, the decedent's estate would pass by intestate succession as a matter of law. (emphasis added) (Page 8 of said Order)

CONCLUSION

The operative evidence as found by this Court is substantial and uncontroverted. The Circuit Court may not disturb the Probate Court's findings of fact unless the review of the record discloses there is no evidence to support them.

Accordingly, the Appellants' appeal should be dismissed and the Order affirmed.

SIGNATURE ON NEXT PAGE

Respectfully submitted,



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April 29, 2009

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, as Guardian ad Litem for
Rebecca Patricia Brown,.....Appellants,

v.

Mary P. Smith, individually and as Personal
Representative of the Estate of Lucinda Pringle,
Maczell Mitchell Jefferson, individually and as
Personal Representative of the Estate of Annbelle
Thornton, Shirrese B. Brockington, as Special
Administrator of the Estate of Janine Gourdine,
Emma Smalls, Viola Pringle, Cephus Thornton,
Arthur Graddick, III, an imprisoned person,
Venetra Watson, and any known or unknown persons
or entities claiming any interest in the Estates of
Lucinda Pringle, Odessa Graddick, Arthur Graddick, Jr.,
Annabella Thornton and Janine Gourdine,.....Respondents.

NOTICE OF APPEAL

Evelina Brown Moses, Thomas P. Brown, Jr., and David L. Michel, as Guardian
ad Litem for Rebecca Patricia Brown appeal the order of the Honorable Roger M. Young
dated June 24, 2009. Appellants received written notice of entry of this order on June 25,
2009.

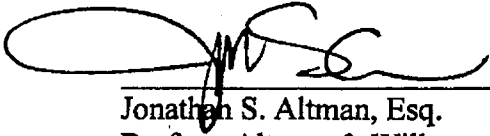
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CLERK OF COURT

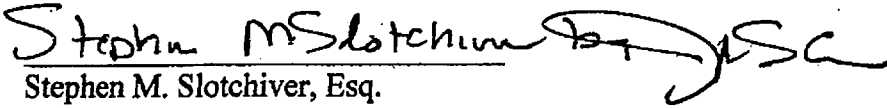
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July 23, 2009



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, as Guardian ad Litem for
Rebecca Patricia Brown.....Appellants,

v.

Shirley Haile-Howard, as Personal Representative
of the Estate of Mary P. Smith and as Personal
Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of Janine Gourdine,
Arthur Smalls as Personal Representative of the Estate of
Emma Smalls, and any known or unknown persons
or entities claiming any interest in the Estates of
Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gourdine and Emma Smalls.....Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURTS ERR IN RULING THAT THE SUBMISSION OF THE WILL WAS UNTIMELY WHEN NO ORDER CLOSING THE ESTATE HAS BEEN ISSUED?
2. DID THE LOWER COURTS ERR IN TREATING THE CERTIFICATE OF DISCHARGE AS AN ORDER CLOSING THE ESTATE?
 - A. Did the lower courts err by ruling that Appellants' time to file their Motion to Vacate had expired?
 - B. Did the lower courts err in holding that S.C. Code Ann. § 62-3-108 barred the probate of the will?
 - C. Did the lower courts err in disregarding the testator's intent?
 - D. Did the lower courts err by holding that the Appellants did not satisfy the requirements of S.C. Code Ann. § 62-3-402 for probating a copy of a will?
 - E. Did the lower courts err by not finding that fraud precluded the imposition of any applicable time limit?
3. DID THE CIRCUIT COURT ERR BY APPLYING THE WRONG STANDARD OF REVIEW?

STATEMENT OF CASE

At the time of Lucinda Pringle's death on October 11, 1989, she was vested with a one-half (1/2) undivided interest in the ten (10) acre tract of land known as 2517 Old Georgetown Road, Mt. Pleasant, SC 29466, TMS No. 578-00-00-026.

Respondents filed the application for an informal appointment in the Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No. 1999-ES-10-689 (R.p. ____). The Probate Court administered the estate as an informal appointment assuming intestacy in accordance with S.C. Code Ann. § 62-3-301(4) (R.p. ____). The Personal Representative designated the Respondents and the Appellants as the heirs at law of Lucinda Pringle (R.p. ____). A Deed of Distribution dated April 6, 2000, was recorded on April 17, 2000, in the RMC Office for Charleston County in Book U369, at Page 558 (R.p. ____). The Probate Court issued a Certificate of Discharge on June 26, 2001 (R.p. ____). The Probate Court did not issue an order closing the estate.

On or about August 3, 2005, Appellant Evelina Brown Moses received the original will from Emma Smalls and filed it with the Probate Court for Charleston County on August 4, 2005 (R.p. ____). The Respondents deny knowing of the existence of the will (R.p. ____).

On October 20, 2005, Appellants filed their Summons and Petition for Recovery of Improper Distribution (R.p. ____). The parties amended the Petition by Consent Order of October 2, 2007 to properly reflect the then parties to the action (R.p. ____). On January 8, 2007, the Appellants filed their Motion to Vacate the Order of June 26, 2001 (R.p. ____).

Appellant Rebecca Patricia Brown is and was at all times during the relevant time periods of this action an incapacitated person for whom no guardian has been appointed (R.p. ____). The Probate Court appointed David L. Michel, Esq., as guardian ad litem for Appellant Rebecca Patricia Brown for the purposes of this action (R.p. ____).

By Order dated October 20, 2008 (hereinafter "the Probate Court's Order"), the Honorable Irvin G. Condon, Judge, Charleston County Probate Court, dismissed Appellants' Motion to Vacate (R.p. ____). Appellants appealed the Probate Court's Order, essentially asking for the opportunity to offer the will for probate because the time period to do so has not expired (R.p. ____).

By order dated June 24, 2009, the Honorable Roger M. Young, Judge, dismissed Appellants' appeal and affirmed the Probate Court's Order (R.p. ____).

FACTS

Lucinda Pringle (hereinafter "Mrs. Pringle"), the testator, was a model grandparent. She raised her grandchildren, Appellants Thomas, Evelina, and Rebecca Patricia as if they were her own, and was particularly concerned for her mentally disabled granddaughter, Appellant

Rebecca Patricia Brown.

In an effort to provide for her grandchildren after her own demise, Mrs. Pringle executed a will on July 30, 1988 declaring her desire to devise her entire estate to Appellants (R.p.____). However, immediately following Mrs. Pringle's death on October 11, 1989, in order to deny Appellants their rightful inheritance pursuant to the will, Respondents commenced a sophisticated conspiracy to fraudulently conceal and suppress her will in clear violation of the statutory duty to deliver a will¹.

The conspiracy deepened in the aftermath of Hurricane Hugo as Respondent Emma Smalls, one of Mrs. Pringle's daughters, produced Mrs. Pringle's tampered will to an insurance company in order to obtain homeowners insurance proceeds (R.p.____). The conspiracy peaked some nine and a half years after Mrs. Pringle's death when another one of her daughters, Respondent Janine Gourdine, petitioned the Probate Court to open Mrs. Pringle's estate as an intestate estate, represented that Mrs. Pringle died with "no will", and purposefully failed to notify Mrs. Pringle's grandchildren of any pending intestate probate proceedings (R.p.____). Finally, the conspiracy culminated on August 3, 2005 when, after some sixteen years of intentionally concealing and suppressing Mrs. Pringle's will, Respondent Emma Smalls confessed the entire scandal and presented the original will to Appellant Evelina Brown Moses (R.p.____).

Several years after Mrs. Pringle's death, Respondent Thomas P. Brown, Jr., received a copy of the will from Respondents and attempted (though legal counsel was not retained) to file the copy of the will in the Probate Court for Charleston County (R.p.____). Appellant Thomas P. Brown, Jr.'s uncontroverted testimony is that someone in the Probate Court office told him a

¹ S.C. Code Ann. § 62-2-901.

copy of a will could not be probated (R.p.____).

The sole asset in Mrs. Pringle's estate is a one-half interest in ten acres located at 2517 Old Georgetown Road in Mt. Pleasant, South Carolina (hereinafter "the property"). Prior to her death, Mrs. Pringle resided on the property with her granddaughter, Rebecca Patricia Brown and her now deceased daughters, Respondents Emma Smalls, Annabelle Thornton, and Janine Gourdine who, upon Mrs. Pringle's death, desired to continue to reside on the property. When Mrs. Pringle died, her daughters were in possession of her will and had a legal duty to deliver it to the Probate Court pursuant to S.C. Code Ann. § 62-2-901. Nevertheless, in an effort to maintain their residency on the property, Mrs. Pringle's daughters fraudulently conspired to conceal and suppress the will.

Shortly after Mrs. Pringle's death, the property needed repair as a result of damage from Hurricane Hugo. On January 15, 1990, the Public Savings Fire & Casualty Insurance Company issued and delivered a check to Respondent Emma Smalls along with correspondence to Respondent Emma Smalls produced by Respondents in the amount of Three Thousand (\$3,000.00) Dollars made payable to:

"Thomas P. Brown, Jr., Patricia Brown, Evelina Brown, and Emma Smalls Executors of the Estate of Lucinda Pringle." (R.p.____)

Mrs. Pringle's will nominates the Appellants as executors, and the insurance check even lists the payees in the same order as they appear in Mrs. Pringle's will, suggesting that Respondent Emma Smalls presented Mrs. Pringle's will in order to obtain the insurance proceeds (R.p.____). In addition, it is important to note that a cursory review of Mrs. Pringle's will suggests that it was tampered with in order to add Respondent Emma Smalls' name as a devisee

so as to aid in her efforts to obtain the insurance proceeds:

The will appears to have been altered via typewriter erasure to add the name of only one of Mrs. Pringle's daughters, Respondent Emma Smalls, as a devisee;

While Respondent Emma Smalls is not appointed co-executor in a complex paragraph where typewriter erasure is not feasible, she is added in a later paragraph that appoints executors via typewriter erasure.

Upon receipt of the insurance check, Respondent Emma Smalls obtained the written consent of Mrs. Pringle's grandchildren (including the mark of Appellant Rebecca Patricia Brown, an incompetent) to cash the insurance proceeds check. The competent grandchildren, Thomas and Evelina, agreed to Respondent Emma Smalls' request, as they were unsophisticated in such affairs, unaware of their interest in the property, and not wanting to interfere with Respondent Emma Smalls' efforts to repair the property. The incompetent grandchild, Rebecca Patricia, was unequipped to comprehend any portion of this transaction.

On May 5, 1999, another of Mrs. Pringle's daughters, Respondent Janine Gourdine, petitioned the Probate Court to open the Estate of Lucinda Pringle as an intestate estate and fraudulently misrepresented to the Probate Court that Mrs. Pringle died without a will (R.p. ____). Respondent Gourdine successfully sought appointment as personal representative, notified her sisters of the intestate probate proceedings, and obtained renunciations of rights to administration from Respondents (R.p. ____). However, Respondent Gourdine did not notify Appellants of the intestate proceedings and failed to seek renunciations of rights to administration from the Appellants despite the fact that they had rights in the estate under any circumstance. The Probate Court file confirms that Appellants did not receive notice of estate filings (R.p. ____). Upon the death of Respondent Gourdine in late 1999, yet another of Mrs. Pringle's daughters, Respondent Annabelle Thornton, obtained successor appointment as

Personal Representative and continued the fraud by also denying the existence of the will, again fraudulently misrepresenting that Mrs. Pringle died intestate, purposefully keeping Mrs. Pringle's grandchildren out of the loop, and seeking new renunciations of rights to administration from all of Mrs. Pringle's surviving children but failing to seek and to obtain similar renunciations from Appellants (R.p.____).

On April 18, 2001, Respondent Annabelle Thornton filed a Deed of Distribution leaving only 1/5 of Mrs. Pringle's intestate estate to be divided among Appellants, the known intended devisees of the estate (1/15th to each grandchild) (R.p.____). The remaining 4/5ths of the estate was improperly distributed to Mrs. Pringle's daughters. Closing documents were filed but not provided to Appellants (R.p.____). Throughout the course of the administration of the Estate, Appellants were not provided notice of estate activity.

By 2005, Respondents Emma Smalls and Mary Smith were Mrs. Pringle's remaining surviving daughters. On August 3, 2005, the conspiracy unraveled when Respondent Emma Smalls confessed to Appellant Evelina Brown Moses that she had fraudulently conspired to conceal Mrs. Pringle's will so that he and her late sisters could continue to live on the property copy of a will could not be probated (R.p.____).

Appellant Evelina Brown Moses immediately filed the will with the Probate Court (R.p.____). In an effort to distribute the estate pursuant to Mrs. Pringle's wishes, her competent grandchildren and a guardian ad litem appointed to represent Appellant Rebecca Patricia Brown promptly filed a Petition for Recovery of the Improper Distribution (R.p.____). Despite Respondent Emma Smalls' production of the will in August 2005, Respondents continued to deny having any knowledge of its existence.

ARGUMENTS

Introduction

Appellants seek an opportunity to demonstrate that Mrs. Pringle's will is valid. There is no possible harm or detriment to the Respondents for allowing this, other than the possibility that, if the testator's will is determined to be valid, they will not retain a windfall that the testator did not intend for them to receive. If, however, this Court does not overturn the lower courts' orders and allow Appellants an opportunity to demonstrate that the will is valid, Mrs. Pringle and Appellants will be irreparably harmed. The primary goal in construing a will is to honor the testator's intent. See, e.g., *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (S.C. 2005). Moreover, there is a presumption against intestacy. See, e.g., *Pate v. Ford*, 293 S.C. 268, 360 S.E.2d 145 (S.C.App. 1987).

I. BECAUSE NO ORDER CLOSING THE ESTATE HAS BEEN ISSUED, THE LOWER COURTS ERRED BY FAILING TO RULE THAT THE SUBMISSION OF THE WILL IS TIMELY.

There has been no order closing Mrs. Pringle's estate. Although the Probate Court's order states that "[t]he court issued a Certificate of Discharge on June 26, 2001, *closing the estate*; the Probate Court acknowledged that through an oversight, it did not issue a formal order closing the estate" (emphasis added). Thus, Mrs. Pringle's estate was not closed because there was no Order Closing Estate. There is no method to close an estate other than by issuance of an Order Closing Estate. See S.C. Code Ann. § 62-3-1001; Probate Court Form # 413 PC (as approved by South Carolina Court Administration). While the Probate Court did issue a Certificate of Discharge, all that did was discharge the Personal Representative; it did not close the estate – either by statutory process or by the plain language of the Certificate of Discharge.

The discharge of a personal representative is a separate matter that is not equivalent to an order closing the estate. Compare S.C. Code Ann. § 62-3-608 --- 613 (recognizing termination of personal representative appointment before closing of estate) with S.C. Code Ann. § 62-3-1001 (involving order closing estate by approving petition for settlement).

The failure of the Probate Court to issue an Order Closing Estate means that the Estate still has not been closed. Consequently, it could not possibly be too late to introduce the will proffered by Appellants because the estate administration remains ongoing to this day². S.C. Code Ann. § 62-3-108 speaks only to the *commencement* of an estate administration within 10 years of a decedent's death, which was done in this case. There is nothing in S.C. Code Ann. 62-3-108 that required the *conclusion* of an estate administration within 10 years from the decedent's death.

In several instances, S.C. Code Ann. § 62-3-108 recognizes that a will might be offered for probate more than ten years after a decedent's death. The first exception to the ten-year time limit in S.C. Code Ann. § 62-3-108 recognizes that probate proceedings may be commenced more than ten years after the decedent's death when there is a mistake about the decedent's death. This exception demonstrates the policy of the section, which is not to create an absolute bar to the commencement of a probate proceeding more than ten years after a decedent's death when the court can rectify a mistake. Another exception to S.C. Code Ann. § 62-3-108 involves the contest of an informal probate, which must occur by the *later* of one year from the decedent's death or eight months after the informal probate. If the contest of the informal probate involves the petition to probate a later will, as recognized by S.C. Code Ann. § 62-3-407, the later will, ultimately determined to be the valid will, might be offered for probate more than ten years after

² None of the sections cited by Respondents preclude the proffer of a will while an estate administration is ongoing.

the decedent's death. For example, the first will might be informally probated nine years and eleven months after the decedent's death. A third exception under S.C. Code Ann. § 62-3-108, in conjunction with S.C. Code Ann. § 62-3-407, allows a contestant to petition for the probate of a later will within eight months thereafter, which would be more than ten years after the decedent's death. In that case, the probate of the later will more than ten years after the decedent's death would prevent the probate of the wrong will by mistake.

Because S.C. Code Ann. § 62-3-108 recognizes these exceptions to its own ten-year limitations period, the lower courts erred by not recognizing that the policy of the SCPC does not preclude the probate of a will more than ten years after a decedent's death when doing so would avoid a mistake in probate.

II. BECAUSE IT IS NOT TOO LATE TO PROFFER MRS. PRINGLE'S WILL, THE LOWER COURTS ERRED EVEN IF A CERTIFICATE OF DISCHARGE WAS ISSUED.

A. The lower courts erred by ruling that Appellants' time had expired.

1. S.C. Code Ann. § 62-3-412

S.C. Code Ann. § 62-3-412 governs the vacation of formal testacy orders, "including an order that the decedent left no valid will" and thus died intestate. S.C. Code Ann. § 62-3-412(1) provides that "[t]he court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication." This section recognizes the SCPC policy to allow correction of mistaken rulings governing the decedent's testacy status.

Appellants were unaware of the existence of the decedent's will³ which was improperly hidden from them, until the confession of Respondent Emma Smalls in 2005, when she produced the will to Appellant Evelina Brown Moses and explained that the will had been concealed so she and her siblings could continue to reside on the property. Moreover, Appellants were unaware of the earlier probate proceedings and were given no notice by Respondents. Within a day of being provided the will, Appellants filed it with the Probate Court. Thus, Appellants satisfied the requirements of S.C. Code Ann. § 62-3-412 for vacating a formal order of intestacy (even if the Probate Court had issued one, which it has yet to do).

Under S.C. Code Ann. § 62-3-412 the time to petition for the vacation of the order has not expired. The Probate Court's Order focuses on the Appellants having constructive notice of the estate administration regarding intestacy and relies on S.C. Code Ann. § 62-3-412(2) to dismiss Appellants' argument. Reliance on S.C. Code Ann. § 62-3-412(2) is misplaced because that subsection requires the issuance of an order of intestacy, which the Probate Court did not issue.

The Probate Court also mistakenly ruled that Appellant Rebecca Patricia Brown received notice of the estate administration because, although incompetent, "[h]er siblings were acting as her guardian" and thus she was bound by the notice to her siblings pursuant to S.C. Code Ann. § 62-1-403. However, Appellant Rebecca Patricia Brown's siblings have never been appointed as her guardian. The general definitional section of the SCPC defines a guardian as "means a person who has qualified as a guardian of an incapacitated person pursuant to testamentary or court appointment." Thus, Appellant Rebecca Patricia Brown could not receive constructive

³ Thomas P. Brown, Jr. was unaware of the existence of the original will. Although he had seen a copy of the will, when he asked he was told there was no original. Appellants Evelina Brown Moses and Rebecca Patricia Brown were unaware of the existence of even a copy of the will.

notice of the estate administration under S.C. Code Ann. § 62-3-412(2).

The Probate Court's error as to the representation of Appellant Rebecca Patricia Brown is evidenced by the Probate Court's decision to appoint a guardian ad litem for her. If her siblings were serving as her guardians, there would be no need for the court to appoint a guardian ad litem in this matter. Thus, even if an order of intestacy had been filed, which it was not, Appellant Rebecca Patricia Brown could not have received notice because of her incapacity, and she satisfies the requirements of S.C. Code Ann. § 62-3-412(2) and (3) entitling her to the vacation of that (nonexistent) order.

2. S.C. Code Ann. § 62-3-413

Moreover, S.C. Code Ann. § 62-3-413 allows the modification or vacation of an order in a formal testacy proceeding for "good cause shown." Thus, this section also recognizes the SCPC policy to allow correction of mistaken rulings governing the decedent's testacy status. In its order, the Probate Court states that "good cause exists." However, it fails to address S.C. Code Ann. § 62-3-413, which is clearly applicable. While S.C. Code Ann. § 62-3-413 contains a time limit to modify or vacate an order for good cause⁴ Appellants are within the time "allowed for appeal." Under S.C. Code Ann. § 62-1-306, the trigger for the time within which an appellant must appeal is the receipt of the written order.

The time limit for Appellants to appeal the "written order" has not expired for three reasons: (1) *There is no written order*, (2) Appellants have not received the written order, and (3) Appellant Rebecca Patricia Brown is incompetent to receive notice even if there were a written order.

⁴ "For good cause shown, an order in a formal testacy proceeding may be modified or vacated *within the time allowed for appeal*" (emphasis added).

the use of unprobated wills as evidence.” S.C. Code Ann. § 62-3-102 merely precludes a nonprobated will from being “effective to prove the transfer of any property or to nominate an executor.” Nothing in that section prevents a will from being used as evidence for other purposes, and it certainly does not prevent a will from being offered for probate to establish the transfer of property.

Moreover, the Probate Court cites but disregards precedent from other jurisdictions that would toll the statute of limitations to probate a will.

In any event, S.C. Code Ann. 62-3-108 is not a bar to Appellants’ motion. Although S.C. Code Ann. § 62-3-108 prevents the commencement of a formal testacy proceeding more than ten years after a decedent’s death, the probate of the decedent’s estate, which included the issuance of a formal testacy proceeding, was commenced within ten years of decedent’s death⁵. The motion to vacate is a part of the probate that was timely commenced. Appellants’ motion does not erase or extinguish the commencement of the probate of decedent’s estate, which was timely. It merely requests that the Certificate of Discharge, to the extent it purports to be a final testacy order (which does not exist) be vacated or, in essence, corrected. S.C. Code Ann. § 62-3-108 does not place a time limit on when a formal testacy order may be handed down or vacated; it places a time limit only on the commencement of the administration of the estate.

The Circuit Court erred by basing its decision on a determination that S.C. Code Ann. § 62-3-108 is a statute of repose instead of a statute of limitations. Nothing in that section provides that it is a statute of repose nor does any case define it as such. Moreover, because S.C. Code Ann. § 62-3-108 contains exceptions allowing the commencement of an estate administration more than 10 years after a decedent’s death based on equitable principles, it is not a statute of

⁵ Mrs. Pringle died on October 11, 1989. The Application for Informal Probate was filed on May 5, 1999.

repose. The comment to S.C. Code Ann. § 62-3-108 refers to a “limitation” — the term repose is not used. Even if it were a statute of repose, S.C. Code Ann. § 62-3-108 does not preclude the offering of the testator’s will, for the reasons set forth herein.

C. The lower courts erred by disregarding public policy considerations.

A primary purpose of probate is to honor the decedent’s intent. To allow the actions of Respondents, whether intentional or not, to circumvent the probate of Mrs. Pringle’s will would dishonor, rather than honor, decedent’s intent, in contravention of public policy. Moreover, it will encourage the withholding of wills by those who do not want them probated, in contravention of the requirements and the policy of S.C. Code Ann. § 62-2-901.

D. The lower courts erred by holding that the Appellants did not satisfy the requirements of S.C. Code Ann. § 62-3-402 for timely probating a copy of a will.

The Probate Court ruled that Appellants did not comply with the requirements to probate a copy of a will. The uncontradicted testimony of Appellant Thomas P. Brown, Jr. was that he timely attempted to file a copy of the will with the Probate Court but *was told by the Probate Court that it would not probate a copy*. In addition, Appellants Evelina Brown Moses and Rebecca Patricia Brown had no knowledge of the existence of this “copy” or their brother’s efforts. It is clearly against public policy to penalize Appellants for relying on an improper and inaccurate statement from the Probate Court itself. If the Probate Court had given the correct answer to Appellant Thomas P. Brown, Jr., this entire dispute about whether it is too late to probate Mrs. Pringle’s will would not have occurred.

E. The lower courts erred by not finding that fraud precluded the imposition of any applicable time limit.

Even if any section of the South Carolina Probate Code, standing alone, precluded the

offering of the will for probate, that section or sections would be overridden by the fraud committed by Respondents because the commission of a fraud or an intentional misrepresentation estops Respondents from asserting any statute of limitations. See *R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (S.C. 2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrrecht*, 327 U.S. 392 (1946). Moreover, even if Respondents did not engage in fraud or make intentional misrepresentations, Respondents are estopped from asserting any statute of limitations because Appellants reasonably relied on the words and conduct of Respondents in allowing any limitations period to expire. See *Regions Bank v. Schmauch*, 582 S.E.2d 432 (S.C. App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (S.C. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (S.C. 2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (S.C. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (S.C. App. 1997). See generally *Vandegrift v. Lagrone*, 477 So.2d 292 (1985) (persuasive authority where will proponent's failure to file a timely petition to probate the will is occasioned by fraud, the filing of the petition within one year from the time the Appellant discovered fraud is effective as timely filing); *Walters v. Lewis*, 276 Ark. 286, 634 S.W.2d 129 (1982) (persuasive authority in case where personal representative fraudulently failed to notice rightful devisees of probate proceedings, and time bar did not commence until discovery of fraud)⁶.

More specifically, S.C. Code Ann. § 62-3-1005 and 62-3-1006, otherwise providing limitations for remedies by heirs and devisees against personal representatives and distributees, expressly do not bar an action to recover for fraud, misrepresentation, or inadequate disclosure

⁶ Respondents contend that the recordation of the Deed of Distribution put the Appellants on notice that should start the fraud statute of limitations clock running. But recordation of a deed is not notice of a fraudulent conveyance. See *Tucker v. Weathersbee*, 825 S.E.2d 638 (S.C. 1914); *Means v. Feaster*, 4 S.C. 249 (1873).

(in the case of personal representatives) and fraud (in the case of distributees.) More generally, S.C. Code Ann. § 62-1-106 creates a fraud-related time period to bring an action, which is two years from the discovery of the fraud. As discussed above, Appellants promptly filed Mrs. Pringle's will upon discovery of the fraud. *See generally Kahn Construction Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

III. THE CIRCUIT COURT ERRED BY APPLYING THE WRONG STANDARD OF REVIEW.

The Circuit Court held that, because the requested relief was statutory, the action was at law, and that it could not disturb the Probate Court's "*findings of fact* unless a review of the record discloses there is no evidence to support them." The Circuit Court erred for several reasons.

The Circuit Court focuses on the standard of review applicable to a finding of fact. The dispositive matter in the lower courts' decisions was a question of law – the interpretation of a statute – rather than a determination of fact. The decision hinged on the interpretation of S.C. Code Ann. § 62-3-108. Statutory interpretation is a question of law for the appellate court to be made without any particular deference to the lower court. *Stewart v. Charleston County School Dist.* ----S.E.2d----, 2009 Westlaw 2851431 (S.C.App. 2009).

Thus, the decision involved a question of law. Questions of law may be decided by an appellate court with no particular deference to the trial court. *Clardy v. Bodolosky*, 383 S.C. 418, 679 S.E.2d 527 (S.C.App. 2009).

There is no prior South Carolina case construing S.C. Code Ann. § 62-3-108 for the issue *sub judice*. When a particular case raises a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *South Carolina Farm*

Bureau Mut. Ins. Co. v. Durham, 380 S.C. 506, 671 S.E.2d 610 (S.C.2009).

The Probate Court's decision resulted directly from errors of law. The jurisdiction of the Circuit Court in an appeal from the Probate Court extends to the correction of errors of law. *Matter of Estate of Tollison*, 463 S.E.2d 611 (S.C. App. 1995); *In re Estate of Hyman*, 606 S.E.2d 205 (S.C. App. 2004); *Bob Jones University vb. Strandell*, 543 S.E.2d 251 (S.C.App. 2001).

The effect of the lower courts' rulings is to dismiss Appellants' appeal based merely on a construction of the statute – in short, a summary judgment. If there was no factual dispute, appellate review of a summary judgment is unlimited. To the extent facts are involved, summary judgment is construed in the light most favorable to Appellants.

CONCLUSION

By erroneously applying the ten-year limitations period of S.C. Code Ann. § 62-3-108, the lower courts have effectively precluded the Appellants from having a determination on the merits of the validity of Mrs. Pringle's will and the honoring of her intentions. This violates the overriding policy of the SCPC as stated in S.C. Code Ann. § 62-1-102: "This Code shall be liberally construed and applied to promote its underlying purposes and policies...[which] are...to discover and make effective the intent of a decedent in the distribution of his property..." Consonant with the underlying purpose and policy of the SCPC, Appellants are entitled to an opportunity to demonstrate the testator's intent in this case, rather than being precluded by judicial fiat from having their day in court.

Had the Respondents been forthright or the Probate Court provided correct information, this case would not even be necessary, as demonstrated by the Appellants' actions. As soon as

Appellants were provided with the original, they offered it for probate. Had Respondents not withheld the will for more than ten years after Mrs. Pringle's death, there would be no question about timeliness. Similarly, had the Probate Court provided correct information about Appellants' ability to probate a copy of a lost will, which Appellant Thomas P. Brown, Jr. attempted to do within the ten-year period, there would be no questions about timeliness.

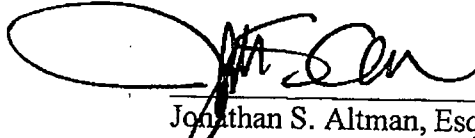
It is hard to imagine that the SCPC, with its stated purpose of a liberal construction to determine a decedent's intentions, would countenance a result that prevents the innocent Appellants from having an opportunity to show the testator's intentions when the Respondents, who will improperly benefit, are the wrongdoers in this case.

The purpose of a statute of limitations is to protect people from having to defend against stale claims. See, e.g., *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 659 S.E.2d 213, (S.C.App. 2008). The underlying purpose is to protect defendants from unnecessary harm and damage. However, Respondents are not damaged by giving Appellants an opportunity to prove that the testator's will is invalid. Rather, if the will is determined to be valid, Respondents will simply be prevented from receiving a windfall in their ability to use the property until a court determines that Mrs. Pringle did not intend for them to have rights in the property. Because of the lower courts' error in refusing to allow Appellants the opportunity to prove the testator's intent through her will, it is the testator and Appellants who are damaged – the opposite effect intended by a statute of limitations.

(SIGNATURE PAGE TO FOLLOW)

November 6, 2009

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, As Guardian ad Litem for
Rebecca Patricia Brown,

Appellants,

v.

Shirley Haile-Howard, as Personal Representative
of the Estate of Mary P. Smith and as Personal
Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of Janine Gourdine,
Arthur Smalls as Personal Representative of the Estate of
Emma Smalls, and any known or unknown persons
or entities claiming any interest in the Estate of
Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gourdine and Emma Smalls,

Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT APPLY THE PROPER STANDARD OF REVIEW?
- II. DID THE CIRCUIT COURT ERR IN SUSTAINING THE ORDER OF THE PROBATE COURT IN FINDING THAT THE WILL OF LUCINDA PRINGLE, DECEASED, WAS NOT FILED WITH THE PROBATE COURT IN ACCORDANCE WITH THE MANDATE OF SECTION 62-3-108, CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED?
- III. DID THE CIRCUIT COURT ERR IN FINDING THAT THE APPELLANTS DID NOT HAVE IN REM OR QUASI IN REM SUBJECT MATTER JURISDICTION TO PROCEED TO TRIAL ON APPELLANTS' PETITION FOR RECOVERY OF IMPROPER DISTRIBUTION?

STATEMENT OF THE CASE

Lucinda Pringle died on October 11, 1989. [R. ____.] The Respondents filed an Application for Informal Appointment in The Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No.: 1999-ES-10-689. [R. ____; Application for Informal Appointment.] A Deed of Distribution to Appellants and Respondents dated April 6, 2001 and recorded on April 25, 2001 in the Charleston County RMC Office in Book U369, at Page 558, [R. ____; Deed of Distribution] which evidences that the parties listed are the heirs at law of Lucinda Pringle, deceased by way of intestate succession. [R. ____; 99-ES-10-00689(2).] A Certificate of Discharge was issued on June 26, 2001 to the PR for the Estate of Lucinda Pringle, 99-ES-10-689. [R. ____; Certificate of Discharge.] The Appellants filed a Summons and Petition for Recovery of Improper Distribution dated October 20, 2005. [R. ____; Summons and Petition, filed October 20, 2005] The Respondents answered and asserted lack of subject matter jurisdiction over the land in question among other defenses, and amendments were made to pleadings to add additional parties, etc. [R. ____; Answer, filed _____.]

On July 27, 2007, the Appellants filed a Motion for Vacation of Order dated June 25, 2001 (June 26, 2001) [R. ____; Motion, filed June 26, 2001.] which was the Certificate of Discharge issued June 26, 2001 [R. ____; Certificate, issued June 26, 2001] in the Pringle Estate. This was an informal appointment and intestacy proceeding to determine heirs.

The Respondents filed an Amended Return to Motion and Motions to Dismiss on or about June 30, 2007 under Rules 12(b)(1) and 60(b)(3), SCRCP. [R. ____; Amended Return to Motion and Motions to Dismiss for lack of subject matter jurisdiction, filed June 30, 2007.] A full hearing was held on April 8, 2008, before Judge Condon. [R. ____; Transcript of Hearing and Exhibits.]

The Probate Court ruled for the Respondents as set forth in Judge Condon's Order of October 20, 2008. [R. ____; Judge Condon's Order, filed October 20, 2008.] Appellants served and filed their Notice of Intention to Appeal to the Circuit Court on October 30, 2008 [R. ____; Notice of Intention to Appeal, filed October 30, 2008] and the Return on February 6, 2009. [R. ____; Return, filed February 6, 2009.] Briefs were filed and served by the parties, and this matter was heard on appeal by the Honorable Judge Roger M. Young, Judge of the Ninth Judicial Circuit, Court of Common Pleas for Charleston County on April 29, 2009. [R. ____; Transcript, April 29, 2009.] He issued his Order sustaining Judge Condon on June 24, 2009. [R. ____; Judge Young Order, filed June 24, 2009.] Appellants Notice of Intention to Appeal to the Court of Appeals herein was served and filed on July 23, 2009. [R. ____; Appellants Notice of Intention to Appeal, filed July 23, 2009.]

STATEMENT OF FACTS

Within several days after the death of Lucinda Pringle on October 11, 1989, Appellant Thomas P. Brown, Jr was shown a copy of the Will of Lucinda Pringle by Respondents Annabelle Thornton and Mary P. Smith. They also gave Mr. Brown \$9,000.00 in cash in a piece of rag which Mrs. Pringle put aside for the Appellants. [R. ____; Deposition of Thomas Brown Jr. (p. 5, lines 23-25).]

About three years after Mrs. Pringle's death, Viola Pringle gave a copy of a Will to Mr. Brown.

Mr. Brown conferred with his job attorney about the copy of the Will.

Mr. Brown presented a copy of the Will to the Probate Court on two occasions but was unsuccessful in filing it.

Mr. Brown never conferred with an attorney in Charleston.

An informal appointment and intestacy proceeding to determine heirs was filed on May 5, 1999. The Respondents and Appellants were allotted their appropriate intestant interests.

A deed of distribution was filed and duly recorded in the RMC Office for Charleston County acknowledging the correct intestate percentage interest of ownership in the land in question as to the Appellants and the Respondents.

Appellant Thomas Brown entered into and received his intestate share of the proceeds from the right of way easement on September 21, 2001, with the Commission of Public Works of Mt. Pleasant recorded on October 2, 2001 in the RMC Office for Charleston County in Book Y383, at Page 484, as an "heir of Lucinda Pringle." [R. ____; Easement dated September 21, 2001.]

No informal probate proceeding has been commenced in this matter nor has a formal testacy proceeding been commenced.

The above facts are uncontroverted.

In regard to the Appellants' numerous allegations of fraud and conspiracy at the hands of the Respondents in the Statement of Facts concerning the Will, the Appellants acknowledge that "the Respondents continued to deny having any knowledge of its evidence." [R. ____; Initial Brief of Appellants (p. 6, line 21-22).]

They did acknowledge an awareness of a copy of the Will which is reflected in the Testimony of Appellant Thomas P. Brown, Jr., and a copy of the Will was given to Mr. Brown by Respondents Annabelle Thornton and Mary P. Smith along with \$9,000.00 in cash as explained by Mr. Brown in his deposition of June 15, 2006. [R. ____; Deposition of Thomas P. Brown, Jr.]

Page 5, lines 21-25 Q And explain that to me. You say there was money in the house.

A Yeah. \$9,000 in Mary P. Smith, and Annebelle Thorton find it, and show it to me. And they give me the money, the \$9,000.

Page 6, lines 1-4 Q Why did they give it to you?

A I really don't know why they give to it me. They say my grandmother leave it to us, leave it to Patricia, Evelina, and Thomas Brown.

Page 7, lines 13-18 Q All right, sir. And did you attend her funeral?

A Yes, I did.

Q And when you came to Charleston to attend her funeral, where did you stay?

A At the house where Lucinda Pringle stay in.

Page 7, lines 23-25 Q Who was there at the house at the time? At Ms. Pringle's house, who else was staying there?

A Patricia and, uh, Annebelle.

Page 8, lines 6-15 Q And then, at that time, if you would tell me about the money. You said somebody had found it and brought it to you.

A Yeah. Because, uh, Annebelle Thornton and, uh, Mary P. Smith, they had the money in their hand in a piece of rag. They say "This what your grandmother leave for uh, and the will, too"

Q You said and the will, too. So they had the will and the money?

A Yes.

Page 9, lines 2-20 Q - but I thought you said that at the time they gave you the money, you also saw the will.

A Yeah, that's right

Q This document right here, a copy, this is a copy of that will that you saw at that time.

A Yes.

Q And we're talking about 1989?

A '89 when she passed away.

Q Now, based on that, did you ever ask them any more about the will?

A Yeah. I asked them. I tried to get it. I asked them about the will.

Q Who did you ask?

A I ask Emma Smalls about the will.

Q When did you ask her that?

A A lot of times. When I came from - - When I moved back here I really - - When I, uh, when I came back to South Carolina, to live here, I asked her more than one time.

Page 13, lines 5-14 Q[D]id you ever go to an attorney to do anything about it?

A Yes. We had my job attorney. Because, uh, when we went to probation court, they say they can't do nothing with the copy, they need the deed.

Q That's when you tried to file the copy here?

A Yeah.

Page 13, lines 17-25 Q Where did you go and who told you that?

A I went to the probate place. I went there and show them the paper where we got this. "Nothing we can do with this copy."

Q How did you get the copy?

A I got a copy from Viola. But when I took the

Page 14, lines 1-15 A copy, I found the copy wasn't no good, really wasn't no good to me. They say I need the original. And that's when I went to other places to try to get it.

Q Excuse me. When did Viola give you a copy of the will?

A About, let me see, about three years after the will.

Q I'm sorry?

A About three years after the death. They give me the copy, you know. I took it down to the probate court, and nothing they could do, so I just leave it alone. And I went back again, they tell me again, no, nothing they can do, unless I have the original.

The alleged fraud is the foundation of the Appellants theory of recovery. However given the uncontradicted facts, the Respondents showed and gave a copy of the Will to Thomas Brown Jr. who talked to an attorney about the Will and presented a copy of the Will to the Probate Court on two different occasions which were declined. Mr. Brown sought no further legal representation until 2005 when this suit was brought. These facts do not sustain a claim of fraud given the burden of proof for the common law elements of fraud. However, the Appellants' fraud argument whether provable or not is irrelevant because fraud, even if proven, is not a defense to the 10 year statute of repose as discussed in the Arguments II and III herein.

However in order to place the fraud allegations in context, there was no reliance on behalf of Appellants regardless of the nature of any representations or misrepresentations about the Will from the Respondents. The Appellants through Mr. Brown undertook to confer with a company attorney and tendered a copy of the Will provided to him by the Respondents to the Probate Court on two separate occasions. The Appellants undertook to do only what was legally required of them whether there were misrepresentations or not. Accordingly there was no inducement or reliance and

therefore no fraud. See, e.g. *Warren v. Peebles*, 183 S.C. 238, 190 S.E.2d 740 (1937) and *M.B. Kahn Constr. Co. v. South Carolina Nat'l Bank of Charleston*, 275 S.C. 381, 385, 271 S.E.2d 414 (1980).

The argument of Appellants claiming they had no notice of the informal intestacy proceeding and the attempt to vacate it is also irrelevant because neither the Will nor a copy of the Will was ever petitioned by the Appellants for informal and for formal testacy proceedings before the Probate Court.

Because of the untimeliness of filing, the Will was never submitted to Probate in accordance with the 10 year statute of repose. Since the Will was unprobated it was evidence of nothing and therefore inadmissible pursuant to § 62-3-102, all as set forth in Arguments II and III.

Since the Will nor a copy were submitted by petition to the Probate Court for informal probate proceedings and formal probate proceedings within the 10 year statute of repose, the title to the real estate vested incontestably in the heirs of Lucinda Pringle as of October 11, 1999. Likewise, the deed of distribution simply confirmed what had already occurred by operation of law under the statute of repose, and at such time the Probate Court lacked subject matter jurisdiction to consider the Will.

ARGUMENTS

I. DID THE CIRCUIT COURT APPLY THE PROPER STANDARD OF REVIEW?

"[T]he jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental." *Ex Parte*

Cannon, 2009 SC 0624.77, Opinion No. 4570, Ct. App., June 23, 2009, citing *Peterson v. Peterson*, 333 S.C. 538, 547, 510 S.E.2d 426, 431 (Ct. App. 1998).

In this case, the Appellants' right to relief is statutory. In *Harvey v. S.C. Dept of Corrections*, 338 S.C. 500, 507, 527 SE2d 765, 769 (Ct. App. 2000), the court held "that where the right to relief is entirely statutory, the action is one at law."

The South Carolina Courts have consistently held that "it is the substance of the requested relief that matters regardless of the form in which the request for relief was framed." See *Historic Charleston Holdings, LLC v. Mallon* (673 S.E.2d 448, ____ S.C. ____ 2009).

In response to the Appellants' Motion to Vacate [R. ____; Motion to Vacate Order, dated July 27, 2007], the Respondents filed an Amended Return to Motion and Motion to Dismiss for lack of subject matter jurisdiction pursuant to SCRCP Rule 12(b)(1) dated June 29, 2007. [R. ____; Motion to Dismiss, filed June 30, 2007.]

As set forth in *Murphy v. Owens-Corning Fiberglass Corp*, 346 S.C. 37, 550 SE2d 589 (Ct. App. 2001), the Court held:

This is an appeal from the grant of a motion to dismiss for lack of subject matter jurisdiction. The question of subject matter jurisdiction is a question of law for the Court.

As set forth above, this is an action at law. "If the proceedings in the Probate Court is in the nature of an action of law, the Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them." In *re Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454(Ct. App. 1997) quoting. In *re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993).

The Appellants have failed to meet the Standard of Review to sustain their appeal

in this matter and avoid the consequences of § 62-3-108 as set forth in Arguments II and III. They have submitted no evidence to the contrary.

Further, contrary to the Appellants attempt to convert the Respondents' Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction to a motion for summary judgment, the law is clear:

The Court of appeals correctly held that the proper procedure for raising lack of jurisdiction prior to trial is to file a Motion to Dismiss pursuant to Rule 12(b)(1), SCRPC, rather than a Motion for Summary Judgment pursuant to Rule 56, SCRPC. See *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994). Further, the Court of Appeals appropriately noted that if a party files a Rule 56 Motion for Summary Judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the Motion as if it were a Rule 12(b)(1) Motion to Dismiss.

Accordingly, Circuit Court Judge Young reviewed the transcript, the record on appeal and exhibits and found that as a matter of law that there was ample evidence to support the Respondents' position.

Furthermore, in regard to an appeal of a legal action from the Probate Court as affirmed by the Circuit Court, the Standard of Review is whether any evidence supports the factual findings of the Court below. See *In Re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993)(Circuit Court sitting in an Appellate capacity should apply the same standard of review as would the Court of Appeals or the Supreme Court). *Williams v. Williams*, 329 S.C. 569, 496 S.E.2d 23 (Ct. App. 1998), cert granted and rev on other grounds, 335 S.C. 386, 517 S.E.2d 689 (1999). Judge Young found and applied the appropriate burden of proof and found that there was substantial evidence to support the rulings of the Probate Court.

II. BECAUSE THE APPELLANTS FAILED TO TIMELY FILE THE PURPORTED WILL IN QUESTION OF LUCINDA PRINGLE WITHIN 10 YEARS AFTER THE DATE OF HER DEATH, THEY DID NOT COMPLY WITH THE MANDATE OF SECTION 62-3-108, CODE OF LAW OF SOUTH CAROLINA, AS AMENDED, AND ON OR ABOUT OCTOBER 12, 1999, THE TITLE TO THE LAND WHICH WAS THE SUBJECT MATTER OF APPELLANTS' PETITION VESTED IN THE COMMON LAW HEIRS OF LUCINDA PRINGLE AS A MATTER OF LAW AND THE MATTER IS INCONTESTABLE.

Lucinda Pringle, the decedent, died on October 11, 1989, owning a one-half undivided interest in a 10 acre tract of land in Charleston County. Respondents filed an application for informal appointment of a Personal Representative of the Estate of Lucinda Pringle on May 5, 1999. However, no will was filed for Probate within 10 years of Ms Pringle's death. The Probate Court administered the Estate as an informal appointment as an intestacy in accordance with S.C. Code Ann. 622-3-301(4). [R. ____; Application for informal appointment, filed May 5, 1999.]

The Personal Representative designated the Respondents and the Appellants as the heirs at law of Lucinda Pringle. A deed of distribution to Appellants and Respondents was issued on April 6, 2001 [R. ____; Deed of Distribution, filed April 6, 2001.] which evidences that the parties to this litigation are the heirs at law of Lucinda Pringle, deceased, by way of intestate succession. A certificate of discharge was issued on June 26, 2001 to the Personal Representative of the Estate of Lucinda Pringle. R. ____; Certificate of Discharge, issued June 26, 2001.]

The grounds for appeal from the Order of Judge Young [R. ____; Grounds for Appeal.] concerning § 62-3-412, 62-1-403, 62-3-413, 62-3-400 all address the Appellants attempt to explain away the Court's application of the Probate Code § 62-3-108 which is the ultimate 10 year time limit under this statute of repose which defines the subject

matter jurisdiction, i.e. within 10 years after the date of death of the deceased.

The applicable portion of § 62-3-108 is as follows:

"If no informal probate and no formal testacy proceedings are commenced within 10 years after the decedent's death, ...it is incontestable that the decedent left no will and that the decedent's estate passes by intestate succession...." (emphasis added).

The basic definition of incontestable is that "one may not make a defense to an adverse claim in a Court of law; unable to controvert, litigate, challenge, oppose as in a suit or other proceeding," as in opposition to contest, see *Black's Law Dictionary*, 5th Ed., *contest*.

The Probate Court had, as affirmed by the Circuit Court, found that the land in question – the res – the subject matter of the litigation was not within the in rem subject matter jurisdiction of the Court due to the incontestability of the intestate estate of the decedent Lucinda Pringle in that:

(a) No informal probate of a Will proceeding has been commenced in this matter under §62-3-301(a)(1)(vi) which requires a statement in the application that the time limit of ten (10) years from decedent's death has not passed or if more than ten (10) years has passed it falls under one of the exceptions of §62-3-108. The exceptions do not apply to this matter. It is further required that the original Will be in the possession of the Court or filed with the application, §62-3-301 (2)(i); and

(b) No formal probate of a will proceeding has been commenced in this matter which under §62-3-402(a)(3) requires that a petition for formal probate of a will be filed stating whether the original will is in possession of the Court or filed with the petition. However, if the original will is not in the possession of the Court nor filed with the petition, the petition must state the contents of the will and indicate that the original will is lost, destroyed or otherwise unavailable. This was not done either.

The appellants filed a petition to vacate the certificate of discharge on the grounds

that no order of the probate court was issued closing the informal application for determination of heirs.

Accordingly, the Motion to Vacate had no significance in fact or law and was unsustainable in that under §62-3-412(1) there was no formal testacy proceeding conducted to generate a formal testacy order as required under § 62-3-108. The Appellants' petition to vacate met none of the time requirements and in particular §62-3-412(3)(ii) which provides that a Petition for Vacation must be filed prior to "whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by §62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent."

Furthermore, at the time of filing the Motion to Vacate by the Appellants on July 27, 2007, the Probate Court no longer had subject matter jurisdiction by virtue of §62-3-108.

The record is uncontradicted that Lucinda Pringle died on October 11, 1989, owning an undivided interest in the land in question and that no will on her behalf was filed with the Probate Court for the commencement of "informal probate" nor for "formal testacy proceedings" within 10 years after her date of death.

Both informal and formal testacy proceedings must be commenced within the 10 year time period and neither was initiated.

The appellants have argued a strained and inconsistent interpretation of the meaning and application of § 62-3-108 as a statute of limitations in an attempt to avoid its clear and obvious intent and consequences.

As stated in *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003) our

Supreme Court found that:

[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.

Our Courts have repeatedly held that if a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction, and this Court has no right to look for or impose another meaning." *University of Southern Ca. v. Moran*, 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005). The *Moran* Court explained further that "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."

Our Supreme Court in *Capco of Summerville v. J.H. Gayle Constr.*, 368 S.C. 137, 142, 628 S.E.2d 38 (2006) stated the definitive relationship between statutes of limitations and statutes of repose as follows:

A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body. *Id.*, at 404, 438 S.E.2d at 243. A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted...even if this period ends before the plaintiff has suffered a resulting injury." *Black's Law Dictionary* 1451 (8th Ed. 2004). "Statutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." *Camacho v. Todd and Leiser Homes*, 706 N.S.2d 49, 54, n. 6 (Minn.2005) citing *W. Page Keeton, et. al. Prosser and Keeton on the Law of Torts* § 30, p. 168 (5th ed. 1984). As noted by the Virginia Supreme Court, "[a] statute of repose differs from a statute of limitations....[T]he expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those

already accrued.” *School Bd. of the City of Norfolk v. U.S. Gypsum*, 234 Va. 32, 360 S.E.2d 325, 327-328 (1987).

Section 62-3-108 states clearly and precisely what the appellants were required to do and the absolute time period within which to do it.

In enacting the 10 year statute of repose, the legislature did not impose any defenses to the statute (i.e. fraud, misrepresentation, incapacity), nor did it provide any tolling mechanism.

Furthermore, the Reporter’s Comments to § 62-3-108 provide that “[t]he limitation period prescribed applies to all persons including those under disability.”

The consequences of failing to comply with commencement of proceedings within the statute of repose (§62-3-108) is that:

[I]t is incontestable that the decedent left no will and that the decedent’s estate passes by intestate succession. (Emphasis added).

III. BECAUSE ONCE THE COURT DETERMINED THAT THE PURPORTED WILL IN QUESTION WAS NOT TIMELY FILED FOR PROBATE, NEITHER IN REM NOR QUASI IN REM SUBJECT MATTER JURISDICTION EXISTED.

Lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal, by a party or by the court. See *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 650-54 (Ct. App. 1998). This is consistent with Rule 12(h)(3), SCRCF which provides that “[w]henver it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.”

The Petition of the Appellants as well as their Motion to Vacate defines the action

as one for recovery of the real estate in question which was the sole asset of the Estate - "the subject property."- the *res*.

The Appellants' Petition appears to be an action *in rem*, "which determines rights in a specific property against the entire world and is equally binding upon everyone." *Campbell v. Jordan*, 675 S.E.2d, 801, 806 (S.C. Ct. App. 2009). However, although the Petition is in the nature of an *in rem* proceeding, "it also has characteristics of a quasi *in rem* proceeding because it deals with the title to reality and operates as to the parties in the proceeding, thus requiring both *in rem* subject matter jurisdiction and personal jurisdiction." See *Campbell v. Jordan*, *supra* at 806-807.

Our Courts have held to the general rule of law as asserted by the Appellant in *Goolsby v. Goolsby*, 229 S.C. 101, 102 92 S.E.2d 57 (1956):

As to an action being *in rem*, or at least quasi *in rem*, jurisdiction of the *res* cannot be waived....As to lack of jurisdiction of the subject matter appearing of record, even though not relied upon by the parties, the Court will take notice thereof *ex mero mortu*....(emphasis added).

The *res* in this case which is the subject matter of the litigation became incontestably vested in the decedent's heirs on or about October 12, 1999 - 10 years from decedent's death - by intestate succession as a matter of law, pursuant to §62-3-108.

The subsequent deed of distribution simply confirmed what had happened by operation of law and designated the lawful heirs of Lucinda Pringle which expressly included the Appellants.

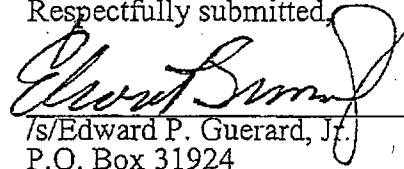
CONCLUSION

The appellants have failed to sustain their burden of proof to reverse the Circuit Courts affirmation of the Probate Court by showing that there was insufficient evidence presented by the Respondents to sustain the findings of the Circuit Court.

Accordingly, the Order of the Circuit Court should be affirmed.

Dec. 4, 2009

Respectfully submitted,


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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, as Guardian ad Litem for
Rebecca Patricia
Brown.....Appellants,

v.

Shirley Haile-Howard, as Personal Representative
of the Estate of Mary P. Smith and as Personal
Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of Janine Gouridine,
Arthur Smalls as Personal Representative of the Estate of
Emma Smalls, and any known or unknown persons
or entities claiming any interest in the Estates of
Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gouridine and Emma Smalls.....Respondents.

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1. INTRODUCTION

In their Initial Brief, Respondents want it both ways. They state that Respondents Thornton and Smith showed one of the Appellants, Thomas P. Brown, Jr., a copy of Decedent's will. (Initial Brief of Respondents p. 3, 4). They contend that Respondent Viola Pringle gave a copy of the will to Appellant Brown several years later. (Initial Brief of Respondents p. 3, 4). Respondents also state that Appellant Brown attempted to file the copy of the will with the Charleston County Probate Court, (Initial Brief of Respondents p. 3, 4) but that the court told him he could not probate a copy. (Initial Brief of Respondents p. 6). In sum, the material facts as set forth in Appellants' and Respondents' Initial Briefs are indistinguishable. However, Respondents contend that, because they showed or gave a copy of the will to Appellant Brown, they cannot be guilty of fraud.

Respondents' testimony under oath tells a different story. In their depositions, Respondents testified that they had no knowledge of the will whatsoever until Appellants commenced their action. (Viola Pringle, deposition p. 20; Smith, deposition p. 9; Smalls, deposition p.20; Cephus Thornton, deposition p. 10; Mitchell, deposition p. 15; Robert Pringle, deposition p. 10). Thus, when it suited Respondents to deny knowing that the will existed, Respondents testified that they were unaware of it until the commencement of this action. Now it suits Respondents to argue that fraud does not apply, they state in their brief that Respondents *were aware* of the will and showed and gave a copy to Appellant Brown. As detailed in Appellants' brief, it is uncontroverted that Respondents withheld the will from the Appellants and the court. The only contravention of that position occurred when the Respondents gave false testimony in their depositions, which their brief now admits.

In making this admission, Respondents' acknowledge that their filings with the Charleston County Probate Court contained misrepresentations. Respondents knew of the existence of the will yet commenced an action in the probate court to probate the estate as an intestacy.¹ It would be a miscarriage of justice to misapply a technical statute of limitations to prevent the probate of a will when the failure to probate the will rewards Respondents for their false statements. Such a result is an invitation for others to similarly defraud the court in the future.

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¹ Respondents might attempt to explain away inconsistencies between their Initial Brief and deposition testimony by arguing that they were referring to the original as opposed to a copy of the will at their depositions. Their testimony does not make such a distinction and in fact disavows any knowledge of the existence of a will. Moreover, their misrepresentation to the court by applying for an intestate probate cannot be explained away by distinguishing an original will from a copy. The application contains handwriting from Respondents that there is "no will." This misrepresentation is continued, *inter alia*, in the petition for appointment of a successor personal representative and the petition for settlement.

Respondents contend that there is no reliance for purposes of fraud because they provided Appellant Brown with a copy of the will. There is a distinction between an original and a copy. Had Respondents provided Appellant Brown with the original will rather than the copy, the court would have accepted the will when Appellant Brown presented it. Instead, Respondents provided only a copy of the will to Appellant Brown and refused to produce the original. (Initial Brief of Respondents p. 5, Brown deposition p. 9, lines 2-20). Appellant Brown relied on Respondents' representation that no original will existed. Notably, Respondents do not contend that even a copy of the will was ever provided to Appellants Evelina Brown Moses or Rebecca P. Brown.

2. SUBJECT MATTER JURISDICTION

Respondents argue that the court lacked subject matter jurisdiction because Appellants' attempt to probate the will was not timely commenced. Whether the court had subject matter jurisdiction depends on the court's determination of the underlying issue of this case: whether Appellants timely commenced their attempt to probate the will. If the court leaves Appellants without justice and an effective remedy by allowing Respondents' fraud to prevail, then the subject matter jurisdiction argument is moot: Appellants would be without a remedy. On the other hand, if the Court determines that Appellants timely commenced their attempt to probate the will, then the probate court would clearly have subject matter jurisdiction. Thus, the subject matter jurisdiction issue is subservient to the court's determination of the essential issue of whether Appellants timely commenced their attempt to probate the will.

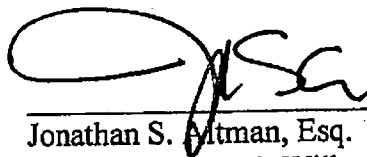
3. PUBLIC POLICY

The primary purpose of probate is to honor the decedent's intent. To allow the actions of Respondents to circumvent the probate of Mrs. Pringle's will would dishonor decedent's intent, in contravention of public policy. Moreover, it will encourage the withholding of wills by those who do not want them probated, in contravention of the requirements and the policy of S.C. Code Ann. § 62-2-901.

This public policy argument is even more compelling in light of Respondents' admissions in their brief that they knew about the will and provided a copy to Appellant Brown, contrary to their sworn testimony. To allow Respondents to prevail would be a severe miscarriage of justice.

Respectfully submitted,

December 16, 2009



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COPY

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Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gourdine and Emma Smalls,

Respondents.

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT APPLY THE PROPER STANDARD OF REVIEW?
- II. DID THE CIRCUIT COURT ERR IN SUSTAINING THE ORDER OF THE PROBATE COURT IN FINDING THAT THE WILL OF LUCINDA PRINGLE, DECEASED, WAS NOT FILED WITH THE PROBATE COURT IN ACCORDANCE WITH THE MANDATE OF SECTION 62-3-108, CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED?
- III. DID THE CIRCUIT COURT ERR IN FINDING THAT THE APPELLANTS DID NOT HAVE IN REM OR QUASI IN REM SUBJECT MATTER JURISDICTION TO PROCEED TO TRIAL ON APPELLANTS' PETITION FOR RECOVERY OF IMPROPER DISTRIBUTION?

STATEMENT OF THE CASE

Lucinda Pringle died on October 11, 1989. [R. 185; Certificate of Death, Lucinda Pringle.] The Respondents filed an Application for Informal Appointment in The Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No.: 1999-ES-10-689. [R. 157; Application for Informal Appointment.] A Deed of Distribution to Appellants and Respondents dated April 6, 2001 and recorded on April 25, 2001 in the Charleston County RMC Office in Book U369, at Page 558, [R. 177; Deed of Distribution] which evidences that the parties listed are the heirs at law of Lucinda Pringle by way of intestate succession. A Certificate of Discharge was issued on June 26, 2001 to the PR for the Estate of Lucinda Pringle, 99-ES-10-689. [R. 184; Certificate of Discharge.] The Appellants filed a Summons and Petition for Recovery of Improper Distribution dated October 20, 2005. [R. 26; Summons and Petition, filed October 20, 2005] The Respondents answered and asserted lack of subject matter jurisdiction over the land in question among other defenses, and amendments were made to pleadings to add additional parties, etc. [R. 38; Answer, filed February 21, 2006.]

On January 27, 2007, the Appellants filed a Motion for Vacation of Order dated June 25, 2001 (June 26, 2001) [R. 49; Motion, filed June 26, 2001.] which was the Certificate of Discharge issued June 26, 2001 [R. 184; Certificate, issued June 26, 2001] in the Pringle Estate. This was an informal appointment and intestacy proceeding to determine heirs.

The Respondents filed an Amended Return to Motion and Motions to Dismiss on or about June 30, 2007 under Rules 12(b)(1) and 60(b)(3), SCRCP. [R. 153; Amended Return to Motion and Motions to Dismiss for lack of subject matter jurisdiction, filed June 30, 2007.] A full hearing was held on April 8, 2008, before Judge Condon. [R. 223; Transcript of Hearing and Exhibits.]

The Probate Court ruled for the Respondents as set forth in Judge Condon's Order of October 20, 2008. [R. 8; Judge Condon's Order, filed October 20, 2008.] Appellants served and filed their Notice of Intention to Appeal to the Circuit Court on October 30, 2008 [R. 132; Notice of Intention to Appeal, filed October 30, 2008]. Briefs were filed and served by the parties, and this matter was heard on appeal by the Honorable Roger M. Young, Judge of the Ninth Judicial Circuit, on April 29, 2009. [R. 188; Transcript, April 29, 2009.] Judge Young issued his Order sustaining Judge Condon on June 24, 2009. [R. 3; Judge Young Order, filed June 24, 2009.] Appellants Notice of Intention to Appeal to the Court of Appeals herein was served and filed on July 23, 2009. [R. ; Appellants Notice of Intention to Appeal, filed July 23, 2009.]

STATEMENT OF FACTS

Within several days after the death of Lucinda Pringle on October 11, 1989, Appellant Thomas P. Brown, Jr was shown a copy of the Will of Lucinda Pringle by

Respondents Annabelle Thornton and Mary P. Smith. They also gave Mr. Brown \$9,000.00 in cash in a piece of rag which Mrs. Pringle put aside for the Appellants. [R. 285; Deposition of Thomas Brown Jr. (p. 5, lines 23-25).]

About three years after Mrs. Pringle's death, Viola Pringle gave a copy of a Will to Mr. Brown.

Mr. Brown conferred with his job attorney about the copy of the Will.

Mr. Brown presented a copy of the Will to the Probate Court on two occasions but was unsuccessful in filing it.

Mr. Brown never conferred with an attorney in Charleston.

An informal appointment and intestacy proceeding to determine heirs was filed on May 5, 1999. The Respondents and Appellants were allotted their appropriate intestant interests.

A deed of distribution was filed and duly recorded in the RMC Office for Charleston County acknowledging the correct intestate percentage interest of ownership in the land in question as to the Appellants and the Respondents.

Appellant Thomas Brown entered into and received his intestate share of the proceeds from the right of way easement on September 21, 2001, with the Commission of Public Works of Mt. Pleasant recorded on October 2, 2001 in the RMC Office for Charleston County in Book Y383, at Page 484, as an "heir of Lucinda Pringle." [R. 484; Easement dated September 21, 2001.]

No informal probate proceeding has been commenced in this matter nor has a formal testacy proceeding been commenced.

The above facts are uncontroverted.

In regard to the Appellants' numerous allegations of fraud and conspiracy at the hands of the Respondents in the Statement of Facts concerning the Will, the Appellants acknowledge that "the Respondents continued to deny having any knowledge of its evidence." [Initial Brief of Appellants (p. 6, line 21-22).]

They did acknowledge an awareness of a copy of the Will which is reflected in the Testimony of Appellant Thomas P. Brown, Jr., and a copy of the Will was given to Mr. Brown by Respondents Annabelle Thornton and Mary P. Smith along with \$9,000.00 in cash as explained by Mr. Brown in his deposition of June 15, 2006. [R. 285; Deposition of Thomas P. Brown, Jr.]

Page 5, lines 21-25 Q And explain that to me. You say there was money in the house.

A Yeah. \$9,000 in Mary P. Smith, and Annebelle Thorton find it, and show it to me. And they give me the money, the \$9,000.

Page 6, lines 1-4 Q Why did they give it to you?

A I really don't know why they give to it me. They say my grandmother leave it to us, leave it to Patricia, Evelina, and Thomas Brown.

Page 7, lines 13-18 Q All right, sir. And did you attend her funeral?

A Yes, I did.

Q And when you came to Charleston to attend her funeral, where did you stay?

A At the house where Lucinda Pringle stay in.

Page 7, lines 23-25 Q Who was there at the house at the time? At Ms. Pringle's house, who else was staying there?

A Patricia and, uh, Annebelle.

Page 8, lines 6-15 Q And then, at that time, if you would tell me about the money. You said somebody had found it and brought it to you.

A Yeah. Because, uh, Annebelle Thornton and, uh, Mary P. Smith, they had the money in their hand in a piece of rag. They say "This what your grandmother leave for uh, and the will, too"

Q You said and the will, too. So they had the will and the money?

A Yes.

Page 9, lines 2-20 Q – but I thought you said that at the time they gave you the money, you also saw the will.

A Yeah, that's right

Q This document right here, a copy, this is a copy of that will that you saw at that time.

A Yes.

Q And we're talking about 1989?

A '89 when she passed away.

Q Now, based on that, did you ever ask them any more about the will?

A Yeah. I asked them. I tried to get it. I asked them about the will.

Q Who did you ask?

A I ask Emma Smalls about the will.

Q When did you ask her that?

A A lot of times. When I came from -- When I moved back here I really -- When I, uh, when I came back to South Carolina, to live here, I asked her more than one time.

Page 13, lines 5-14 Q[D]id you ever go to an attorney to do anything about it?

A Yes. We had my job attorney. Because, uh, when we went to probation court, they say they can't do nothing with the copy, they need the deed.

Q That's when you tried to file the copy here?

A Yeah.

Page 13, lines 17-25 Q Where did you go and who told you that?

A I went to the probate place. I went there and show them the paper where we got this. "Nothing we can do with this copy."

Q How did you get the copy?

A I got a copy from Viola. But when I took the

Page 14, lines 1-15 A copy, I found the copy wasn't no good, really wasn't no good to me. They say I need the original. And that's when I went to other places to try to get it.

Q Excuse me. When did Viola give you a copy of the will?

A About, let me see, about three years after the will.

Q I'm sorry?

A About three years after the death. They give

me the copy, you know. I took it down to the probate court, and nothing they could do, so I just leave it alone. And I went back again, they tell me again, no, nothing they can do, unless I have the original.

The alleged fraud is the foundation of the Appellants theory of recovery. However given the uncontradicted facts, the Respondents showed and gave a copy of the Will to Thomas Brown Jr. who talked to an attorney about the Will and presented a copy of the Will to the Probate Court on two different occasions which were declined. Mr. Brown sought no further legal representation until 2005 when this suit was brought. These facts do not sustain a claim of fraud given the burden of proof for the common law elements of fraud. However, the Appellants' fraud argument, whether provable or not, is irrelevant because fraud, even if proven, is not a defense to the 10 year statute of repose as discussed in the Arguments II and III herein.

However in order to place the fraud allegations in context, there was no reliance on behalf of Appellants regardless of the nature of any representations or misrepresentations about the Will from the Respondents. The Appellants, through Mr. Brown, undertook to confer with a company attorney and tendered a copy of the Will provided to him by the Respondents to the Probate Court on two separate occasions. The Appellants undertook to do only what was legally required of them whether there were misrepresentations or not. Accordingly there was no inducement or reliance and therefore no fraud. See, e.g. *Warren v. Peebles*, 183 S.C. 238, 190 S.E.2d 740 (1937) and *M.B. Kahn Constr. Co. v. South Carolina Nat'l Bank of Charleston*, 275 S.C. 381, 385, 271 S.E.2d 414 (1980).

The argument of Appellants claiming they had no notice of the informal intestacy proceeding and the attempt to vacate it is also irrelevant because neither the Will nor a copy of the Will was ever petitioned by the Appellants for informal and for formal testacy proceedings before the Probate Court.

Because of the untimeliness of filing, the Will was never submitted to Probate in accordance with the 10 year statute of repose. Since the Will was unprobated it was evidence of nothing and therefore inadmissible pursuant to § 62-3-102, all as set forth in Arguments II and III.

Since the Will nor a copy were submitted by petition to the Probate Court for informal probate proceedings and formal probate proceedings within the 10 year statute of repose, the title to the real estate vested incontestably in the heirs of Lucinda Pringle as of October 11, 1999. Likewise, the deed of distribution simply confirmed what had already occurred by operation of law under the statute of repose, and at such time the Probate Court lacked subject matter jurisdiction to consider the Will.

ARGUMENTS

I. DID THE CIRCUIT COURT APPLY THE PROPER STANDARD OF REVIEW?

“[T]he jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the State, and is fundamental.” *Ex Parte Cannon*, 2009 SC 0624.77, Opinion No. 4570, Ct. App., June 23, 2009, citing *Peterson v. Peterson*, 333 S.C. 538, 547, 510 S.E.2d 426, 431 (Ct. App. 1998).

In this case, the Appellants’ right to relief is statutory. In *Harvey v. S.C. Dept of*

Corrections, 338 S.C. 500, 507, 527 SE2d 765, 769 (Ct. App. 2000), the court held “that where the right to relief is entirely statutory, the action is one at law.”

The South Carolina Courts have consistently held that “it is the substance of the requested relief that matters regardless of the form in which the request for relief was framed.” See *Historic Charleston Holdings, LLC v. Mallon* (673 S.E.2d 448, 381 S.C. 417 (2009).

In response to the Appellants’ Motion to Vacate [R. 49; Motion to Vacate Order, dated July 27, 2007], the Respondents filed an Amended Return to Motion and Motion to Dismiss for lack of subject matter jurisdiction pursuant to SCRCP Rule 12(b)(1) dated June 29, 2007. [R. 153; Motion to Dismiss, filed June 30, 2007.]

As set forth in *Murphy v. Owens-Corning Fiberglass Corp*, 346 S.C. 37, 550 SE2d 589 (Ct. App. 2001), the Court held:

This is an appeal from the grant of a motion to dismiss for lack of subject matter jurisdiction. The question of subject matter jurisdiction is a question of law for the Court.

As set forth above, this is an action at law. “If the proceedings in the Probate Court is in the nature of an action of law, the Circuit Court may not disturb the Probate Court’s findings of fact unless a review of the record discloses there is no evidence to support them.” *In re Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454(Ct. App. 1997) quoting. *In re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993).

The Appellants have failed to meet the Standard of Review to sustain their appeal in this matter and avoid the consequences of § 62-3-108 as set forth in Arguments II and III. They have submitted no evidence to the contrary.

Further, contrary to the Appellants attempt to convert the Respondents’

Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction to a motion for summary judgment, the law is clear:

The Court of appeals correctly held that the proper procedure for raising lack of jurisdiction prior to trial is to file a Motion to Dismiss pursuant to Rule 12(b)(1), SCRCp, rather than a Motion for Summary Judgment pursuant to Rule 56, SCRCp. See *Ballenger v. Bowen*, 313 S.C. 476, 443 S.E.2d 379 (1994). Further, the Court of Appeals appropriately noted that if a party files a Rule 56 Motion for Summary Judgment on the ground of lack of subject matter jurisdiction, the trial court should treat the Motion as if it were a Rule 12(b)(1) Motion to Dismiss.

Accordingly, Circuit Court Judge Young reviewed the transcript, the record on appeal and exhibits and found that as a matter of law that there was ample evidence to support the Respondents' position.

Furthermore, in regard to an appeal of a legal action from the Probate Court as affirmed by the Circuit Court, the Standard of Review is whether any evidence supports the factual findings of the Court below. See *In Re Howard*, 315 S.C. 356, 434 S.E.2d 254 (1993)(Circuit Court sitting in an Appellate capacity should apply the same standard of review as would the Court of Appeals or the Supreme Court). *Williams v. Williams*, 329 S.C. 569, 496 S.E.2d 23 (Ct. App. 1998), cert granted and rev on other grounds, 335 S.C. 386, 517 S.E.2d 689 (1999). Judge Young found and applied the appropriate burden of proof and found that there was substantial evidence to support the rulings of the Probate Court.

- II. BECAUSE THE APPELLANTS FAILED TO TIMELY FILE THE PURPORTED WILL IN QUESTION OF LUCINDA PRINGLE WITHIN 10 YEARS AFTER THE DATE OF HER DEATH, THEY DID NOT COMPLY WITH THE MANDATE OF SECTION 62-3-108, CODE OF LAW OF SOUTH CAROLINA, AS AMENDED, AND ON OR ABOUT OCTOBER 12, 1999, THE TITLE TO THE LAND WHICH WAS THE SUBJECT MATTER OF APPELLANTS' PETITION VESTED IN THE COMMON LAW HEIRS OF LUCINDA PRINGLE AS A MATTER OF LAW AND THE MATTER IS INCONTESTABLE.

Lucinda Pringle, the decedent, died on October 11, 1989, owning a one-half undivided interest in a 10 acre tract of land in Charleston County. Respondents filed an application for informal appointment of a Personal Representative of the Estate of Lucinda Pringle on May 5, 1999. However, no Will was filed for Probate within 10 years of Ms Pringle's death. The Probate Court administered the Estate as an informal appointment and as an intestacy in accordance with S.C. Code Ann. 62-3-301(4). [R. 157; Application for informal appointment, filed May 5, 1999.]

The Personal Representative designated the Respondents and the Appellants as the heirs at law of Lucinda Pringle. A deed of distribution to Appellants and Respondents was issued on April 6, 2001 [R. 177; Deed of Distribution, filed April 6, 2001.] which evidences that the parties to this litigation are the heirs at law of Lucinda Pringle, deceased, by way of intestate succession. A certificate of discharge was issued on June 26, 2001 to the Personal Representative of the Estate of Lucinda Pringle. [R. 184; Certificate of Discharge, issued June 26, 2001.]

The grounds for appeal from the Order of Judge Young [R. 147; Grounds for Appeal.] concerning § 62-3-412, 62-1-403, 62-3-413, 62-3-400 all address the Appellants attempt to explain away the Court's application of the Probate Code § 62-3-108 which is the ultimate 10 year time limit under this statute of repose which defines the subject

matter jurisdiction, i.e. within 10 years after the date of death of the deceased.

The applicable portion of § 62-3-108 is as follows:

“ If no informal probate and no formal testacy proceedings are commenced within 10 years after the decedent’s death, ...it is incontestable that the decedent left no will and that the decedent’s estate passes by intestate succession....” (emphasis added).

The basic definition of incontestable is that “one may not make a defense to an adverse claim in a Court of law; unable to controvert, litigate, challenge, oppose as in a suit or other proceeding,” as in opposition to contest, see *Black’s Law Dictionary*, 5th Ed., *contest*.

The Probate Court had, as affirmed by the Circuit Court, found that the land in question – the res – the subject matter of the litigation was not within the in rem subject matter jurisdiction of the Court due to the incontestability of the intestate estate of the decedent Lucinda Pringle in that:

(a) No informal probate of a Will proceeding has been commenced in this matter under §62-3-301(a)(1)(vi) which requires a statement in the application that the time limit of ten (10) years from decedent’s death has not passed or if more than ten (10) years has passed it falls under one of the exceptions of §62-3-108. The exceptions do not apply to this matter. It is further required that the original Will be in the possession of the Court or filed with the application, §62-3-301 (2)(i); and

(b) No formal probate of a will proceeding has been commenced in this matter which under §62-3-402(a)(3) requires that a petition for formal probate of a will be filed stating whether the original will is in possession of the Court or filed with the petition. However, if the original will is not in the possession of the Court nor filed with the petition, the petition must state the contents of the will and indicate that the original will is lost, destroyed or otherwise unavailable. This was not done either.

The appellants filed a petition to vacate the certificate of discharge on the grounds

that no order of the probate court was issued closing the informal application for determination of heirs.

Accordingly, the Motion to Vacate had no significance in fact or law and was unsustainable in that under §62-3-412(1) there was no formal testacy proceeding conducted to generate a formal testacy order as required under § 62-3-108. The Appellants' petition to vacate met none of the time requirements and in particular §62-3-412(3)(ii) which provides that a Petition for Vacation must be filed prior to "whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by §62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent."

Furthermore, at the time of filing the Motion to Vacate by the Appellants on July 27, 2007, the Probate Court no longer had subject matter jurisdiction by virtue of §62-3-108.

The record is uncontradicted that Lucinda Pringle died on October 11, 1989, owning an undivided interest in the land in question, and that no will on her behalf was filed with the Probate Court for the commencement of "informal probate" nor for "formal testacy proceedings" within 10 years after her date of death.

Both informal and formal testacy proceedings must be commenced within the 10 year time period and neither was initiated.

The appellants have argued a strained and inconsistent interpretation of the meaning and application of § 62-3-108 as a statute of limitations in an attempt to avoid its clear and obvious intent and consequences.

As stated in *Harrison v. Bevilacqua*, 354 S.C. 129, 580 S.E.2d 109 (2003) our

Supreme Court found that:

[A] statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body.

Our Courts have repeatedly held that if a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction, and this Court has no right to look for or impose another meaning." *University of Southern Ca. v. Moran*, 365 S.C. 270, 617 S.E.2d 135 (Ct. App. 2005). The *Moran* Court explained further that "[w]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."

Our Supreme Court in *Capco of Summerville v. J.H. Gayle Constr.*, 368 S.C. 137, 142, 628 S.E.2d 38 (2006) stated the definitive relationship between statutes of limitations and statutes of repose as follows:

A statute of limitations is a procedural device that operates as a defense to limit the remedy available from an existing cause of action. A statute of repose creates a substantive right in those protected to be free from liability after a legislatively determined period of time. *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993). A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body. *Id.* at 404, 438 S.E.2d at 243. A statute of repose is "[a] statute barring any suit that is brought after a specified time since the defendant acted...even if this period ends before the plaintiff has suffered a resulting injury." *Black's Law Dictionary* 1451 (8th Ed. 2004). "Statutes of repose by their nature impose on some plaintiffs the hardship of having a claim extinguished before it is discovered, or perhaps before it even exists." *Camacho v. Todd and Leiser Homes*, 706 N.S.2d 49, 54, n. 6 (Minn.2005) citing *W. Page Keeton, et. al., Prosser and Keeton on the Law of Torts* § 30, p. 168 (5th ed. 1984). As noted by the Virginia Supreme Court, "[a] statute of repose differs from a statute of limitations....[T]he expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those

already accrued.” *School Bd. of the City of Norfolk v. U.S. Gypsum*, 234 Va. 32, 360 S.E.2d 325, 327-328 (1987).

Section 62-3-108 states clearly and precisely what the appellants were required to do and the absolute time period within which to do it.

In enacting the 10 year statute of repose, the legislature did not impose any defenses to the statute (i.e. fraud, misrepresentation, incapacity), nor did it provide any tolling mechanism.

Furthermore, the Reporter’s Comments to § 62-3-108 provide that “[t]he limitation period prescribed applies to all persons including those under disability.”

The consequences of failing to comply with commencement of proceedings within the statute of repose (§62-3-108) is that:

[I]t is incontestable that the decedent left no will and that the decedent’s estate passes by intestate succession. (Emphasis added).

III. BECAUSE ONCE THE COURT DETERMINED THAT THE PURPORTED WILL IN QUESTION WAS NOT TIMELY FILED FOR PROBATE, NEITHER IN REM NOR QUASI IN REM SUBJECT MATTER JURISDICTION EXISTED.

Lack of subject matter jurisdiction can be raised at any time, even for the first time on appeal, by a party or by the court. See *Lake v. Reeder Constr. Co.*, 330 S.C. 242, 248, 498 S.E.2d 650, 650-54 (Ct. App. 1998). This is consistent with Rule 12(h)(3), SCRCPP which provides that “[w]henver it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.”

The Petition of the Appellants as well as their Motion to Vacate defines the action

as one for recovery of the real estate in question which was the sole asset of the Estate - "the subject property."- the *res*.

The Appellants' Petition appears to be an action *in rem*, "which determines rights in a specific property against the entire world and is equally binding upon everyone." *Campbell v. Jordan*, 675 S.E.2d, 801, 806 (S.C. Ct. App. 2009). However, although the Petition is in the nature of an *in rem* proceeding, "it also has characteristics of a quasi *in rem* proceeding because it deals with the title to realty and operates as to the parties in the proceeding, thus requiring both *in rem* subject matter jurisdiction and personal jurisdiction." See *Campbell v. Jordan*, *supra* at 806-807.

Our Courts have held to the general rule of law as asserted by the Appellant in *Goolsby v. Goolsby*, 229 S.C. 101, 102 92 S.E.2d 57 (1956):

As to an action being *in rem*, or at least quasi *in rem*, jurisdiction of the *res* cannot be waived....As to lack of jurisdiction of the subject matter appearing of record, even though not relied upon by the parties, the Court will take notice thereof *ex mero mortu*....(emphasis added).

The *res* in this case which is the subject matter of the litigation became incontestably vested in the decedent's heirs on or about October 12, 1999 - 10 years from decedent's death - by intestate succession as a matter of law, pursuant to §62-3-108.

The subsequent deed of distribution simply confirmed what had happened by operation of law and designated the lawful heirs of Lucinda Pringle which expressly included the Appellants.

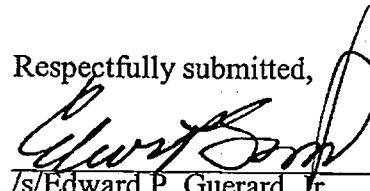
CONCLUSION

The appellants have failed to sustain their burden of proof to reverse the Circuit Courts affirmation of the Probate Court by showing that there was insufficient evidence presented by the Respondents to sustain the findings of the Circuit Court.

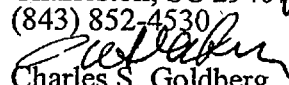
Accordingly, the Order of the Circuit Court should be affirmed.

Jan. 27, 2010

Respectfully submitted,


/s/Edward P. Guerard, Jr.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, As Guardian ad Litem for
Rebecca Patricia Brown,

Appellants,

v.

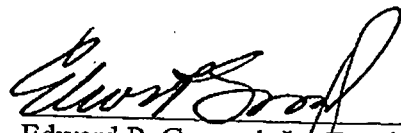
Shirley Haile-Howard, as Personal Representative
of the Estate of Mary P. Smith and as Personal
Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of Janine Gourdine,
Arthur Smalls as Personal Representative of the Estate of
Emma Smalls, and any known or unknown persons
or entities claiming any interest in the Estate of
Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gourdine and Emma Smalls,

Respondents.

CERTIFICATE OF COUNSEL

Counsel hereby certifies that this Brief complies with the requirements of Rule
211 of the South Carolina Appellate Court Rules.

SIGNATURE ON NEXT PAGE



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-006213

Evelina Brown Moses, Thomas P. Brown, Jr.,
and David L. Michel, as Guardian ad Litem for
Rebecca Patricia Brown.....Appellants,

v.

Shirley Haile-Howard, as Personal Representative
of the Estate of Mary P. Smith and as Personal
Representative of the Estate of Lucinda Pringle,
Maezell Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese B. Brockington,
as Special Administrator of the Estate of Janine Gouridine,
Arthur Smalls as Personal Representative of the Estate of
Emma Smalls, and any known or unknown persons
or entities claiming any interest in the Estates of
Mary P. Smith, Lucinda Pringle, Annabella Thornton,
Janine Gouridine and Emma Smalls.....Respondents.

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STATEMENT OF ISSUES ON APPEAL

1. DID THE LOWER COURTS ERR IN RULING THAT THE SUBMISSION OF THE WILL WAS UNTIMELY WHEN NO ORDER CLOSING THE ESTATE HAS BEEN ISSUED?
2. DID THE LOWER COURTS ERR IN TREATING THE CERTIFICATE OF DISCHARGE AS AN ORDER CLOSING THE ESTATE?
 - A. Did the lower courts err by ruling that Appellants' time to file their Motion to Vacate had expired?
 - B. Did the lower courts err in holding that S.C. Code Ann. § 62-3-108 barred the probate of the will?
 - C. Did the lower courts err in disregarding the testator's intent?
 - D. Did the lower courts err by holding that the Appellants did not satisfy the requirements of S.C. Code Ann. § 62-3-402 for probating a copy of a will?
 - E. Did the lower courts err by not finding that fraud precluded the imposition of any applicable time limit?
3. DID THE CIRCUIT COURT ERR BY APPLYING THE WRONG STANDARD OF REVIEW?

STATEMENT OF THE CASE

At the time of Lucinda Pringle's death on October 11, 1989, she was vested with a one-half (1/2) undivided interest in the ten (10) acre tract of land known as 2517 Old Georgetown Road, Mt. Pleasant, SC 29466, TMS No. 578-00-00-026.

Respondents filed the application for an informal appointment in the Matter of the Estate of Lucinda Pringle on May 5, 1999, in the Probate Court for Charleston County, Case No. 1999-ES-10-689 (R.pp. 157-161). The Probate Court administered the estate as an informal appointment assuming intestacy in accordance with S.C. Code Ann. § 62-3-301(4). The Personal Representative designated the Respondents and the Appellants as the heirs at law of Lucinda Pringle (R.pp. 157-161). A Deed of Distribution dated April 6, 2000, was recorded on April 17, 2000, in the RMC Office for Charleston County in Book U369, at Page 558 (R.pp. 177-178). The Probate Court issued a Certificate of Discharge on June 26, 2001 (R.p. 184). The Probate Court did not issue an order closing the estate.

On or about August 3, 2005, Appellant Evelina Brown Moses received the original will from Emma Smalls and filed it with the Probate Court for Charleston County on August 4, 2005 (R.pp.186-187). The Respondents deny knowing of the existence of the will (R.p. 322, line 25-p. 323, line 5, p. 375, line 25-p. 376, line 4, p. 402, line 6-p. 403, line 11, p. 439, lines 18-22-p. 452 lines 4-24).

On October 20, 2005, Appellants filed their Summons and Petition for Recovery of Improper Distribution (R.pp. 26-32). The parties amended the Petition by Consent Order of October 2, 2007 to properly reflect the then parties to the action. On January 8, 2007, the Appellants filed their Motion to Vacate the Order of June 26, 2001 (R.pp. 49-57).

Appellant Rebecca Patricia Brown is and was at all times during the relevant time periods of this action an incapacitated person for whom no guardian has been appointed. The Probate Court appointed David L. Michel, Esq., as guardian ad litem for Appellant Rebecca Patricia Brown for the purposes of this action (R.p. 24).

By Order dated October 20, 2008 (hereinafter "the Probate Court's Order"), the Honorable Irvin G. Condon, Judge, Charleston County Probate Court, dismissed Appellants' Motion to Vacate (R.pp. 8-20). Appellants appealed the Probate Court's Order, essentially asking for the opportunity to offer the will for probate because the time period to do so has not expired (R.pp. 132-152).

By order dated June 24, 2009, the Honorable Roger M. Young, Judge, dismissed Appellants' appeal and affirmed the Probate Court's Order (R.pp. 3-7).

FACTS

Lucinda Pringle (hereinafter "Mrs. Pringle"), the testator, was a model grandparent. She raised her grandchildren, Appellants Thomas, Evelina, and Rebecca Patricia as if they were her own, and was particularly concerned for her mentally disabled granddaughter, Appellant Rebecca Patricia Brown.

In an effort to provide for her grandchildren after her own demise, Mrs. Pringle executed a will on July 30, 1988 declaring her desire to devise her entire estate to Appellants (R.pp. 186-187). However, immediately following Mrs. Pringle's death on October 11, 1989, in order to deny Appellants their rightful inheritance pursuant to the will, Respondents commenced a sophisticated conspiracy to fraudulently conceal and suppress her will in clear violation of the statutory duty to deliver a will¹.

The conspiracy deepened in the aftermath of Hurricane Hugo as Respondent Emma Smalls, one of Mrs. Pringle's daughters, produced Mrs. Pringle's tampered will to an insurance company in order to obtain homeowners insurance proceeds (R.pp. 58-60, 70-73). The conspiracy peaked some nine and a half years after Mrs. Pringle's death when another one of her daughters, Respondent Janine Gourdine, petitioned the Probate Court to open Mrs. Pringle's estate as an intestate estate, represented that Mrs. Pringle died with "no will", and purposefully failed to notify Mrs. Pringle's grandchildren of any pending intestate probate proceedings (R.p. 158). Finally, the conspiracy culminated on August 3, 2005 when, after some sixteen years of intentionally concealing and suppressing Mrs. Pringle's will, Respondent Emma Smalls confessed the entire scandal and presented the original will to Appellant Evelina Brown Moses (R.p. 299).

¹ S.C. Code Ann. § 62-2-901.

Several years after Mrs. Pringle's death, Respondent Thomas P. Brown, Jr., received a copy of the will from Respondents and attempted (though legal counsel was not retained) to file the copy of the will in the Probate Court for Charleston County (R.p. 288). Appellant Thomas P. Brown, Jr.'s uncontroverted testimony is that someone in the Probate Court office told him a copy of a will could not be probated (R.p. 288).

The sole asset in Mrs. Pringle's estate is a one-half interest in ten acres located at 2517 Old Georgetown Road in Mt. Pleasant, South Carolina (hereinafter "the property"). Prior to her death, Mrs. Pringle resided on the property with her granddaughter, Rebecca Patricia Brown and her now deceased daughters, Respondents Emma Smalls, Annabelle Thornton, and Janine Gourdine who, upon Mrs. Pringle's death, desired to continue to reside on the property. When Mrs. Pringle died, her daughters were in possession of her will and had a legal duty to deliver it to the Probate Court pursuant to S.C. Code Ann. § 62-2-901. Nevertheless, in an effort to maintain their residency on the property, Mrs. Pringle's daughters fraudulently conspired to conceal and suppress the will.

Shortly after Mrs. Pringle's death, the property needed repair as a result of damage from Hurricane Hugo. On January 15, 1990, the Public Savings Fire & Casualty Insurance Company issued and delivered a check to Respondent Emma Smalls along with correspondence to Respondent Emma Smalls produced by Respondents in the amount of Three Thousand (\$3,000.00) Dollars made payable to:

"Thomas P. Brown, Jr., Patricia Brown, Evelina Brown, and Emma Smalls Executors of the Estate of Lucinda Pringle." (R.p. 71)

Mrs. Pringle's will nominates the Appellants as executors, and the insurance check even lists the payees in the same order as they appear in Mrs. Pringle's will, suggesting that

Respondent Emma Smalls presented Mrs. Pringle's will in order to obtain the insurance proceeds. In addition, it is important to note that a cursory review of Mrs. Pringle's will suggests that it was tampered with in order to add Respondent Emma Smalls' name as a devisee so as to aid in her efforts to obtain the insurance proceeds:

The will appears to have been altered via typewriter erasure to add the name of only one of Mrs. Pringle's daughters, Respondent Emma Smalls, as a devisee;

While Respondent Emma Smalls is not appointed co-executor in a complex paragraph where typewriter erasure is not feasible, she is added in a later paragraph that appoints executors via typewriter erasure.

Upon receipt of the insurance check, Respondent Emma Smalls obtained the written consent of Mrs. Pringle's grandchildren (including the mark of Appellant Rebecca Patricia Brown, an incompetent) to cash the insurance proceeds check. The competent grandchildren, Thomas and Evelina, agreed to Respondent Emma Smalls' request, as they were unsophisticated in such affairs, unaware of their interest in the property, and not wanting to interfere with Respondent Emma Smalls' efforts to repair the property. The incompetent grandchild, Rebecca Patricia, was unequipped to comprehend any portion of this transaction.

On May 5, 1999, another of Mrs. Pringle's daughters, Respondent Janine Gourdine, petitioned the Probate Court to open the Estate of Lucinda Pringle as an intestate estate and fraudulently misrepresented to the Probate Court that Mrs. Pringle died without a will (R.pp. 157-161). Respondent Gourdine successfully sought appointment as personal representative, notified her sisters of the intestate probate proceedings, and obtained renunciations of rights to administration from Respondents (R.pp. 163-165). However, Respondent Gourdine did not notify Appellants of the intestate proceedings and failed to seek renunciations of rights to administration from the Appellants despite the fact that they had rights in the estate under any

circumstance. The Probate Court file confirms that Appellants did not receive notice of estate filings (R.pp. 181-183). Upon the death of Respondent Gourdine in late 1999, yet another of Mrs. Pringle's daughters, Respondent Annabelle Thornton, obtained successor appointment as Personal Representative and continued the fraud by also denying the existence of the will, again fraudulently misrepresenting that Mrs. Pringle died intestate, purposefully keeping Mrs. Pringle's grandchildren out of the loop, and seeking new renunciations of rights to administration from all of Mrs. Pringle's surviving children but failing to seek and to obtain similar renunciations from Appellants (R.pp. 174-175).

On April 18, 2001, Respondent Annabelle Thornton filed a Deed of Distribution leaving only 1/5 of Mrs. Pringle's intestate estate to be divided among Appellants, the known intended devisees of the estate (1/15th to each grandchild) (R.pp. 177-178). The remaining 4/5ths of the estate was improperly distributed to Mrs. Pringle's daughters. Closing documents were filed but not provided to Appellants (R.pp. 179-183). Throughout the course of the administration of the Estate, Appellants were not provided notice of estate activity. By 2005, Respondents Emma Smalls and Mary Smith were Mrs. Pringle's remaining surviving daughters. On August 3, 2005, the conspiracy unraveled when Respondent Emma Smalls confessed to Appellant Evelina Brown Moses that she had fraudulently conspired to conceal Mrs. Pringle's will so that she and her late sisters could continue to live on the property (R.p. 299).

Appellant Evelina Brown Moses immediately filed the will with the Probate Court (R.pp. 186-187). In an effort to distribute the estate pursuant to Mrs. Pringle's wishes, her competent grandchildren and a guardian ad litem appointed to represent Appellant Rebecca Patricia Brown promptly filed a Petition for Recovery of the Improper Distribution (R.pp. 26-

32). Despite Respondent Emma Smalls' production of the will in August 2005, Respondents continued to deny having any knowledge of its existence.

ARGUMENTS

Introduction

Appellants seek an opportunity to demonstrate that Mrs. Pringle's will is valid. There is no possible harm or detriment to the Respondents for allowing this, other than the possibility that, if the testator's will is determined to be valid, they will not retain a windfall that the testator did not intend for them to receive. If, however, this Court does not overturn the lower courts' orders and allow Appellants an opportunity to demonstrate that the will is valid, Mrs. Pringle and Appellants will be irreparably harmed. The primary goal in construing a will is to honor the testator's intent. See, e.g., *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (S.C. 2005). Moreover, there is a presumption against intestacy. See, e.g., *Pate v. Ford*, 293 S.C. 268, 360 S.E.2d 145 (S.C.App. 1987).

I. BECAUSE NO ORDER CLOSING THE ESTATE HAS BEEN ISSUED, THE LOWER COURTS ERRED BY FAILING TO RULE THAT THE SUBMISSION OF THE WILL IS TIMELY.

There has been no order closing Mrs. Pringle's estate. Although the Probate Court's order states that "[t]he court issued a Certificate of Discharge on June 26, 2001, *closing the estate*; the Probate Court acknowledged that through an oversight, it did not issue a formal order closing the estate" (emphasis added) (R.p. 11). Thus, Mrs. Pringle's estate was not closed because there was no Order Closing Estate. There is no method to close an estate other than by issuance of an Order Closing Estate. See S.C. Code Ann. § 62-3-1001; Probate Court Form # 413 PC (as approved by South Carolina Court Administration). While the Probate Court did issue a Certificate of Discharge, all that did was discharge the Personal Representative; it did not

close the estate – either by statutory process or by the plain language of the Certificate of Discharge. The discharge of a personal representative is a separate matter that is not equivalent to an order closing the estate. Compare S.C. Code Ann. § 62-3-608 --- 613 (recognizing termination of personal representative appointment before closing of estate) with S.C. Code Ann. § 62-3-1001 (involving order closing estate by approving petition for settlement).

The failure of the Probate Court to issue an Order Closing Estate means that the Estate still has not been closed. Consequently, it could not possibly be too late to introduce the will proffered by Appellants because the estate administration remains ongoing to this day². S.C. Code Ann. § 62-3-108 speaks only to the *commencement* of an estate administration within 10 years of a decedent's death, which was done in this case. There is nothing in S.C. Code Ann. § 62-3-108 that required the *conclusion* of an estate administration within 10 years from the decedent's death.

In several instances, S.C. Code Ann. § 62-3-108 recognizes that a will might be offered for probate more than ten years after a decedent's death. The first exception to the ten-year time limit in S.C. Code Ann. § 62-3-108 recognizes that probate proceedings may be commenced more than ten years after the decedent's death when there is a mistake about the decedent's death. This exception demonstrates the policy of the section, which is not to create an absolute bar to the commencement of a probate proceeding more than ten years after a decedent's death when the court can rectify a mistake. Another exception to S.C. Code Ann. § 62-3-108 involves the contest of an informal probate, which must occur by the *later* of one year from the decedent's death or eight months after the informal probate. If the contest of the informal probate involves the petition to probate a later will, as recognized by S.C. Code Ann. § 62-3-407, the later will,

² None of the sections cited by Respondents preclude the proffer of a will while an estate administration is ongoing.

ultimately determined to be the valid will, might be offered for probate more than ten years after the decedent's death. For example, the first will might be informally probated nine years and eleven months after the decedent's death. A third exception under S.C. Code Ann. § 62-3-108, in conjunction with S.C. Code Ann. § 62-3-407, allows a contestant to petition for the probate of a later will within eight months thereafter, which would be more than ten years after the decedent's death. In that case, the probate of the later will more than ten years after the decedent's death would prevent the probate of the wrong will by mistake.

Because S.C. Code Ann. § 62-3-108 recognizes these exceptions to its own ten-year limitations period, the lower courts erred by not recognizing that the policy of the SCPC does not preclude the probate of a will more than ten years after a decedent's death when doing so would avoid a mistake in probate.

II. BECAUSE IT IS NOT TOO LATE TO PROFFER MRS. PRINGLE'S WILL, THE LOWER COURTS ERRED EVEN IF A CERTIFICATE OF DISCHARGE WAS ISSUED.

A. The lower courts erred by ruling that Appellants' time had expired.

1. S.C. Code Ann. § 62-3-412

S.C. Code Ann. § 62-3-412 governs the vacation of formal testacy orders, "including an order that the decedent left no valid will" and thus died intestate. S.C. Code Ann. § 62-3-412(1) provides that "[t]he court shall entertain a petition for modification or vacation of its order and probate of another will of the decedent if it is shown that the proponents of the later-offered will were unaware of its existence at the time of the earlier proceeding or were unaware of the earlier proceeding and were given no notice thereof, except by publication." This section recognizes the SCPC policy to allow correction of mistaken rulings governing the decedent's testacy status.

Appellants were unaware of the existence of the decedent's will³ which was improperly hidden from them, until the confession of Respondent Emma Smalls in 2005, when she produced the will to Appellant Evelina Brown Moses and explained that the will had been concealed so she and her siblings could continue to reside on the property (R.p. 299). Moreover, Appellants were unaware of the earlier probate proceedings and were given no notice by Respondents. Within a day of being provided the will, Appellants filed it with the Probate Court. Thus, Appellants satisfied the requirements of S.C. Code Ann. § 62-3-412 for vacating a formal order of intestacy (even if the Probate Court had issued one, which it has yet to do).

Under S.C. Code Ann. § 62-3-412 the time to petition for the vacation of the order has not expired. The Probate Court's Order focuses on the Appellants having constructive notice of the estate administration regarding intestacy and relies on S.C. Code Ann. § 62-3-412(2) to dismiss Appellants' argument. Reliance on S.C. Code Ann. § 62-3-412(2) is misplaced because that subsection requires the issuance of an order of intestacy, which the Probate Court did not issue.

The Probate Court also mistakenly ruled that Appellant Rebecca Patricia Brown received notice of the estate administration because, although incompetent, "[h]er siblings were acting as her guardian" and thus she was bound by the notice to her siblings pursuant to S.C. Code Ann. § 62-1-403 (R.p. 17). However, Appellant Rebecca Patricia Brown's siblings have never been appointed as her guardian. The general definitional section of the SCPC defines a guardian as "means a person who has qualified as a guardian of an incapacitated person pursuant to

³ Thomas P. Brown, Jr. was unaware of the existence of the original will. Although he had seen a copy of the will, when he asked he was told there was no original. Appellants Evelina Brown Moses and Rebecca Patricia Brown were unaware of the existence of even a copy of the will.

testamentary or court appointment.” Thus, Appellant Rebecca Patricia Brown could not receive constructive notice of the estate administration under S.C. Code Ann. § 62-3-412(2).

The Probate Court’s error as to the representation of Appellant Rebecca Patricia Brown is evidenced by the Probate Court’s decision to appoint a guardian ad litem for her (R.p. 24). If her siblings were serving as her guardians, there would be no need for the court to appoint a guardian ad litem in this matter. Thus, even if an order of intestacy had been filed, which it was not, Appellant Rebecca Patricia Brown could not have received notice because of her incapacity, and she satisfies the requirements of S.C. Code Ann. § 62-3-412(2) and (3) entitling her to the vacation of that (nonexistent) order.

2. S.C. Code Ann. § 62-3-413

Moreover, S.C. Code Ann. § 62-3-413 allows the modification or vacation of an order in a formal testacy proceeding for “good cause shown.” Thus, this section also recognizes the SCPC policy to allow correction of mistaken rulings governing the decedent’s testacy status. In its order, the Probate Court states that “good cause exists.” However, it fails to address S.C. Code Ann. § 62-3-413, which is clearly applicable. While S.C. Code Ann. § 62-3-413 contains a time limit to modify or vacate an order for good cause,⁴ Appellants are within the time “allowed for appeal.” Under S.C. Code Ann. § 62-1-306, the trigger for the time within which an appellant must appeal is the receipt of the written order.

The time limit for Appellants to appeal the “written order” has not expired for three reasons: (1) *There is no written order*, (2) Appellants have not received the written order, and (3) Appellant Rebecca Patricia Brown is incompetent to receive notice even if there were a written order.

⁴ “For good cause shown, an order in a formal testacy proceeding may be modified or vacated *within the time allowed for appeal*” (emphasis added).

B. The lower courts erred by holding that S.C. Code Ann. § 62-3-108 precluded the probate of the will proffered by Appellants.

Not being able to find any applicable South Carolina law to support its position, the Probate Court relied on cases from other jurisdictions as precedent for its determination that S.C. Code Ann. § 62-3-108 creates an absolute bar to probate a will more than 10 years after the decedent's death. The cases cited are inapposite because they do not address an attempt to probate a will while the timely-commenced intestate administration of an estate was ongoing. In particular, the Probate Court cited *Martin v. Martin*, 883 P.2d 673 (Hawaii 1994), as "directly on point" for the propositions (1) that it is too late to probate a will after the applicable time limit even if an intestacy proceeding was ongoing, and (2) that a nonprobated will can not be used as evidence to defeat the claims for intestate succession. Again, that case is inapposite. *Martin* does not deal with an attempt to introduce a will as part of an ongoing probate intestacy administration that was timely commenced. Rather, *Martin* deals with a *nonprobate* proceeding for a determination of intestate heirs and partition commenced after the time period to probate a will had expired. The case *sub judice*, however, involves an attempt to probate a will while the timely-commenced administration of the estate was ongoing.

Nor does *Martin* stand as applicable precedent that a court should refuse to allow the introduction of a nonprobated will as evidence. Appellants herein attempted to introduce Mrs. Pringle's will as evidence of, inter alia, the fraud practiced by some of the Respondents and to ultimately allow the Probate Court to consider its validity. *Martin* simply stands for the proposition that a nonprobated will cannot be used to establish ownership. The Probate Court similarly misapprehends the application of S.C. Code Ann. § 62-3-102, which it states "denies the use of unprobated wills as evidence." S.C. Code Ann. § 62-3-102 merely precludes a

nonprobated will from being "effective to prove the transfer of any property or to nominate an executor." Nothing in that section prevents a will from being used as evidence for other purposes, and it certainly does not prevent a will from being offered for probate to establish the transfer of property.

Moreover, the Probate Court cites but disregards precedent from other jurisdictions that would toll the statute of limitations to probate a will.

In any event, S.C. Code Ann. § 62-3-108 is not a bar to Appellants' motion. Although S.C. Code Ann. § 62-3-108 prevents the commencement of a formal testacy proceeding more than ten years after a decedent's death, the probate of the decedent's estate, which included the issuance of a formal testacy proceeding, was commenced within ten years of decedent's death⁵. The motion to vacate is a part of the probate that was timely commenced. Appellants' motion does not erase or extinguish the commencement of the probate of decedent's estate, which was timely. It merely requests that the Certificate of Discharge, to the extent it purports to be a final testacy order (which does not exist) be vacated or, in essence, corrected. S.C. Code Ann. § 62-3-108 does not place a time limit on when a formal testacy order may be handed down or vacated; it places a time limit only on the commencement of the administration of the estate.

The Circuit Court erred by basing its decision on a determination that S.C. Code Ann. § 62-3-108 is a statute of repose instead of a statute of limitations. Nothing in that section provides that it is a statute of repose nor does any case define it as such. Moreover, because S.C. Code Ann. § 62-3-108 contains exceptions allowing the commencement of an estate administration more than 10 years after a decedent's death based on equitable principles, it is not a statute of repose. The comment to S.C. Code Ann. § 62-3-108 refers to a "limitation" — the term repose is

⁵ Mrs. Pringle died on October 11, 1989. The Application for Informal Probate was filed on May 5, 1999.

not used. Even if it were a statute of repose, S.C. Code Ann. § 62-3-108 does not preclude the offering of the testator's will, for the reasons set forth herein.

C. The lower courts erred by disregarding public policy considerations.

A primary purpose of probate is to honor the decedent's intent. To allow the actions of Respondents, whether intentional or not, to circumvent the probate of Mrs. Pringle's will would dishonor, rather than honor, decedent's intent, in contravention of public policy. Moreover, it will encourage the withholding of wills by those who do not want them probated, in contravention of the requirements and the policy of S.C. Code Ann. § 62-2-901.

D. The lower courts erred by holding that the Appellants did not satisfy the requirements of S.C. Code Ann. § 62-3-402 for timely probating a copy of a will.

The Probate Court ruled that Appellants did not comply with the requirements to probate a copy of a will. The uncontradicted testimony of Appellant Thomas P. Brown, Jr. was that he timely attempted to file a copy of the will with the Probate Court but *was told by the Probate Court that it would not probate a copy* (R.p. 288). In addition, Appellants Evelina Brown Moses and Rebecca Patricia Brown had no knowledge of the existence of this "copy" or their brother's efforts (R.p. 301). It is clearly against public policy to penalize Appellants for relying on an improper and inaccurate statement from the Probate Court itself. If the Probate Court had given the correct answer to Appellant Thomas P. Brown, Jr., this entire dispute about whether it is too late to probate Mrs. Pringle's will would not have occurred.

E. The lower courts erred by not finding that fraud precluded the imposition of any applicable time limit.

Even if any section of the South Carolina Probate Code, standing alone, precluded the offering of the will for probate, that section or sections would be overridden by the fraud committed by Respondents because the commission of a fraud or an intentional

misrepresentation estops Respondents from asserting any statute of limitations. *See R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (S.C. 2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Moreover, even if Respondents did not engage in fraud or make intentional misrepresentations, Respondents are estopped from asserting any statute of limitations because Appellants reasonably relied on the words and conduct of Respondents in allowing any limitations period to expire. *See Regions Bank v. Schmauch*, 582 S.E.2d 432 (S.C. App. 2003); *Hedgepath v. American Telephone and Telegraph Co.*, 559 S.E.2d 327 (S.C. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (S.C. 2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (S.C. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (S.C. App. 1997). *See generally Vandegrift v. Lagrone*, 477 So.2d 292 (1985) (persuasive authority where will proponent's failure to file a timely petition to probate the will is occasioned by fraud, the filing of the petition within one year from the time the Appellant discovered fraud is effective as timely filing); *Walters v. Lewis*, 276 Ark. 286, 634 S.W.2d 129 (1982) (persuasive authority in case where personal representative fraudulently failed to notice rightful devisees of probate proceedings, and time bar did not commence until discovery of fraud)⁶.

More specifically, S.C. Code Ann. § 62-3-1005 and 62-3-1006, otherwise providing limitations for remedies by heirs and devisees against personal representatives and distributees, expressly do not bar an action to recover for fraud, misrepresentation, or inadequate disclosure (in the case of personal representatives) and fraud (in the case of distributees.) More generally, S.C. Code Ann. § 62-1-106 creates a fraud-related time period to bring an action, which is two

⁶ Respondents contend that the recordation of the Deed of Distribution put the Appellants on notice that should start the fraud statute of limitations clock running. But recordation of a deed is not notice of a fraudulent conveyance. *See Tucker v. Weathersbee*, 825 S.E.2d 638 (S.C. 1914); *Means v. Feaster*, 4 S.C. 249 (1873).

years from the discovery of the fraud. As discussed above, Appellants promptly filed Mrs. Pringle's will upon discovery of the fraud. *See generally Kahn Construction Co. v. South Carolina National Bank of Charleston*, 275 S.C. 381, 384, 271 S.E.2d 414 (1980).

III. BECAUSE THE WRONG STANDARD OF REVIEW WAS APPLIED, THE CIRCUIT COURT ERRED.

The Circuit Court held that, because the requested relief was statutory, the action was at law, and that it could not disturb the Probate Court's "*findings of fact* unless a review of the record discloses there is no evidence to support them." The Circuit Court erred for several reasons.

The Circuit Court focuses on the standard of review applicable to a finding of fact. The dispositive matter in the lower courts' decisions was a question of law – the interpretation of a statute – rather than a determination of fact. The decision hinged on the interpretation of S.C. Code Ann. § 62-3-108. Statutory interpretation is a question of law for the appellate court to be made without any particular deference to the lower court. *Stewart v. Charleston County School Dist.* ---S.E.2d---, 2009 Westlaw 2851431 (S.C.App. 2009).

Thus, the decision involved a question of law. Questions of law may be decided by an appellate court with no particular deference to the trial court. *Clardy v. Bodolosky*, 383 S.C. 418, 679 S.E.2d 527 (S.C.App. 2009).

There is no prior South Carolina case construing S.C. Code Ann. § 62-3-108 for the issue *sub judice*. When a particular case raises a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *South Carolina Farm Bureau Mut. Ins. Co. v. Durham*, 380 S.C. 506, 671 S.E.2d 610 (S.C.2009).

The Probate Court's decision resulted directly from errors of law. The jurisdiction of the Circuit Court in an appeal from the Probate Court extends to the correction of errors of law. *Matter of Estate of Tollison*, 463 S.E.2d 611 (S.C. App. 1995); *In re Estate of Hyman*, 606 S.E.2d 205 (S.C. App. 2004); *Bob Jones University v. Strandell*, 543 S.E.2d 251 (S.C.App. 2001).

The effect of the lower courts' rulings is to dismiss Appellants' appeal based merely on a construction of the statute – in short, a summary judgment. If there was no factual dispute, appellate review of a summary judgment is unlimited. To the extent facts are involved, summary judgment is construed in the light most favorable to Appellants.

CONCLUSION

By erroneously applying the ten-year limitations period of S.C. Code Ann. § 62-3-108, the lower courts have effectively precluded the Appellants from having a determination on the merits of the validity of Mrs. Pringle's will and the honoring of her intentions. This violates the overriding policy of the SCPC as stated in S.C. Code Ann. § 62-1-102: "This Code shall be liberally construed and applied to promote its underlying purposes and policies...[which] are...to discover and make effective the intent of a decedent in the distribution of his property..." Consonant with the underlying purpose and policy of the SCPC, Appellants are entitled to an opportunity to demonstrate the testator's intent in this case, rather than being precluded by judicial fiat from having their day in court.

Had the Respondents been forthright or the Probate Court provided correct information, this case would not even be necessary, as demonstrated by the Appellants' actions. As soon as Appellants were provided with the original, they offered it for probate. Had Respondents not withheld the will for more than ten years after Mrs. Pringle's death, there would be no question

about timeliness. Similarly, had the Probate Court provided correct information about Appellants' ability to probate a copy of a lost will, which Appellant Thomas P. Brown, Jr. attempted to do within the ten-year period, there would be no questions about timeliness.

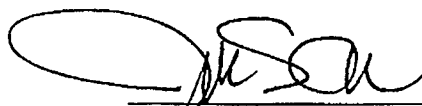
It is hard to imagine that the SCPC, with its stated purpose of a liberal construction to determine a decedent's intentions, would countenance a result that prevents the innocent Appellants from having an opportunity to show the testator's intentions when the Respondents, who will improperly benefit, are the wrongdoers in this case.

The purpose of a statute of limitations is to protect people from having to defend against stale claims. See, e.g., *Hooper v. Ebenezer Senior Services and Rehabilitation Center*, 659 S.E.2d 213, (S.C.App. 2008). The underlying purpose is to protect defendants from unnecessary harm and damage. However, Respondents are not damaged by giving Appellants an opportunity to prove that the testator's will is valid. Rather, if the will is determined to be valid, Respondents will simply be prevented from receiving a windfall in their ability to use the property until a court determines that Mrs. Pringle did not intend for them to have rights in the property. Because of the lower courts' error in refusing to allow Appellants the opportunity to prove the testator's intent through her will, it is the testator and Appellants who are damaged – the opposite effect intended by a statute of limitations.

For the reasons stated, this Court should reverse the judgment of the Circuit Court.

February 3, 2010

Respectfully submitted,

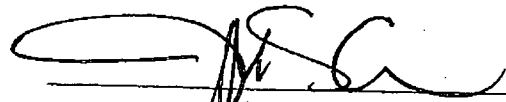


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Attorneys for the Appellants

Date: February 3, 2010



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Attorneys for the Appellants

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

**EVELINA BROWN MOSES and THOMAS
P. BROWN, JR.**

Petitioners

VS

**NOTICE OF MOTION
AND MOTION TO DISMISS**

**SHIRLEY HAILE-HOWARD, as Personal
Representative of the Estate of Mary P.
Smith, and as Personal Representative
of the Estate of Lucinda Pringle, Maezell
Mitchell Jefferson, as Personal Representative
of the Estate of Annabelle Thornton, Shirrese
B. Brockington, as Special Administrator of
the Estate of Janine Gourdine, Arthur Smalls,
as Personal Representative of the Estate of
Emma Smalls, and any known or unknown
persons or entitles claiming any interest in
the Estates of Mary P. Smith, Lucinda Pringle,
Annabelle Thornton, Janine Gourdine and
Emma Smalls,**

Respondents.

**TO JONATHAN S. ALTMAN AND STEPHEN SLOTCHIVER, ATTORNEYS
FOR THE PETITIONERS:**

NOTICE IS HEREBY GIVEN YOU that the Respondents will move before The Honorable Irvin G. Condon, Probate Judge for Charleston County, on a date and time set by this Court, that the Respondents' Petition for Improper Distribution and Motion to Vacate the Order of June 25, 2001 be dismissed on the following grounds:

(A) There is a lack of subject matter jurisdiction in that it is no longer possible to initiate an original proceeding to probate a will of the decedent because no formal or informal testacy proceedings have been commenced by the Petitioners.

(a) A formal testacy proceeding is litigation to determine whether a decedent left a valid will. Section 62-3-401, Code of Laws of South Carolina, as amended.

(b) The only substantive Petition before this Court is the Petition for Recovery of Improper Distribution dated October 20, 2005. A Motion for Vacation of Order (of Intestate Distribution) dated June 25, 2001, was filed January 7, 2008.

Section 62-3-413, Code of Laws of South Carolina states:

(1)

For good cause shown, an order in a formal testacy proceeding may be modified or vacated within the time allowed for appeal.

Section 62-3-412, Formal Testacy proceedings; provides that a " formal testacy order under Section 62-3-409 through 62-3-411, including an order that the decedent left no valid will and determining heirs, is final as to all persons with respect to all issues concerning the decedent's estate that the court considered or might have considered incident to its rendition relevant to the question of whether the decedent left a valid will, and to the determination of heirs, except that:

(1) Omitted.

(2) If intestacy of all or part of the estate has been ordered, the determination of heirs of the decedent may be reconsidered if it is shown that one or more persons were omitted from the determination and it is also shown that the persons were unaware of their relationship to the decedent, were unaware of his death, or were given no notice of any proceeding concerning his estate except by publication.

(3) A petition for vacation under either (1) or (2) above must be filed prior to the earlier of the following time limits:

(2)

(i) If a personal representative has been appointed for the estate, the time of entry of any order approving final distribution of the estate.

(ii) Whether or not a personal representative has been appointed for the estate of the decedent, the time prescribed by Section 62-3-108 when it is no longer possible to initiate an original proceeding to probate a will of the decedent. (Emphasis added)

(iii) Twelve months after the entry of the order sought to be vacated."

The purported Will as asserted by the Petitioners is not before this Court, and the Petition is time barred.

(B). The only asset in the Estate of Lucinda Pringle is real estate consisting of 10 ½ acres, more or less, known as Lot No. 5, Boone Hall and Sea Shore Tracts, Charleston County, South Carolina and shown as Tax Map Number 578-00-00-026, which was conveyed by Deed of Distribution dated April 6, 2001, and recorded April 26, 2001, in Deed Book U-369, page 558, in the RMC Office for Charleston County. Title to the real estate is vested in the Grantees named in the Deed of Distribution. The Probate Court has no jurisdiction over actions concerning the title and ownership of this real estate.

(3)

(C) The Petitioners filed their Petition for Recovery of Improper Distribution on October 20, 2005, more than 4 years after the Deed of Distribution aforementioned was recorded, and failed to take any action to overturn the said Deed of Distribution prior to that time despite having legal and/or constructive notice. This is an action at law, and, therefore, the Petitioners are estopped from claiming the distribution of the real estate was improper and barred by the statutes of repose.

(D) Petitioners filed their Petition for Recovery of Improper Distribution on October 20, 2005, more than 4 years after the Deed of Distribution was recorded, and having legal and/or constructive notice of such recording, failed to take any action to overturn said deed. Therefore, the statute of limitations prevents the Petitioners from claiming the distribution of the real estate was improper.

(E) The Petitioners although having physical possession of a copy of the Will, have never filed either a formal or informal Petition for Testacy, with the purported Will attached, as required by statute.

(a) An un-probated Will constitutes no evidence and is not before the Court for admission.

(4)

(F) Section 62-3-108, Code of Laws of South Carolina, as amended, is a statute of repose, and applicable in this matter because the Last Will and Testament of Lucinda Pringle was not filed within ten (10) years from the date of her death, and the matter is incontestable "if no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death."



Shirrese B. Brockington

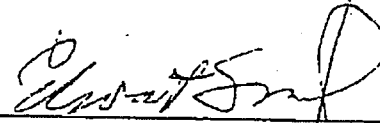
764 St. Andrews Blvd.

Charleston, SC 29407

(843) 571-5000

Special Administrator of

The Estate of Janine Gourdine

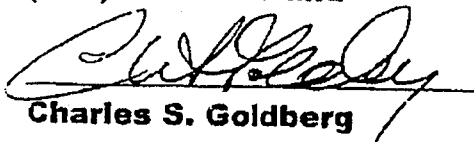


Edward P. Guerard, Jr.

1 Carriage Lane, Building H

Charleston, SC 29407

(843) 852-4530 and



Charles S. Goldberg

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Charleston, SC 29401

(843) 720-2800

**Attorneys for the Remaining
Respondents**

**Charleston, South Carolina
March 13, 2012.**

EXHIBIT C

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NO.: 1999-ES-10-689-2

Evelina Brown Moses, Thomas P.)
Brown, Jr., and David L. Michel, as)
Guardian Ad Litem for Rebecca)
Patricia Brown,)

Petitioners)

Vs.)

Shirley Haile-Howard, as Personal)
Representative of the Estate of Mary)
P. Smith and as Personal)
Representative of the Estate of)
Lucinda Pringle, Maezelle Mitchell)
Jefferson, as Personal Representative)
of the Estate of Annabelle Thornton,)
Shirrese B. Brockington, as Special)
Administrator of the Estate of)
Janine Gourdine, Arthur Small, as)
Personal Representative of the Estate)
of Emma Smalls, and any unknown)
persons or entities claiming any)
interest in the Estate of Mary P.)
Thornton, Janine Gourdine and)
Emma Smalls,)

Respondents.)

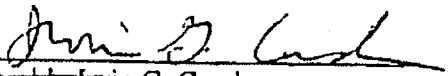
ORDER

On November 9, 2012, a Final Hearing was held on the Estate of Lucinda Pringle. Present at the Hearing were attorneys Stephen M. Slotchiver and Jonathan Altman representing the Petitioners, Charles Goldberg and Edward P. Guerard, Jr. representing Respondents Estate of Emma Smalls, Estate of Annabelle Thornton, and the Estate of Mary Smith, and Shirrese B. Brockington, in her capacity as Special Administrator of the Estate of Janine Gourdine.

After arguments presented by counsel, this Court hereby finds that based on the South Carolina Court of Appeals' decision issued on August 9, 2011, that this Court hereby accepts for Probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988, Petitioners shall submit a Form 300 Application to open the Estate (either formally or informally) with this Court on or before ~~November 30, 2012~~.

Apr. 15, 2013. *(Signature)*

IT IS HEREBY SO ORDERED.


The Honorable Irvin G. Condon
Judge of Probate

Charleston, South Carolina

March 24, 2012
2013 



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NUMBER: 1999-ES-10-689-2

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2008-CP-10-006213

Evelina Brown Moses, Thomas P.)
Brown, Jr., and David L. Michel, as)
Guardian Ad Litem for Rebecca)
Patricia Brown,)

Petitioners,)

vs.)

Shirley Haile-Howard, as Personal)
Representative of the Estate of Mary)
P. Smith and as Personal)
Representative of the Estate of)
Lucinda Pringle, Maezell Mitchell)
Jefferson, as Personal Representative)
of the Estate of Annabelle Thornton,)
Shirrese B. Brockington, as Special)
Administrator of the Estate of)
Janine Gourdine, Arthur Smalls as)
Personal Representative of the Estate)
of Emma Smalls, and any unknown)
persons or entities claiming any)
interest in the Estates of Mary P.)
Smith, Lucinda Pringle, Annabelle)
Thornton, Janine Gourdine and)
Emma Smalls,)

Respondents.)

**PETITIONERS' MEMORANDUM
FOR FINAL HEARING**

INTRODUCTION

Petitioners respectfully submit this memorandum and Petitioners' Final Record for the Probate Court's (hereinafter "Court") consideration. Petitioners' Final Record includes the Record on Appeal filed with the Court of Appeals with two (2) additions; the Court of Appeals' Order filed August 9, 2011 and the transcript and exhibits from the

recent deposition of Respondent Arthur Smalls, who serves as Personal Representative of the estate of his mother, Emma Smalls.

PROCEDURAL HISTORY

A. Probate Court

On April 18, 2008, this Court heard lengthy arguments as to the matters at issue. On October 20, 2009, it issued an Order containing the following factual findings:

1. In October/November of 1989, the parties acknowledged the awareness of at least a copy of Decedent's will within several days after her death.
2. Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings Fire & Casualty Insurance Company with reference to damages which resulted to the house in which she resided in on Decedent's property.
3. As a result of the claim, the insurance company issued a check naming as payees, the Petitioners and Emma Smalls as "executors of the estate" of the Decedent on January 15, 1990.
4. The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in Decedent's will.
5. Ms. Smalls used the monies received from this check to repair the home on Decedent's property in which she resided.

The Court issued an Order finding that Petitioners had shown good cause for the reopening of Decedent's estate but "this court, until a South Carolina appellate court finds otherwise, reluctantly follows other UPC states in holding that Section 3-108 is an

ultimate bar on later offered, even if fraudulently withheld, wills.¹” Petitioners appealed this Order.

B. Court of Appeals

On August 9, 2011, The Court of Appeals found that S.C. Code Ann. § 62-3-108 does not bar the admission of Decedent’s will and remanded the case for further proceedings consistent with its opinion. The Court of Appeals also affirmed the Court’s unappealed finding of good cause to reopen Decedent’s estate.

RELIEF REQUIRED BY COURT OF APPEALS

Petitioners respectfully request that the Court issue an Order consistent with the opinion of the Court of Appeals which includes the following:

(1) The acceptance of Decedent’s Last Will and Testament dated July 30, 1988, as her Last Will and Testament;

(2) The appointment of Thomas P. Brown, Jr. and Evelina Brown Moses as Personal Representatives of the Estate of Lucinda Pringle;

(3) Directing the Personal Representatives to distribute the assets of Decedent’s estate in accordance with her Last Will and Testament;

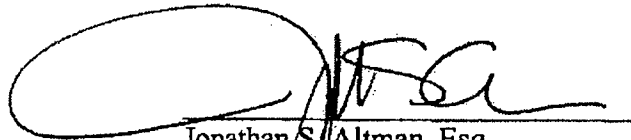
(4) Voiding ab initio the Deed of Distribution issued regarding the Decedent’s interest in 2517 Old Georgetown Road, Mt. Pleasant, SC (TMS #578-00-00-026) by the prior Personal Representative of the Estate of Lucinda Pringle and recorded in the Charleston County RMC Office on April 25, 2001 in Book U369 at Page 558; and

¹ Case law in other UPC jurisdictions could support a different conclusion. *Accord Long v. Todd*, 252 S.W. 327 (Tex.Civ.App. 1923); *Armstrong v. Carter*, 291 S.W. 626 (Tex.Civ.App. 1927). *See Fuller v. Qualls*, 4 So.2d 418 (Ala. 1941)(holding that the statute of limitations was tolled upon a finding of fraudulent concealment); *See also Second Nat’l. Bank & Trust Co. First Sec. Nat. Bank & Trust Co.*, 398 S.W.2d 50 (Ky. 1965)(holding that affirmative fraud would toll the statute of limitations for probate of wills). *But see State ex rel. Bier v. Bigger*, 178 S.W.2d 347 (Mo. 1944)(holding that statute not tolled because of fraudulent concealment). *See generally* L.S. Groff, *What circumstances excuse failure to submit will for probate within time limit set by statute*, 17 A.L.R. 3d 1361 (1968).

(5) Any other relief that the Court deems necessary to comply with the Order of the Court of Appeals.

Respectfully submitted,

Date: November 9, 2012



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Attorneys for the Petitioners

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

2013-CP-10-2007

**EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,**

Petitioners

VS

**NOTICE OF INTENT TO
APPEAL TO THE CIRCUIT
COURT UNDER SECTION
62-1-308 OF THE SOUTH
CAROLINA CODE**

**SHIRLEY HAILE-HOWARD AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF MARY P. SMITH,
AND AS Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
AS PERSONAL REPRESENTATIVE of
the ESTATE OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the ESTATE
JANINE GOURDINE, ET AL.**

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____**

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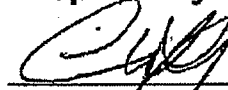
Respondents.

**TO: JONATHAN ALTMAN AND STEPHEN M. SLOTCHIVER, ATTORNEYS
FOR THE PETITIONERS.**

PLEASE TAKE NOTICE that the Respondents intend to appeal the Order of the Probate Court for Charleston County, dated March 24, 2013, and received by counsel on April 1, 2013, pursuant to Section 62-1-308, South Carolina Code of Laws, as amended.

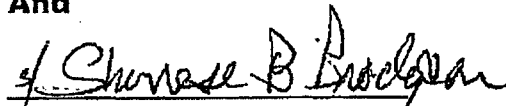
FURTHER NOTICE is given you that the Respondents have filed with the Probate Court a Motion to Reconsider under Rule 59 (e), South Carolina Rules, as amended.

Respectfully submitted,



**Charles S. Goldberg and
Edward P. Guerard, Jr.**

And



**Shirrese B. Brockington
Attorneys for the Respondents**

**April 5, 2013
Charleston, SC**

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

NOTICE OF MOTION AND
MOTION TO AMEND OR
ALTER THE ORDER OF
THE PROBATE COURT
UNDER RULE 59(e) SCRCP

SHIRLEY HAILE-HOWARD AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF MARY P. SMITH,
AND AS Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
AS PERSONAL REPRESENTATIVE of
the ESTATE OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the ESTATE
JANINE GOURDINE, ET AL.

Respondents.

TO: JONATHAN ALTMAN AND STEPHEN M. SLOCHIVER, ATTORNEYS
FOR THE PETITIONERS.

PLEASE TAKE NOTICE that the Respondents will move before
The Honorable Irvin G. Condon, Judge of the Probate Court for

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PROBATE COURT
CHARLESTON COUP

Charleston County, pursuant to Rule 59(e) of the South Carolina Rules for Civil Procedure, as amended, at a date and time scheduled by the Court to alter, amend or reconsider the Court's Order dated March 24, 2013, and received by Respondent's attorneys on April 1, 2013, on the following grounds.

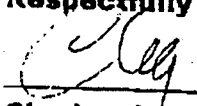
(a) The Order of the Probate Court did not consider or address Respondents' argument that the failure to file the Last Will and Testament of Lucinda Pringle within ten (10) years from the date of her death, deprives the Probate Court of subject matter jurisdiction under the statute of repose set forth in Section 62-1-108, as amended, whether there was fraud or not.

(b) The Order of the Probate Court did not consider or address Respondents' argument that because Petitioner, Thomas Brown, was in possession of a copy of the Last Will and Testament of Lucinda Pringle several years before the ten (10) year time limit but did not file it therefore there could be no fraud in the alleged "hidden existence" of the Will; further, the Court did not consider the fact that after the ten (10) year statute aforementioned, the Petitioners executed water and sewer easements in the subject real estate

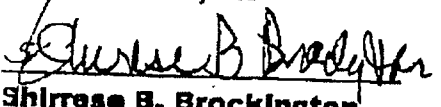
acknowledging their intestate shares by the amounts they and
Respondents received;

(c) The Order of the Probate Court overlooked the need to conduct
a hearing on the issue of extrinsic fraud before allowing the
acceptance of the Last Will and Testament of Lucinda Pringle.

Respectfully submitted,



Charles S. Goldberg and
E. P. Guerard, Jr.



Shirrese B. Brockington
Attorneys for the Respondents

Charleston, SC
April 5, 2013.

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689

EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
As Guardian ad Litem for REBECCA
PATRICIA BROWN,

Petitioners

VS

NOTICE OF MOTION,
MOTION TO DISMISS AND
BRIEF IN SUPPORT OF MOTION

ESTATES OF LUCINDA PRINGLE,
EMMA SMALLS, MARY P. SMITH,
ESTATE OF ANNABELLE THORNTON,
ESTATE OF JANINE GOURDINE, ODESSA
GRADDICK, ARTHUR EUGENE GRADDICK,
JR., VIOLA PRINGLE, MAEZELL MITCHELL,
CEPHUS THORNTON, and any other
Persons and entities claiming any
Interest in the Estate of Lucinda
Pringle,

Respondents.

NOTICE IS HEREBY GIVEN that the Respondents will move before The Honorable Irvin J. Condon, Judge of the Charleston County Probate Court, that this matter be dismissed pursuant to the S.C. Rules of Civil Procedure, Rule 12(b)(1) lack of jurisdiction over the subject matter and/or (6) failure to state facts sufficient to constitute a cause of action based on the following grounds as briefed:

1. To date the Petitioners have never filed for either a Petition for Informal Testacy or a Petition for Formal Testacy required under Section 62-3-401 and, -402 and subject to the Statute of Repose, Section 62-3-108, Probate Court Code of Laws of S.C. (See Numbered Paragraph 3 herein)

No such petitions have been filed to date. In fact none can be filed because of the lack of subject matter jurisdiction of the Probate Court to entertain the

untimely filings. The will is not before this Court and has not and cannot jurisdictionally be presented to this Court.

The Probate Court found that Section 62-3-108 of the Probate Court was applicable and disallowed the probate of the will. The Court of Common Pleas sustained the order of the Probate Court in upholding the Statute of Repose (Section 62-3-108). On appeal to the Court of Appeals, the case was remanded to the Probate Court by Order of August 9, 2011.

The ruling of the Probate Court is jurisdictional as to subject matter. Because of the failure of the Petitioners to file Petitions for Informal Testacy and Court no longer had the ability to admit the will. Without the will, there was no basis to entertain the Petition for Improper Distribution. The Probate Court no longer had the ability to grant the requested relief. The Probate Court further ruled "that it is incontestable that the decedent left no will and that the decedent's estate passed by intestate succession...and ordered...that the Motion to Vacate and the Petition for Improper Distribution are dismissed." (Order of the Probate Court dated October 20, 2008.)

Since no will is or has been timely before the court, the attempt to admit the "will" was barred, and the Probate Court ruled that "it is incontestable that the decedent left no will and the decedent's estate passed by intestate succession" (emphasis added), Order of Judge Condon, Charleston County Probate Court, dated Oct. 20, 2008, pg. 13). The will does not legally exist and has not since October 11, 1999 (10 years after the death of Mrs. Pringle).

Therefore the "appellate court cannot acquire jurisdiction of cause if court from which appeal was taken lacked jurisdiction." Matter of Howard v. Mutz, 315 S.C. 356, 434 S.E.2d 254 (1993). Accordingly, the matters raised by the Court of Appeals are of no effect because of lack of subject matter jurisdiction.

The will has never been tendered to the Probate Court through the filing of a Petition for Informal Testacy nor a Petition for Formal Testacy. Accordingly, the remand of the Court of Appeals was of no consequence since there was no will before the court as set forth above in Matter of Howard.

As a matter of law, since there is no will before the Probate Court nor can there be, the land in question passed through Intestacy as evidenced by the Deed of Distribution in 2001 and the order of this Court.

2. The Petitioner's filed their original Petition for Improper Distribution in an untimely manner. The Respondents' position is that the Deed of Distribution in the Estate of Lucinda Pringle was recorded in Deed Bk U-369 at page 558 on April 25, 2001, and properly indexed in the RMC Office for Charleston County. Section 30-9-40, Code of Laws of S.C., provide that a properly indexed and recorded Deed of Distribution puts the world on notice of the deed and its terms.

The Petition for Improper Distribution was filed with the Probate Court for Charleston County on October 20, 2005, and basically alleged extrinsic fraud by the Respondents. Thomas Brown's testimony at his deposition is that he was shown "the Will" at Mrs. Pringle's home when he drove down for her funeral in October of 1989, and he received a copy of her will "about three years after the death." (Deposition, page 14, line 11). Mr. Brown testified that he showed the copy of the will to his company attorney who advised him to file the will as soon as possible. Mr. Brown tendered the will to the Probate Court in Charleston several times. He testified that the Probate Court would not accept the copy for probate. He never sought advice from a South Carolina attorney, and the Petitioners took no further action until they retained local counsel in 2005.

Section 62-3-402(3) Formal testacy or appointment proceedings...provides:

If the original will is neither in the possession of the court nor accompanies the petition..., the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

This was simply never done. The Petition for Improper Distribution is simply an attempt to end-run the failure to file timely the copy of the will and Petitions for Informal and Formal Probate. The filing of the Improper Distribution Petition should have been filed within 1 year after discovery of the alleged extrinsic fraud Section 60(b)(3), but the Probate Court lacked jurisdiction at the time of filing in 2005. The lack of subject matter jurisdiction may be raised at any time after

October 11, 1999. The relevant action and inaction of the Petitioners preclude any cause of action for improper distribution as set forth herein.

3. However, the action for Improper Distribution and all of the issues of the defenses of the statutes of limitations, waiver, unclean hands, promissory and judicial estoppel all merge into the applicable statute of repose as set forth in the Probate Code Section 62-3-108 which provides that if a will is not filed with the Probate Court by both Informal and Formal petition within 10 years of the date of death of decedent, the assets of the estate shall pass by intestacy.

Accordingly, since her will has never been filed with the Probate Court by Informal and Formal Petition, this Court ruled:

If no informal probate and no formal testacy proceedings are commenced within ten years after the decedent's death..., it is incontestable that the decedent left no will and that the decedent's estate passed by intestate succession....(emphasis added)

(See Order of Judge Condon, dated October 20, 2008, at page 12. (Copy Attached.)

This statute states the subject matter jurisdiction of the Probate Court. It is absolute and not subject to any and all defenses of whatever kind or nature. Fraud is not a defense as held by the Probate Court herein. The statute is "incontestable" – absolute.

Mrs. Pringle passed away October 11, 1989, and as of the date of this motion, no will has been presented to the Probate Court for Charleston County by Informal and Formal Petitions for probate.

Pursuant to Probate Code Section 62-3-108, the subject matter jurisdiction of the Probate Court for probating Mrs. Pringle's will expired on October 11, 1999. As a matter of law, the Pringle estate became an intestate estate which has been duly probated and Deed of Distribution executed and recorded in the RMC Office for Charleston County.

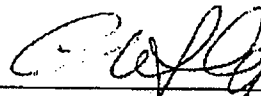
Accordingly, the Motion to Vacate and the Summons and Petition for Recovery of Improper Distribution of the assets of Lucinda Pringle filed October 20, 2005 should

be dismissed with prejudice for lack of subject matter jurisdiction and for such other and further relief as this Court may deem just and proper.

Respectfully submitted,



Shirrese Brown Brockington
764 St. Andrews Blvd.
Charleston, SC 29407
(843)571-5000



Charles S. Goldberg
61 Broad Street
Charleston, SC 29402
(843)720-2800



Edward P. Guérard, Jr.
1106 Port Harbor Court
Mt. Pleasant, SC 29464
(843)881-7869

Attorneys for Respondents

February ^{20th} 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NUMBER: 1999-ES-10-689-2

FILED
15 MAR 18 AM 9:43

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2008-CP-10-006413
CHARLESTON COUNTY

Evelina Brown Moses, Thomas P.)
Brown, Jr., and David L. Michel, as)
Guardian Ad Litem for Rebecca)
Patricia Brown,)

Petitioners,)

vs.)

Shirley Haile-Howard, as Personal)
Representative of the Estate of Mary)
P. Smith and as Personal)
Representative of the Estate of)
Lucinda Pringle, Maezell Mitchell)
Jefferson, as Personal Representative)
of the Estate of Annabelle Thornton,)
Shirrese B. Brockington, as Special)
Administrator of the Estate of)
Janine Gourdine, Arthur Smalls as)
Personal Representative of the Estate)
of Emma Smalls, and any unknown)
persons or entities claiming any)
interest in the Estates of Mary P.)
Smith, Lucinda Pringle, Annabelle)
Thornton, Janine Gourdine and)
Emma Smalls,)

Respondents.)

**PETITIONERS' MEMORANDUM IN
OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS**

On August 9, 2011, the Court of Appeals issued Opinion No. 2011-UP-386, attached hereto as Exhibit A, reversing the Order dismissing Petitioners' Petition and remanding this case to the Probate Court for further proceedings. The Court of Appeals found that the "*law of the case is that Appellants have demonstrated good cause to re-open the estate and the administration of the estate was timely commenced pursuant to Section 62-3-108.*" Since the

issuance of the Court of Appeals Opinion, Respondents have filed multiple motions to dismiss, a motion for reconsideration, and an appeal inconsistent with the Court of Appeals' Opinion.

Respondents' motions/appeals include the following:

- A. March 13, 2012 - Motion to Dismiss (attached hereto as Exhibit B) reasserting the arguments addressed by the Court of Appeals. By Order dated March 24, 2013, this motion was denied (attached hereto as Exhibit C);
- B. April 5, 2013 - Motion to Amend/Alter Order of the Probate Court under Rule 59(e) (attached hereto as Exhibit D). The Probate Court denied Respondents' Motion to Amend or Alter by Order dated December 20, 2013 (attached hereto as Exhibit E);
- C. April 5, 2013 - Notice of Intent to Appeal (attached hereto as Exhibit F);
- D. March 10, 2014 - Motion to Dismiss Appeal (attached hereto as Exhibit G). On March 14, 2014, the Court of Appeals issued an Order dismissing Respondents' appeal (attached hereto as Exhibit H); and
- E. February 20, 2015 - Motion to Dismiss and Brief in Support of Motion (attached hereto as Exhibit I).

Petitioners have endeavored to probate Decedent's Will without success since the remand of this case. Respondents' responses to Petitioners' efforts are set forth in the emails attached hereto as Exhibit J and include the following:

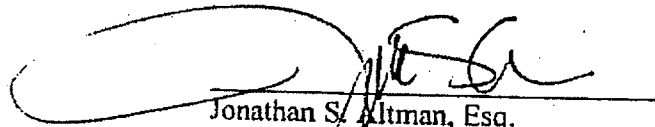
- A. March 14, 2012 - Respondents' counsel advised that Respondents would not consent to an Order appointing Petitioners as Personal Representatives of Decedent's estate;
- B. March 16, 2012 - Respondents' counsel advised that Respondents were filing a Motion to Dismiss regarding lack of subject matter jurisdiction;
- C. March 28, 2013 - Respondents' counsel advised that Respondents were seeking a direct appeal to the Supreme Court (which Petitioners consented to);
- D. April 1, 2014 - In response to Petitioners' service being unacceptable to Respondents, a discussion regarding appointment of a Special Administrator occurred;
- E. April 16, 2014 - Respondents' counsel suggested Angus Lawton to serve as Special Administrator to which Petitioners agreed;
- F. April 17, 2014 - Respondents' counsel advised that Mr. Lawton may now be unacceptable;

- G. October 16, 2014 – Petitioners' counsel spoke with Angus Lawton who agreed to serve as Special Administrator;
- H. On November 5, 2014, Respondents' counsel advised that Respondents would not be contributing to the expense of associated with a Special Administrator; and
- I. December 3, 2014 – Respondents' counsel requested that Petitioners delay filing for settlement negotiations to occur. These negotiations failed.

In their latest motion to dismiss, Respondents again raise issues addressed by the Court of Appeals and previously denied by this Court. Petitioners have no objection to the Court's appointment of a Special Administrator in this matter to insure compliance with the Court of Appeals' Order.

Respectfully submitted,

Date: March 18, 2015



Jonathan S. Altman, Esq.
Derfner & Altman, LLC
575 King Street, Suite B
Charleston, SC 29403
843-723-9804

Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
843-577-6531

Attorneys for the Petitioners

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT
CASE NUMBER: 1999-ES-10-689-2

IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2008-CP-10-006213

Evelina Brown Moses, Thomas P.
Brown, Jr., and David L. Michel, as
Guardian Ad Litem for Rebecca
Patricia Brown,

Petitioners,

vs.

Shirley Haile-Howard, as Personal
Representative of the Estate of Mary
P. Smith and as Personal
Representative of the Estate of
Lucinda Pringle, Maezell Mitchell
Jefferson, as Personal Representative
of the Estate of Annabelle Thornton,
Shirrese B. Brockington, as Special
Administrator of the Estate of
Janine Gourdine, Arthur Smalls as
Personal Representative of the Estate
of Emma Smalls, and any unknown
persons or entities claiming any
interest in the Estates of Mary P.
Smith, Lucinda Pringle, Annabelle
Thornton, Janine Gourdine and
Emma Smalls,

Respondents.

ORDER

Hearing Date:

March 18, 2015

Presiding Judge:

Irvin G. Condon

Petitioners' Attorneys:

Stephen M. Slotchiver, Esq. and Jonathan S. Altman, Esq.

Respondents' Attorneys:

Charles S. Goldberg, Esq., Edward P. Guerard, Jr., Esq.,
and Shirrese B. Brockington, Esq., in her capacity as
Special Administrator of the Estate of Janine Gourdine

Court Reporter:

Trish Rarick, RSA

THIS MATTER comes before the Court upon Respondents' Motion to Dismiss filed on
February 20, 2015. Present at the hearing were attorneys Stephen M. Slotchiver, Esq. and Jonathan S.

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Altman, Esq. representing the Petitioners, as well as attorneys Charles S. Goldberg, Esq. and Edward P. Guerard, Jr., Esq., who were representing the Respondents. Also present was Shirrese B. Brockington, Esq., in her capacity as Special Administrator of the Estate of Janine Gourdine.

Respondents argue that the matters raised by the South Carolina Court of Appeals are of no effect because this Court lacks subject matter jurisdiction. Respondents argue that because the Petitioners have never tendered a Last Will & Testament of the Decedent, Lucinda Pringle, to this Court through filing of a Petition for Informal or Formal Testacy, this Court never had jurisdiction over the matter.

This Court finds that, by Order dated March 24, 2013, this Court has previously accepted for probate the Last Will & Testament of Lucinda Pringle dated July 30, 1988.

After hearing arguments of counsel, this Court finds that based on the South Carolina Court of Appeals' decision in this matter on August 9, 2011, Respondents' motion is hereby **DENIED**.

Based on the foregoing, it is now, hereby:

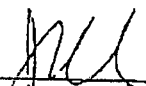
ORDERED, ADJUDGED, AND DECREED that Respondents' Motion to Dismiss is hereby **DENIED**; it is further

ORDERED, ADJUDGED, AND DECREED that the appointment of Shirley Haile-Howard as Special Administrator of the Estate of Lucinda Pringle is hereby terminated; it is further

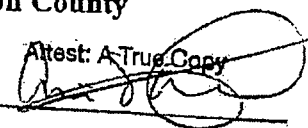
ORDERED, ADJUDGED, AND DECREED that Angus M. Lawton, Esq. is hereby appointed Special Administrator of the Estate of Lucinda Pringle to take all necessary steps to complete administration of the Estate.

IT IS SO ORDERED.

This 25th day of June, 2015
Charleston, South Carolina.



IRVING G. CONDON
Judge of Probate
Charleston County

Attest: A True Copy


Clerk Probate Court
Charleston County, South Carolina

Page 2 of 2

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF CHARLESTON

CASE NO. 1999-ES-10-689-2

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-10-006213

**EVELINA BROWN MOSES, THOMAS
P. BROWN, JR., AND DAVID L. MICHEL,
as Guardian ad Litem for REBECCA
PATRICIA BROWN,**

Petitioners

VS

**NOTICE OF MOTION AND
MOTION TO AMEND OR
ALTER THE ORDER OF
THE PROBATE COURT
UNDER RULE 59(e) SCRCP**

**SHIRLEY HAILE-HOWARD AS
PERSONAL REPRESENTATIVE
OF THE ESTATE OF MARY P. SMITH,
AND AS Personal Representative of the
ESTATE OF LUCINDA PRINGLE,
MAEZELL MITCHELL JEFFERSON,
AS PERSONAL REPRESENTATIVE of
the ESTATE OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as
Special Administrator of the ESTATE
JANINE GOURDINE, ET AL.**

Respondents.

**TO: JONATHAN ALTMAN AND STEPHEN M. SLOCHIVER, ATTORNEYS
FOR THE PETITIONERS.**

**PLEASE TAKE NOTICE that the Respondents will move before
The Honorable Irvin G. Condon, Judge of the Probate Court for
Charleston County, pursuant to Rule 59(e) of the South Carolina Rules
for Civil Procedure, as amended, at a date and time scheduled by the
Court to alter, amend or reconsider the Court's Order dated June 28,
2015, and received by Respondents's attorneys on July 7, 2015,
on the following grounds.**

**(a) The Order of the Probate Court did not consider or
address that portion of the March 24, 2013 Order which required,
and is required statutorily, that "Petitioners shall submit a Form 300
Application to open the Estate (either formally or informally) with this
Court on or before April 15, 2013." Petitioners did not submit Form
300, and as of this date, have still not filed the required form to allow
the Court to accept a Last Will and Testament. Therefore, the Court
lacks subject matter jurisdiction.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE MATTER OF:
ESTATE OF LUCINDA PRINGLE
(Decedent)

IN THE PROBATE COURT

CASE NUMBER: 1999-ES-10-689

***COMPLETE THIS SECTION ONLY IF FILING PETITION
FOR FORMAL TESTACY AND/OR FORMAL APPOINTMENT**

Petitioner(s)
vs.
Respondent(s)

APPLICATION FOR INFORMAL

(check any that apply)

- ☒ PROBATE OF WILL
☒ APPOINTMENT

***PETITION FOR FORMAL**

- ☐ TESTACY
☐ APPOINTMENT

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. If this is a formal filing, please explain below or attach pleadings pursuant to *SC Rules of Civil Procedure*.

***NOTE: IF THIS IS A FORMAL PROCEEDING, IN ADDITION TO THIS FORM PETITION, YOU MUST ALSO
FILE A SUMMONS (FORM SCCA 401PC) AND PAY THE STATUTORY FILING FEE OF \$150.00.
A HEARING IN THE PROBATE COURT ON THE PETITION MAY BE REQUIRED.**

If not a formal filing, please indicate N/A. N/A

2. Decedent Information:

Full Legal Name
(including all known names): Lucinda Pringle
Date of Birth: May 5, 1899
Date of Death: October 11, 1989
Age at date of death: 90

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

- ☒ Decedent was domiciled in this County at date of death:
Address: _____; County: Charleston; State: South Carolina.
☐ Decedent was not domiciled in South Carolina, but property of Decedent was located in this County at date of death:
Address: _____; County: _____; State: South Carolina
☐ Decedent has a right to take legal action in this County because: _____

If the above address is the address of a nursing home, a prison, or other residential facility, please give the last address
of the Decedent prior to entering the facility: _____

4(a). Names and addresses of beneficiaries (devisees) named in the Will.

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Thomas P. Brown, Jr.	Adult	131 Ponderosa Avenue, Ladson, SC 29456	Grandson
Estate of Patricia Brown	Deceased	c/o David L. Michel 15 State Street Charleston, SC 29401	Granddaughter
Evelina Brown Moses	Adult	105 Eucalyptus Court, Summerville, SC 29483	Granddaughter

(use additional sheet if necessary)

4(b). Names and addresses of intestate heirs who are not devisees (persons who inherit if Decedent left no Will).

Full Legal Name (including all known names)	Year of Birth	Full Address	Relationship to Decedent
Estate of Emma Smalls		c/o Arthur Smalls, Personal Representative c/o Charles Goldberg 61 Broad Street Charleston, SC 29401	Daughter
Estate of Janine Gourdine		c/o Shirrese Brockington, Special Administrator 764 St. Andrews Blvd. Charleston, SC 29407	Daughter
Estate of Annabelle Thornton		c/o Maezell Michael Jefferson, Personal Representative c/o Charles Goldberg 61 Broad Street Charleston, SC 29401	Daughter
Estate of Mary Smith		c/o Shirley Haile-Howard, Personal Representative c/o Charles Goldberg 61 Broad Street Charleston, SC 29401	Daughter

(use additional sheet if necessary)

4(c) Did all of the above persons survive one hundred and twenty (120) hours since the death of Decedent?

☒ YES ☐ NO If no, please explain on page 3.

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/her 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 non-private State of 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 by the Court 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 (FORM 111ES) 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 (10) 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 probate personal property having an approximate value of \$TBD and/or probate real estate having an approximate value of \$TBD. (Note: A complete Inventory of probate assets with fair market values to be filed after Personal Representative is appointed.)

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 exemplified (authenticated) copy of a Will probated in another jurisdiction is attached.
☐ An exemplified (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. The execution date of the Will was: July 30, 1988
Codicil(s): _____

3. Does Decedent's Will refer to a Memorandum (list disposing of tangible personal property)?

☒ NO ☐ YES If yes, attach hereto.

4. To the best of your knowledge, do you believe the Will listed above is the Decedent's validly executed last Will?

☒ YES ☐ NO If no, please explain on page 3.

5. To the best of your knowledge, is any witness to the will an "Interested witness" (devisee, spouse of a devisee, or issue of a devisee)?

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

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

The Estate of Lucinda Pringle was initially opened in 1989 as an Intestate estate as a result of the Petitioner concealing the Decedent's original Last Will and Testament of the Decedent. Shortly thereafter, the initial Personal Representative passed away wherein there were subsequent Personal Representatives appointed that have also since died. In accordance with the South Carolina Court of Appeals' Order, the Probate Court was directed to accept the Decedent's Will for probate and appoint a Personal Representative to administer the Estate to address all outstanding issues relative to the same.

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

1. If the Applicant/Petitioner is not the proposed Personal Representative(s), list name and address of the person you are proposing be appointed as the fiduciary:

Angus M. Lawton
496 Bramson Court, Suite 100
Mt. Pleasant, SC 29464

2. Priority for appointment of the proposed Personal Representative (whether applicant or nominee) 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 (45) days after death must have passed) or nominee of creditor; written statement of claim, FORM 371ES, is attached
- ☒ other (describe): appointed by Court Order

3. List below the names of any other persons, if any, having an equal or higher priority of appointment than the proposed Personal Representative:
The Petitioner was appointed by Court Order.

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
19 day of July, 2015. Aug. 2015

Ronald R. Samini
Notary Public for South Carolina
My Commission Expires: 5-13-19

Signature of
Applicant/Petitioner: Evelina Brown Moses
Print Full Name: Evelina Brown Moses
Address: _____

Telephone (work): _____
(Home): _____
(Cell): _____
Email: _____

Relationship to Decedent/Estate: _____

ORDER OF INFORMAL PROBATE / Appointment

IT IS HEREBY ORDERED that the above application for probate of a Will executed

be Informally ☒ GRANTED ☐ DENIED.

See order dated 6/28/15
Excluded this 28th day of June 2015.

John G. Clark
Probate Court Judge

☒ For formal probate of Will, see separate order executed _____

6/28/15

Antonia A. T. Brown
Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

ORDER OF INFORMAL APPOINTMENT

IT IS HEREBY ORDERED that the above Application for Appointment be granted upon the filing of an appropriate bond, if applicable, and upon the signing of the Qualification and Statement of Acceptance of appointment.

- ☐ Fiduciary Bond in the amount of \$ _____
☐ Bond waived by Will or Personal Representative nominated by Will
☐ Bond not required as Personal Representative is sole heir or sole devisee
☐ Bond not required as Personal Representative is state agency, bank, or trust company
☐ Bond waivers filed
☐ See order dated _____
☐ Other: _____

Notice to Creditors

- ☐ Required
☐ Not Required

Executed this _____ day of _____, 20____

_____, Probate Court Judge

☒ For formal appointment of Personal Representative, see separate order executed 6/28/15 

QUALIFICATION AND STATEMENT OF ACCEPTANCE

I accept this appointment and agree to perform the duties and discharge the trust of the office of Special Administrator of this estate. I further submit personally to the jurisdiction of the Court in any proceeding relating to the Estate.

Signature: 
Print Full Name: Angus M. Lawton
Address: 486 Bramson Court Suite 100
Mt Pleasant, South Carolina 29484
Telephone (Work): (843) 881-9901
(Home): _____
(Cell): _____
Email: _____

Signature: _____
Print Full Name: _____
Address: _____
Telephone (Work): _____
(Home): _____
(Cell): _____
Email: _____

Attorney: _____
Address: _____
Telephone: _____
Email: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE PROBATE COURT

Civil Action No. 1999-ES-10489

FILED
16 FEB -9 AM 8:36
PROBATE COURT
CHARLESTON COUNTY

RE: ESTATE OF LUCINDA PRINGLE,)
)
MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondents.)

PETITION FOR FORMAL TESTACY
AND FOR HEARING TO DETERMINE
ISSUES RELATED TO WILL RAISED
BY COURT OF APPEALS

COMES NOW, Petitioners, by and through their undersigned attorney and would respectfully show unto the Court as follows:

1. Evelina Brown Moses filed a Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015.

2. Counsel for the Petitioners of this Petition retired and moved to be relieved as counsel in October 2015 and were relieved as counsel after Evelina Brown Moses filed her Petition September 4, 2015. In doing so, the Court ordered Petitioners of this Petition to obtain new counsel.
3. T. Jeff Goodwyn, Jr. was retained by Petitioners and filed his notice of appearance January 16, 2015.
4. After reviewing the extensive case materials and consulting with prior counsel, T. Jeff Goodwyn, Jr., on behalf of Petitioners hereby responds to Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment.
5. Petitioners are the intestate heirs of the decedent that are not listed as beneficiaries under the will submitted for probate by Respondents.
6. Lucinda Pringle (the "Decedent"), died October 11, 1989 (age 90) and was domiciled in Charleston County at the time of her death.
7. Decedent's heirs and relationships to the Decedent are as follows:
 - Thomas P. Brown, Jr., 131 Ponderosa Avenue, Ladson, SC 29456;
 - Estate of Patricia Brown, c/o David L. Michel, 15 State Street, Charleston, SC 29401;
 - Evelina Brown Moses, 105 Eucalyptus Court, Summerville, SC 29483;
 - Estate of Emma Smalls, c/o Arthur Smalls, Personal Representative, c/o Charles Goldberg, Charleston, SC 29401;
 - Estate of Janine Gourdine, c/o Shirrese Brockington, Special Administrator, 764 St. Andrews Blvd., Charleston, SC 29407;
 - Estate of Annabelle Thornton, c/o Maszell Michael Jefferson, Personal Representative, c/o Charles Goldberg, 61 Broad Street, Charleston, SC 29401;
 - Estate of Mary Smith, c/o Shirley Haile-Howard, Personal Representative, c/o Charles Goldberg, 61 Broad Street, Charleston, SC 29401.
8. Angus M. Lawton was appointed as Personal Representative by order dated 6/28/15. Petitioners are not seeking the appointment of a different Personal Representative.
9. Petitioners are aware of prior Demands for Notice that have been previously filed in this case.

10. Petitioners contend that the time for probate of the will that is in the Court's possession and submitted with Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015 has expired as it has been more than 10 years (26 years) since the death of the Decedent and no exception under §62-3-108 is applicable.

DEMAND FOR FORMAL TESTACY AND FOR FINDING OF INTESTACY

11. Petitioners, pursuant to §62-3-401 and §62-3-402(b), hereby make a demand for Formal Testacy, a finding by the Court that the will of Lucinda Pringle attached to Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015 is invalid, that this will is not able to be probated, that the Decedent left no will or no will able to be probated, and a finding that the Decedent died intestate.
12. Petitioners would show that the will that is being requested to be accepted by the court has not been presented to the court prior to the filing of the Petition to Probate Will dated September 4, 2015.
13. Petitioners are not seeking administration under Part 5 at this time, but reserved the right to seek Part 5 administration.

DEMAND FOR HEARING

14. Petitioners demand a hearing to determine the validity of the will, whether the will can be probated in light of the fact that it is being offered for probate 26 years after the death of the decedent in violation of §62-3-108, to address all issues in the remand Order from the Court of Appeals filed August 9, 2011 and to address all other issues raised by Petitioners.

RESPONSES TO PETITION FOR INFORMAL PROBATE OF WILL

15. With respect to the first sentence of the explanations for questions in sections I and II listed on page 3 of Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015, Petitioners deny that the will was concealed from Respondents and show that Petitioners could not possibly have concealed the

will from Respondents since Respondents admittedly were in possession of the will within 3 years of the death of Decedent.

16. With respect to the third sentence of the explanations for questions in sections I and II listed on page 3 of Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015, Petitioners deny that the Court of Appeals Order directed the Probate Court to accept the Decedent's will for probate and assert that the Order only instructs the Probate Court that if the will is offered for probate, to investigate whether it is a valid will, whether §62-3-108 is applicable and if extrinsic fraud prevented Respondents from gaining possession of the will within the 10 year ultimate time limit to probate a will specified under §62-3-108.

ADDITIONAL DEFENSES

All allegations made in Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015 not specifically admitted herein are denied. Petitioners reserve all rights under S.C. Rule of Civil Procedure 12(b).

FOR A FIRST DEFENSE

17. The Court lacks jurisdiction over the subject matter of this litigation and should be dismissed pursuant to S.C. Rule of Civil Procedure 12(b)(1).

FOR A SECOND DEFENSE

18. The Plaintiff's Complaint is barred by the applicable Statute of Repose including §62-3-108.

FOR A THIRD DEFENSE

19. The Plaintiff's Complaint is barred by the applicable Statute of Limitations including §62-3-108

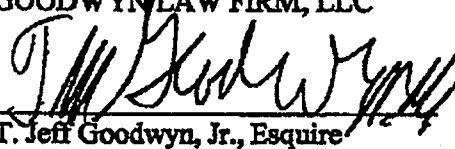
FOR A FOURTH DEFENSE

20. The Plaintiff's Complaint is barred by the applicable Statute of Limitations relating to the time to void the deed transfer of the Decedent's property in this case.

WHEREFORE, Petitioners pray that the Court proceed with the further administration of this Estate as a Formal Testacy, for a finding by the Court that the will of Lucinda Pringle attached to Evelina Brown Moses' Petition for Informal Probate of Will and for Appointment (Form #300ES) filed September 4, 2015 is invalid, that the will is not able to be probated, that the Decedent left no will or no will able to be probated, a finding that the Decedent died intestate, and to inquire into and hold the appropriate and necessary hearings to make these findings and to answer the questions raised by Petitioners and the Court of Appeals in its Remand Order filed August 9, 2011.

Respectfully Submitted,

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

(803) 251-4527 (f)

JGoodwyn@Goodwynlaw.com

ATTORNEY FOR PETITIONERS

Columbia, South Carolina
February 4, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE PROBATE COURT)

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 1999-ES-10-689)

MARY P. SMITH, Maczell Mitchell Jefferson,)
individually and as Personal Representative of the)
ESTATE OF ANNABELLE THORNTON,)
SHIRRESE B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON, ARTHUR)
GRADDICK, III, an imprisoned person,)
VENETRA WATSON, and any known or)
unknown persons or entities claiming any interest)
in the ESTATES OF LUCINDA PRINGLE,)
ODESSA GRADDICK, ARTHUR GRADDICK,)
Jr., ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal Representative)
of the Estate of Lucinda Pringle, EVELINA)
BROWN MOSES, THOMAS P. BROWN, JR.,)
and Unknown PR REBECCA PATRICIA)
BROWN,)

Respondents.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 18, 2016, copies of the foregoing filed Summons and Petition for Formal Testacy and for Hearing to Determine Issues Related to Will Raised by Court of Appeals along with a Proof of Delivery and Acceptance of Service were served on the following party(s) by placing a copy of the same via the United States mail, Regular Mail, Restricted Delivery, Certified Mail, Return Receipt Requested, post prepaid, at the address shown below:

VIA CERTIFIED REGISTERED MAIL

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517 Phone

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE PROBATE COURT

Civil Action No. 1999-ES-10-689

RE: ESTATE OF LUCINDA PRINGLE,

MARY P. SMITH, Maezell Mitchell Jefferson,
individually and as Personal Representative of the
ESTATE OF ANNABELLE THORNTON,
SHIRRESE B. BROCKINGTON, as Special
Administrator of the ESTATE OF JANINE
GOURDINE, EMMA SMALLS, VIOLA
PRINGLE, CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned person,
VENETRA WATSON, and any known or
unknown persons or entities claiming any interest
in the ESTATES OF LUCINDA PRINGLE,
ODESSA GRADDICK, ARTHUR GRADDICK,
Jr., ANNABELLE THORNTON and JANINE
GOURDINE,

Petitioners,

vs.

ANGUS M. LAWTON, Personal Representative
of the Estate of Lucinda Pringle, EVELINA
BROWN MOSES, THOMAS P. BROWN, JR.,
and Unknown PR REBECCA PATRICIA
BROWN,

Respondents.

ACCEPTANCE OF SERVICE

The undersigned hereby accepts service of the filed Summons, Petition for Formal Testacy and for Hearing to Determine Issues Related to Will Raised by Court of Appeals, and Proof of Delivery on behalf of the above-named Respondents, Evelina Brown Moses, Thomas P. Brown, Jr. and Unknown P.R. Rebecca Patricia Brown, in connection with the above captioned matter this ____ day of February, 2016.

Stephen M. Slotchiver
Slotchiver & Slotchiver, LLP
Attorney for Respondents Evelina Brown Moses, Thomas
P. Brown, Jr. and Unknown P.R. Rebecca Patricia Brown

) IN THE PROBATE COURT

) CASE NO. 1999-ES-10-689

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for

3. As to the allegations contained in Paragraph 3 of the Petition, Respondents crave reference to the Notice of Appearance which speaks for itself. Any allegations in Paragraph 3 that is inconsistent with the Notice of Appearance is denied, and strict proof is demanded thereof.

4. In response to the allegations contained in Paragraph 4 of the Petition, the allegations are either statements or conclusions of law, and the Respondents are not required to admit or deny the same.

5. In response to the allegations contained in Paragraph 5 of the Petition, Respondents admit that the Petitioners would be some of the intestate heirs to the Decedent, but denies that they would comprise all of the intestate heirs of the Decedent.

6. Respondents admit the allegations contained in Paragraph 6 of the Petition.

7. With reference to the allegations contained in Paragraph 7 of the Petition, Respondents admit that the listed individuals, and/or their respective Estates, would comprise the intestate heirs of the Decedent had the decedent died without a Will.

8. As to the allegations contained in Paragraph 8 of the Petition, Respondents crave reference to the Court's Order dated June 28 2015.

9. With reference to the allegations contained in Paragraph 9 of the Petition, the allegations are statements, and the Respondents are not required to admit or deny the same.

10. Respondents deny the allegations contained in Paragraph 10 of the Petition, and demand strict proof thereof.

11. Respondents deny the allegations contained in Paragraph 11 of the Petition, and demand strict proof thereof.

12. Respondents deny the allegations contained in Paragraph 12 of the Petition, and demand strict proof thereof.

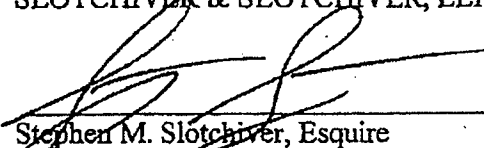
13. With reference to the allegations contained in Paragraph 13 of the Petition, the allegations are statements, and the Respondents are not required to admit or deny the same.

14. With reference to the allegations contained in Paragraph 14 of the Petition, Respondents deny that the Petitioners should be entitled to another hearing to determine whether or not the Will can be probated in light of the fact that this has already been determined by the Court of Appeals.

15. As to the allegations contained in Paragraphs 15 through 20 of the Petition, the allegations are responses and/or defenses to a Petition for Informal Probate of a Will that was filed on September 4, 2015, and as such, the Respondents are not required to admit or deny the same.

Respectfully submitted,

SLOTCHIVER & SLOTCHIVER, LLP



Stephen M. Slotchiver, Esquire
SC Bar No.: 65477
44 State Street
Charleston, SC 29401
Telephone: 843-577-6531
Facsimile: 843-577-0261

-and-

Jonathan S. Altman, Esquire
Derfner & Altman, LLC
575 King Street, Suite B
Charleston, SC 29403
Tel: 843-723-9804 Phone
Fax: 843-723-7446

**ATTORNEYS FOR RESPONDENTS, EVELINA
BROWN MOSES, AND THOMAS P. BROWN, JR.**

Charleston, South Carolina
This 8 day of March, 2016

CERTIFICATE OF SERVICE

I, CAROL C. HEINLE, do hereby certify that on March 8, 2016, I mailed a true and exact copy of the foregoing **ANSWERS OF RESPONDENTS, EVELINA BROWN MOSES, AND THOMAS P. BROWN, JR., TO PETITION FILED BY PETITIONERS FOR FORMAL TESTACY** by mailing a copy of the same by U.S. Mail, with postage paid thereon to the following:

T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
Attorney for the Petitioners

Angus M. Lawton, Esquire
Lawton Law Firm, LLC
496 Bramson Court, Suite #100
Mt Pleasant, SC 29464
Special Administrator for the Estate of Lucinda Pringle

David L. Michel, Esquire
15 State Street
Charleston, SC 29401
Guardian ad Litem for Rebecca Patricia Brown


SIGNATURE

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mary P. Smith, et. al.,

Plaintiff(s)

vs.

Angus M. Lawton, et.al.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

-CP-

Submitted By: T. Jeff Goodwyn, Jr., Esquire
 Address: 2519 Devine Street, Suite A
Columbia, SC 29205

SC Bar #: 73789
 Telephone #: 803-251-4517
 Fax #: 803-251-4527

Other:
 E-mail: jgoodwyn@goodwynlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☒ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Out-of State Depositions (650) ☐ Other (699) _____ ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510) ☐ Pre-Suit Discovery (670) ☐ Permanent Restraining Order (680)			

Submitting Party Signature: T. Jeff GoodwynDate: January 23, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE PROBATE COURT

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 1999-ES-10-689

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

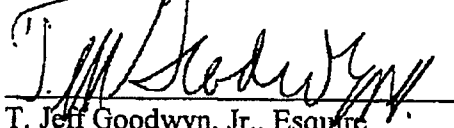
Respondents.)

NOTICE OF INTENT TO APPEAL

COMES NOW, Petitioners, by and through their undersigned attorney, and hereby notify the Court of their intent to appeal the decision of the Charleston County Probate Court in this matter dated January 18, 2017 and received by counsel for Petitioners on January 23, 2017.

Respectfully Submitted,

GOODWYN LAW FIRM, LLC

A handwritten signature in dark ink, appearing to read "T. Jeff Goodwyn, Jr.", is written over a horizontal line.

T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

(803) 251-4527 (f)

JGoodwyn@Goodwynlaw.com

ATTORNEY FOR PETITIONERS

Columbia, South Carolina
January 23, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondents.)

APPELLANTS STATEMENT OF
ISSUES ON APPEAL

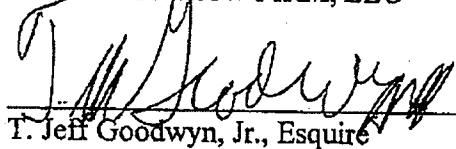
COMES NOW, Appellants, by and through their undersigned attorney and pursuant to S.C.
Code §62-1-308(b), and hereby files their Statement of Issues on Appeal from the appeal of the
Order of the Charleston County Probate Court dated January 18, 2017.

1. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite no evidence being offered to prove it as required by S.C. Code §62-3-407 and S.C. Code §62-3-406?
2. Did the Probate Court err as a matter of law in finding that no further inquiry into the validity of the will is required when the two witnesses are deceased?
3. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite the attestation clause of the will referencing that someone by a name other than the testator signed the will?
4. Did the Probate Court err as a matter of law in finding that the name "Lucinda Springer" as stated in the attestation clause was a scrivener's error and no further inquiry is warranted without any evidence beyond the contents of the will itself that the use of "Springer" was in error?
5. Did the Probate Court err as a matter of law in finding that further inquiry into the issue surrounding the obvious alterations to the beneficiary portion of the will is unwarranted when these alterations clearly show that the will is not the original will and that the named beneficiaries in the will that was offered had been changed from the original will?
6. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite no evidence being offered as to the contents of the original will as required by S.C. Code §62-3-402?
7. Did the Probate Court err in finding Appellants concealed the will from Respondents and that this prejudiced Respondents when the attempted concealment could not have

- caused any prejudice since the proponents of the will were in possession of a copy of the will within three years of the date of death and neglected to offer it for probate?
8. Did the Probate Court err as a matter of law in finding that the 10-year ultimate time limit to offer a will for probate under S.C. Code §62-3-108 did not apply?

Respectfully Submitted,

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

(803) 251-4527 (f)

JGoodwyn@Goodwynlaw.com

ATTORNEY FOR PETITIONERS

Columbia, South Carolina

March 1, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,
MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE
B. BROCKINGTON, as Special
Administrator of the ESTATE OF JANINE
GOURDINE, EMMA SMALLS, VIOLA
PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or entities
claiming any interest in the ESTATES OF
LUCINDA PRINGLE, ODESSA
GRADDICK, ARTHUR GRADDICK, Jr.,
ANNABELLE THORNTON and JANINE
GOURDINE,

Petitioners,

vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **February 28, 2017**, copies of the foregoing **Appellant's Statement of Issues on Appeal** were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

Angus M. Lawton Personal Representative of the Estate of Lucinda Pringle 496 Bramson Court, Suite 100 Mt. Pleasant, SC 29464	Stephen M. Slotchiver, Esquire Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
Jonathan S. Atlman, Esquire Derfner & Altman 575 King Street, Suite B Charleston, SC 29403	Ayesha Washington, Esquire P.O. Box 30026 Charleston, SC 29417



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517 Phone

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mary P. Smith, et.al.

vs.

Angus M. Lawton, et. al.

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
____ JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-00398

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

T. Jeff Goodwyn, Jr., Bar No. 73789

Address:

2519 Devine Street, Columbia, SC 29205

Phone: (803) 251-4517 Fax (803) 251-4527

E-mail: JGoodwyn@goodwynlaw.com Other:

Defendant's Attorney:

____, Bar No. ____

Address:

Phone: ____ Fax ____

E-mail: ____ Other: ____

- ☐ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☒ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion for Extension

Estimated Time Needed: ____

Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

April 5, 2017

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: ____

☐ Other: ____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE ____

Date: ____

CLERK'S VERIFICATION

Collected by: ____ Date Filed: ____

☐ **MOTION FEE COLLECTED: \$** ____

☐ **CONTESTED - AMOUNT DUE: \$** ____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Appellant(s),)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondent(s).)

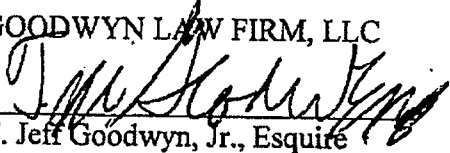
MOTION FOR EXTENSION

Appellant hereby moves for an additional thirty (30) days in which to file its Initial Brief and Designation of Matter that was currently due April 3, 2017. This motion is based on the fact that Appellant's counsel did not receive the hearing transcript until March 14, 2017. Pursuant to Section 62-1-308(c), Appellant's initial brief is due 45 days after receipt of the written order, sentence, or decree of the probate court. The undersigned did not receive the transcripts until

March 14, 2017 and could not have begun preparing the brief until this date. As a result, Appellant respectfully requests that he be given 30 days from March 14, 2017, until April 13, 2017 to submit his Initial Brief and Designation of Matter.

Respectfully Submitted,

GOODWYN LAW FIRM, LLC


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Attorney for Appellant(s)

Columbia, South Carolina

April 5, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,
MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE B.
BROCKINGTON, as Special Administrator
of the ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned person,
VENETRA WATSON, and any known or
unknown persons or entities claiming any
interest in the ESTATES OF LUCINDA
PRINGLE, ODESSA GRADDICK,
ARTHUR GRADDICK, Jr., ANNABELLE
THORNTON and JANINE GOURDINE,

Appellant(s),

vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

Respondent(s).

ORDER GRANTING EXTENSION

For good cause having been shown, the time for Appellant's to file and serve the Initial Brief and Designation of Matter in the above matter is hereby extended until and including April 13, 2017.

IT IS SO ORDERED.

Judge

_____, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE
B. BROCKINGTON, as Special
Administrator of the ESTATE OF JANINE
GOURDINE, EMMA SMALLS, VIOLA
PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or entities
claiming any interest in the ESTATES OF
LUCINDA PRINGLE, ODESSA
GRADDICK, ARTHUR GRADDICK, Jr.,
ANNABELLE THORNTON and JANINE
GOURDINE,

Petitioners,

vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 5, 2017, copies of the foregoing Motion for Extension were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

Angus M. Lawton Personal Representative of the Estate of Lucinda Pringle 496 Bramson Court, Suite 100 Mt. Pleasant, SC 29464	Stephen M. Slotchiver, Esquire Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
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IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
PROBATE COURT

Irvin G. Condon, Probate Court Judge

Case No. 2017-CP-10-00398

FILED
2017 APR 17 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT

MARY P. SMITH, Maezell Mitchell Jefferson, individually and as Personal Representative of the ESTATE OF ANNABELLE THORNTON, SHIRRESE B. BROCKINGTON, as Special Administrator of the ESTATE OF JANINE GOURDINE, EMMA SMALLS, VIOLA PRINGLE, CEPHUS THORNTON, ARTHUR GRADDICK, III, an imprisoned person, VENETRA WATSON, and any known or unknown persons or entities claiming any interest in the ESTATES OF LUCINDA PRINGLE, ODESSA GRADDICK, ARTHUR GRADDICK, Jr., ANNABELLE THORNTON and JANINE GOURDINE.....Appellants,

v.

ANGUS M. LAWTON, Personal Representative of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and Unknown PR REBECCA PATRICIA BROWN Respondents.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite no evidence being offered to prove it as required by S.C. Code §62-3-407 and S.C. Code §62-3-406?
- II. Did the Probate Court err as a matter of law in finding that no further inquiry into the validity of the will is required when the two witnesses are deceased?
- III. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite the attestation clause of the will referencing that someone by a name other than the testator signed the will?
- IV. Did the Probate Court err as a matter of law in finding that the name "Lucinda Springer" as stated in the attestation clause was a scrivener's error and no further inquiry is warranted without any evidence beyond the contents of the will itself that the use of "Springer" was in error?
- V. Did the Probate Court err as a matter of law in finding that further inquiry into the issue surrounding the obvious alterations to the beneficiary portion of the will is unwarranted when these alterations clearly show that the will is not the original will and that the named beneficiaries in the will that was offered had been changed from the original will?
- VI. Did the Probate Court err as a matter of law in finding the will offered for probate to be valid despite no evidence being offered as to the contents of the original will as required by S.C. Code §62-3-402?
- VII. Did the Probate Court err in finding Appellants concealed the will from Respondents and that this prejudiced Respondents when the attempted

concealment could not have caused any prejudice since the proponents of the will were in possession of a copy of the will within three years of the date of death and neglected to offer it for probate?

- VIII. Did the Probate Court err as a matter of law in finding that the 10-year ultimate time limit to offer a will for probate under S.C. Code §62-3-108 did not apply?

STATEMENT OF THE CASE

The decedent in this case died October 11, 1989 and was vested with an undivided fifty percent (50%) interest in a 10½ acre tract of land located on or near U.S. Highway 17 North in Mount Pleasant, South Carolina (the "Property"). No formal attempt to probate Decedent's estate was made until an application for informal appointment was filed May 5, 1999. The estate was probated and a Deed of Distribution for the Property was filed April 17, 2000. The court issued a Certificate of Discharge on June 26, 2001.

On October 20, 2005, Respondents filed a Petition for Recovery of Improper Distribution based on their claim that a will had been discovered that left the Property to Respondents. This Petition was amended by consent on October 2, 2007 to properly reflect the parties to the action. On January 8, 2007, Respondents filed a Motion to Vacate the Order of June 25, 2001. A hearing on this motion was held April 8, 2008 where the Appellants took the position that the will could be considered by the Probate Court since the 10 year statute of repose set forth in §62-3-108 prevented the court from any such consideration. The Probate Court found that the 10 year statute of repose did apply to this case and denied Respondent's request for relief in an order dated October 20, 2008.

Respondents appealed this decision to the Court of Appeals arguing that the statute of repose should be tolled if the will was fraudulently concealed as alleged in this case.

The Court of Appeals issued an Order filed August 9, 2011 that reversed the Probate Court's ruling that the 10 year statute of repose set forth in §62-3-108 prevented the court from considering the will in cases where there is evidence that a fraudulent concealment of the will has taken place and remanded the case to the Probate Court for further findings consistent with its opinion.

Between the date the Court of Appeals issued its decision in 2011 and 2015, the will was not offered to the Probate Court for consideration. During this period, Appellants filed multiple motions to dismiss on jurisdictional grounds and pursuant to §62-3-108 that were denied. The Probate Court issued an Order dated June 25, 2015 ordering Angus Lawton, the Special Administrator of the estate, to file a Petition to Probate the will. Mr. Lawton filed a Petition for Appointment and for the Informal Probate of a Will on September 4, 2015. Appellants filed a Petition for Formal Testacy February 9, 2016 challenging the validity of the will and requesting that the court address all issues on remand from the Court of Appeals order filed August 9, 2011.

A hearing on this petition was held November 9, 2016. The Probate Court issued an Order dated January 18, 2017 denying Appellants Petition and finding that the will was valid and able to be probated.

STATEMENT OF FACTS

The decedent in this case died October 11, 1989 and was vested with an undivided fifty percent (50%) interest in a 10½ acre tract of land located on or near U.S. Highway 17 North in Mount Pleasant, South Carolina (the "Property"). Lucinda Pringle's surviving heirs were three daughters, Mary Smith, Annebelle Thornton, and Janine Gourdine and three children of a deceased daughter, Evelina Brown Moses, Thomas P. Brown, Jr. and

Rebecca Patricia Brown. The estate was originally administered as an intestate estate in 1999 and the Property was deeded to all of the children of Decedent per stirpes by way of deed of distribution on April 6, 2000. The court issued a Certificate of Discharge on June 26, 2001.

In October or November 1989, the parties acknowledged the awareness of at least one copy of the alleged will within several days after the death of Lucinda Pringle but with no information as to the content of the will. On another occasion about three years later, Thomas Brown, Jr. acknowledged in his testimony that he had a copy of the will and made various attempts to file the copy of the will with the Probate Court of Charleston County with no success.

Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings Fire and Casualty Insurance Company with reference to damages which resulted to the house she resided in on the decedent's property. As a result of the claim, the insurance company issued a check naming as payees the Respondents and Emma Smalls as the "executors of the estate" of the decedent on January 15, 1990. The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in the alleged will of Lucinda Pringle.

On October 20, 2005, Respondents filed a Petition for Recovery of Improper Distribution based on their claim that a will had been discovered that left the Property to Respondents. This Petition was amended by consent on October 2, 2007 to properly reflect the parties to the action. On January 8, 2007, Respondents filed a Motion to Vacate the Order of June 25, 2001. A hearing on this motion was held April 8, 2008 where the Appellants took the position that the will could be considered by the Probate Court since

the 10 year statute of repose set forth in §62-3-108 prevented the court from any such consideration. The Probate Court found that the 10 year statute of repose did apply to this case and denied Respondent's request for relief in an order dated October 20, 2008.

Respondents appealed this decision to the Court of Appeals arguing that the statute of repose should be tolled if the will was fraudulently concealed as alleged in this case. The Court of Appeals issued an Order filed August 9, 2011 that reversed the Probate Court's ruling that the 10 year statute of repose set forth in §62-3-108 prevented the court from considering the will in cases where there is evidence that a fraudulent concealment of the will has taken place and remanded the case to the Probate Court for further findings consistent with its opinion.

Between the date the Court of Appeals issued its decision in 2011 and 2015, the will was not offered to the Probate Court for consideration. During this period, Appellants filed multiple motions to dismiss on jurisdictional grounds and pursuant to §62-3-108 that were denied. The Probate Court issued an Order dated June 25, 2015 ordering Angus Lawton, the Special Administrator of the estate, to file a Petition to Probate the will. Mr. Lawton filed a Petition for Appointment and for the Informal Probate of a Will on September 4, 2015. Appellants filed a Petition for Formal Testacy February 9, 2016 challenging the validity of the will and requesting that the court address all issues on remand from the Court of Appeals order filed August 9, 2011.

A hearing on this petition was held November 9, 2016. The Probate Court issued an Order dated January 18, 2017 denying Appellants Petition and finding that the will was valid and able to be probated.

STANDARD OF REVIEW

The standard of review applicable to cases originating in the Probate Court depends upon whether the underlying cause of action is at law or in equity. *University of Southern California v. Moran*, 365 S.C. 270 (S.C. App. 2005). An action to contest a will is an action at law. *In re Estate of Pallister* 363 S.C. 437 (S.C. 2005). In the absence of a statute or rule prescribing a different standard of review in the appeal of a probate matter to the Circuit Court, the Circuit Court must apply the same standard the Court of Appeals would apply on direct appeal. *Matter of Estate of Tollison*, 320 S.C. 132 (S.C. App. 1995). The Circuit Court may not disturb the Probate Court's findings of fact unless a review of the record discloses there is no evidence to support them. *University of Southern California v. Moran*, 365 S.C. 270 (S.C. App. 2005).

ARGUMENT

I. The Probate Court erred as a matter of law in allowing Decedent's will to be probated when the validity of the will was properly raised and no evidence was offered to prove the proper execution of the will.

A. The Probate Court is required to inquire into the validity of the will since the issue of validity was properly raised when the will was first offered for probate.

It its Order dated January 18, 2017, the Probate Court found that no additional inquiry into the "validity of the will is required in light of the court's prior orders and the Court of Appeals' opinion." (1/18/17 Order, pp 4-5, R. ____). The Probate Court does, however, go on to make findings related to the validity of the will that are addressed below.

With respect to the finding that no additional inquiry into the validity of the will is required in light of the court's prior orders and the Court of Appeals' opinion, Appellants would show that there is nothing in any of the prior orders or the Court of Appeals opinion

that addresses the validity of the will. The reason for this, of course, is that the validity of the will was not, and could not have been, in dispute prior to the will first being offered for probate September 4, 2015. While the November 12, 2012 hearing was styled as a “final hearing”, the March 24, 2013 Order from this hearing orders the Special Administrator to “submit a Form 300 Application to open the Estate...” which clearly indicates that the court did not consider the estate to be finalized. (3/24/13 Order, p. 1, R., p. ____).

It is also important to put the phrase, “the Court hereby accepts the will for probate” that is used in the March 24, 2013 Order in the correct context in light of the litigation. As of 2013, the Probate Court was prohibited from accepting any will for consideration and had refused to do so due to the statute of repose set forth in §62-3-108. This issue was put to rest at the November 9, 2012 hearing when the court ordered that it was going to accept the will pursuant to the Court of Appeals Order. This could not have meant that the court passed judgment on the validity of the will because no Form 300 Application for the Probate of a Will had ever been filed offering the will for probate. This fact was acknowledged by the court in the March 24, 2013 Order when it ordered the Special Administrator to “submit a Form 300 Application to open the Estate...”. (R. p. ____).

The Special Administrator then filed a Form 300 Application September 4, 2015 formally asking the court to probate the will for the first time. Due to the court of appeals order, the Probate Court was required to accept the will despite the fact that it was more than 10 years after the decedent’s death, but there is nothing in any of these orders that prevented any interested party from challenging the validity of the will when it was formally offered for probate.

There is no mechanism in the Probate Code for an opponent to a will to challenge the validity of a will before it is first offered for probate. All of the litigation prior to the will being offered for probate September 4, 2015 dealt with whether the Probate Court could accept for consideration Decedent's will in light of the statute of repose set forth in §62-3-108. As a result, the prior orders and opinions have no bearing on whether the court should inquire into the validity of the will upon proper petition from Appellants when the will is first presented to the court for consideration. While a ruling on this finding may be moot given the fact that the court did make findings related to the validity of the will, to the extent a ruling is required, it was reversible error for the court to fail to inquire into the validity of the will and this court should reverse this decision and declare that the Decedent died intestate.

B. The Probate erred as a matter of law in finding that the will was properly proved and can be probated.

Despite finding that no inquiry into the validity of the will was required, the Probate Court went on to make such findings. The first finding related to the evidence needed to prove the will and the second related to the discrepancies in the attestation clause. (1/18/17 Order, p. 5, R. p. ____). The Probate Court found that since the witnesses to the will were dead at the time of the hearing, "no further inquiry is required." (1/18/17 Order, p. 5, R. p. ____).

S.C. Code §62-3-406 and S.C. Code §62-3-407 of the South Carolina Probate Code require that evidence be presented to prove a will and the burden in all contested cases to prove the due execution of a will is on the proponents of the will. The code sections read as follows:

§62-3-406. Testimony of attesting witnesses.

In a contested case in which the proper execution of a will is at issue:

(1) if the will is self-proved pursuant to §62-2-503, the will satisfies the requirements for execution, subject to rebuttal, without the testimony of any attesting witness, upon filing the will and the acknowledgment and affidavits annexed or attached to it;

(2) if the will is notarized pursuant to §62-2-503(c), but not self-proved, there is a rebuttable presumption that the will satisfies the requirements for execution upon filing the will;

(3) if the will is witnessed pursuant to §62-2-502, but not notarized or self-proved, the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness. An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred.

(emphasis added).

§62-3-407. Burdens in contested cases.

In contested cases, petitioners who seek to establish intestacy have the burden of establishing prima facie proof of death, venue, and heirship. **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. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof. If a will is opposed by the petition for probate of a later will revoking the former, it must be determined first whether the later will is entitled to probate, and if a will is opposed by a petition for a declaration of intestacy, it must be determined first whether the will is entitled to probate.

(emphasis added).

§62-3-407 clearly tasks the proponents of the will in this case, the Respondents, with the burden of establishing prima facie proof of due execution of the will. §62-3-406 states that in cases where the will is not notarized or self-proved, “the testimony of at least one of the attesting witnesses is required to establish proper execution if the witness is within this State, competent, and able to testify. Proper execution may be established by other evidence, including an affidavit of an attesting witness”. Having the burden of proof, it is Appellants’ position that Respondent must produce either the testimony of one witness,

either live or by affidavit, or evidence that the witnesses are out of the State, incompetent or unable to testify. If the witnesses are unable to testify, then Respondent must produce some other reliable evidence as to the due execution of the will.

In this case, the Respondent produced no testimony, live or by affidavit, from either of the witnesses to the will. While it was understood by both parties and the court that all of the witnesses to the will had died prior to the hearing, this case has been actively litigated for over 10 years and an affidavit of one of the witnesses could have been obtained during that period prior to the death of the witnesses. It is Appellant's position that the Respondents should not be relieved of the requirement to produce testimony of one of the witnesses to the will if the witnesses were living during the pendency of the case. Respondents produced no evidence as to when the witnesses died or that they were unable to obtain an affidavit as to the proper execution of the will prior to each witness's death. As a result, the Probate Court had no evidence before it to find the will was sufficiently proved and erred in finding that will was sufficiently proved and accepting it for probate. As a result, this court should reverse this finding ruling that the Decedent died intestate.

Assuming that Respondents met their burden of proving the unavailability of the witnesses to the will, they still must produce some evidence of the proper execution of the will under §62-3-406. The last sentence of §62-3-406 states, "An attestation clause that is signed by the attesting witnesses raises a rebuttable presumption that the events recited in the clause occurred." In this case, the attestation clause states that the witnesses are witnessing "Lucinda Springer" sign the will. The Probate found that this was a scrivener's error and that no further inquiry is warranted. (1/18/17 Order, p. 6, R. p. _____).

A scrivener's error is defined by Black's Law Dictionary as "a drafter's or typist's technical error that can be rectified without serious doubt about the correct reading." *Black's Law Dictionary*, 10th ed. The difference between "Pringle" and "Springer" is more than the leaving off of a letter ('Daniel' instead of 'Daniels'), a common misspelling ('Jonson' instead of 'Johnson'), or the transposition of letters ('Pringel' instead of 'Pringle'). While the two names have the letters "pring" in common, the names start with a different letter, end with a different letter, and do not share all of the same interior letters. It is much further of a stretch to make a finding that there is no serious doubt as to the correct reading in this case than in the examples above.

It is not inconceivable, especially in this family, that this will is in fact a fraud drafted and executed by one or more of the named beneficiaries in the will in an effort to take more than they would in intestacy. With the testator's signature being only "X" marks, her signature cannot be disproved by comparisons to prior known signatures. There are plausible reasons to think that the name "Pringle" could have been changed to "Springer" in furtherance of a fraud. For example, the perpetrator of the fraud could have done this to ease the witnesses' concerns that they would be lying about what they actually witnessed.

The burden is on the proponents of the will, the Respondents, to prove that it was a scrivener's error and they did not produce any evidence that the use of "Springer" is an honest mistake. The court may consider extrinsic evidence in determining if an error is a scrivener's error. *Fenzel v. Floyd*, 289 S.C. 495, 347 S.E.2d. 105 (Ct. of App. 1986). "The Court cannot make wills nor can they conjecture as to the intent of the testator." *Cornelson v. Vance*, 220 S.C. 47, 66 S.E.2d. 421 (1951). In this case, no extrinsic evidence was presented to try to show that this was a scrivener's error.

Regardless of how likely the court believes that the inclusion of "Springer" was a scrivener's error as opposed to being part of a fraud, with no evidence presented outside of the will itself that this was in fact a scrivener's error, the court is only left to speculate that this was a scrivener's error which it is prohibited from doing under *Cornelson. Id.* As a result, the court has committed a reversible error of law in making this finding and this court should reverse the Probate Court's finding on this issue and find that the attestation clause is invalid and no evidence as to the valid execution of the will was presented and that the decedent died intestate.

Assuming that the court finds that the attestation clause stated that the witnesses were witnessing Lucinda Pringle sign the will, this with nothing more cannot be enough to prove a will's validity. To make such a finding would create a method for any unscrupulous heir to create a fraudulent will that no one can dispute: present a will that is not notarized or self-proved with an attestation clause containing forged signatures of two witnesses that are already dead. For example, one of the Appellants could present a will executed shortly after this will, with a different disposition of the property, signed with an "X" mark and with an attestation clause signed with forged signatures of the same two dead witnesses used for the will in this case. Without a requirement of testimony or other proof of the execution of the will outside of the will itself, no one would have any way to prevent the court from accepting the will as the last will of decedent.

The requirements for the execution of and the proving of a will are in place to prevent fraud and to ensure that the testator actually signed the will presented. If any will should ever be suspected for fraud, this is the one. There are many aspects of and

irregularities with this will that are not found in most wills that suggest that it may be fraudulent. This list includes:

1. There is no evidence that the will was prepared by an attorney or executed in the presence of an attorney;
2. The will is a form will copied out of a book with blanks to fill in the names of beneficiaries and the property devised;
3. The will was executed with "X" marks that cannot be compared to other known signatures of the testator;
4. The will was not executed before a notary nor are the witness signatures notarized;
5. The name of the person the witnesses claim to be witnessing the signature of in the attestation clause is significantly different than the testator ("Springer" v. "Pringle");
6. There are clear alterations made to multiple sections of the will that change the beneficiaries, personal representative and the property being devised;
7. Both of the witnesses to the will are dead and unavailable to testify; and
8. No other witness testimony or other evidence as to the execution of the will has been presented.

Even if the court believes that the will is valid, the Respondents still have the burden under §62-3-407 to present evidence to support such a belief. With no evidence other than the will itself presented, the court can only use conjecture to assume that it is valid and as a result, it has no basis to make a finding that the will is valid. For these reasons, the

Probate Courts finding that the will is valid should be reversed and the Decedent be declared to have died intestate.

II. The lower court erred as a matter of law in finding the offered will to be an accurate version of the last will of the Decedent when the beneficiary designation portion of the will is clearly altered on its face and there was no Petition to probate something other than the original will and no evidence presented as to how the original will disposed of the decedent's property.

In addressing Appellants' argument that The Probate Court cannot probate the will submitted to the court since it is not the original will, the court found that Emma Smalls made the alterations and that since Appellants were not questioning Emma Small's status as an heir, "any such alteration by Ms. Smalls does not preclude Decedent's will from being probated and that further inquiry is unwarranted." (1/18/17 Order, p. 5; R. p. ____).

S.C. Code §62-3-402 of the South Carolina Probate Code addresses the requirements to petition the court to probate a will or if no original will is submitted, the requirements of the petitioner in such a case, and reads as follows:

§62-3-402. Formal testacy or appointment proceedings; petition; contents.

(a) Petitions for formal probate of a will, or for adjudication of intestacy with or without request for appointment of a personal representative, must be directed to the court, request a judicial order after notice and hearing, and contain further statements as indicated in this section. A petition for formal probate of a will:

(1) requests an order as to the testacy of the decedent in relation to a particular instrument which may or may not have been informally probated and determining the heirs;

(2) contains the statements required for informal applications as stated in the six subitems under Section 62-3-301(a)(1), and the statements required by subitems (ii) and (iii) of Section 62-3-301(a)(2);

(3) states whether the original of the last will of the decedent is in the possession of the court or accompanies the petition.

If the original will is neither in the possession of the court nor accompanies the petition and no authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable.

(b) A petition for adjudication of intestacy and appointment of an administrator in intestacy must request a judicial finding and order that the decedent left no will and determining the heirs, contain the statements required by (1) and (4) of Section 62-3-301(a) and indicate whether administration under Part 5 [Sections 62-3-501 et seq.] is sought. A petition may request an order determining intestacy and heirs without requesting the appointment of an administrator, in which case, the statements required by subitem (ii) of Section 62-3-301(a)(4) above may be omitted.

(Emphasis added).

In this case, Angus Lawton, the Special Administrator of the estate filed a Petition for Appointment and for the Informal Probate of a Will on September 4, 2015 pursuant to the Court's order directing him to do so dated June 25, 2015. This petition asserts that the will being offered for probate is the original will. The Probate Court, however, finds that there are alterations made to this will and goes on to make a finding that Emma Smalls made these alterations. (1/18/17 Order, p. 5; R. p. ____). This finding is unappealed and is now the law of the case.

If there are changes to the original will made by the testator, the changes have to be executed with the same formalities as the original will. *Stevens v. Royalls*, 77 S.E.2d 198, 223 S.C. 510 (S.C., 1953). In this case, however, Respondent took the position that the clear changes made to the will were not made by the testator herself. Rather, Respondent argued, and the Court agreed, that the changes were made by Emma Smalls to help her obtain home owners insurance benefits. As a result, the beneficiaries named and the property devised in the will before the court were the wishes of Emma Smalls, and not the wishes of the testator. The Appellant also agrees that this is the case meaning that there is no dispute on this issue.

When a will is offered for probate that is not the original will, S.C. Code §62-3-402 requires that the "petition also must state the contents of the will, and indicate that it is lost, destroyed, or otherwise unavailable." Not only did the petition fail to state who the

beneficiaries were or what property was being devised under the original will, no evidence was presented at the hearing on the petition as to how the altered clause read prior to being altered by Emma Smalls. This is a clear failure to comply with the requirements of S.C. Code §62-3-402 by Respondents and this court should reverse the Probate Court's findings that the will offered for probate can be probated.

In addition to this statutory violation, the more significant issued raised by the alterations in the section of the will that devises property to the beneficiaries is that the court has no basis to determine the intent of the testator as to who she wanted to take under the will and what she wanted them to take. "The paramount rule of will construction is to determine and give effect to the testator's intent. S.C. Code Ann. § 62-1-102(b)(2) ('The underlying purposes and policies of this Code are ... (2) to discover and make effective the intent of a decedent in the distribution of his property.');" *Holcombe-Burdette v. Bank of America*, 640 S.E. 2d 480 (S.C. App. 2006) citing, *Epworth Children's Home v. Beasley*, 365 S.C. 157, 165, 616 S.E.2d 710, 714 (2005); *Bob Jones Univ. v. Strandell*, 344 S.C. 224, 230, 543 S.E.2d 251, 254 (Ct.App.2001); *Matter of Clark*, 308 S.C. 328, 330, 417 S.E.2d 856, 857 (1992).

"In determining the intent of the deceased, a court must always look first to the language of the will itself". *Holcombe-Burdette v. Bank of America*, 640 S.E. 2d 480 (S.C. App. 2006) citing, *Pate v. Ford*, 297 S.C. 294, 299, 376 S.E.2d 775, 778 (1989); *Bob Jones Univ.*, 344 S.C. at 230, 543 S.E.2d at 254 ("In construing a will, a court's first reference is always to the will's language itself."). "The primary rule of ascertaining intent is that "[r]esort is first to be had to the instrument's language, and if such is perfectly plain and capable of legal construction, such language determines the force and effect of the

instrument." *Chiles v. Chiles*, 270 S.C. 379, 383-84, 242 S.E.2d 426, 429 (1978) (quoting *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973)). "The court must be guided by the words which the testator has used, reading them in the light of established principles of law." *White v. White*, 241 S.C. 181, 185, 127 S.E.2d 627, 629 (1962).

The court's ruling on this issue states that since the Appellants do not question "Emma Small's status as an heir, any alteration she made does not preclude Decedent's will from being probated...". This analysis has no rational relationship to the requirements of the law relating to determining the intent of the testator. *Id.* Appellants position has consistently been that the will is not valid as not being proved, that it is not the original will, that no determination can be made as to what property the testator intended to be devised or who the testator intended to receive the property, and the all of the children/heirs of the testator, including Emma Smalls, should take under the laws of intestacy. This finding by the court suggests that the intent of the testator is irrelevant since the court intends to probate a will that it has found is not the original and that the portion of the will identifying the property being devised and the beneficiaries receiving the property was drafted by someone other than the testator.

The altered section of the will shows that the items to be devised was whited out or otherwise covered up along with what appears to be room for at least one beneficiary. The only evidence the court has before it to help it determine what was originally in this clause is the fact that Emma Smalls either added herself as a beneficiary, added the homes as an item being devised, or both. There is no evidence, however, as to what information was covered up and typed over. "The Court cannot make wills nor can they conjecture as to

the intent of the testator.” *Cornelson v. Vance*, 220 S.C. 47, 66 S.E.2d. 421 (1951). Without any evidence of what the original will devised, the court is not allowed to speculate and has no way to determine what property the testator intended to devise.

Based on the court’s finding that Emma Smalls made these alterations, it is reasonable to assume that Emma Smalls added her name where it was not before. However, there is no way to tell and there is no evidence in the record as to who the other beneficiary was, if any, and what property the testator intended to devise prior to the alteration. One could simply assume that the original will included Evelina Brown as a beneficiary and that the original will devised “my personal property and my homes”, but this would be pure conjecture which the court is not allowed to do. *Id.* Emma Smalls was free to name anyone she wanted as beneficiary and to add any items to the property being devised that she wanted. Emma Smalls has been found to have altered the will and then conceal it to suit her own needs, so it cannot fairly be said that she was not willing to or capable of altering the property being devised in the will as well.

Not knowing what property was devised as part of the original will is especially significant in this case since there is no residuary clause in the will. For example, if the original will only devised personal property, the decedent’s real property would not pass under the will and would pass under the law of intestacy pursuant to S.C. Code §62-2-101 and §62-2-103. Respondent simply assumes that the original will leaves the Property to the named beneficiaries in the altered will, but presented no evidence that the Property was ever listed as devised property in the original will. If it were not, all of the parties would take an equal share under §62-2-103.

It is also noteworthy that the reason Respondents claim Emma Smalls made these alterations was so that she could show a home owners insurance company that she was an heir to the home she was living in order to obtain home owner's insurance benefits after hurricane Hugo. If the original will did not leave the homes to the named beneficiaries, Emma Smalls would then be motivated to not only add herself as a beneficiary, but to add a specific mention that the homes were being devised.

Regardless of what is listed as the devised property in the will before the court, the record is completely devoid of what property the testator intended to be devised in the original will. While the names of Thomas Brown and Patricia Brown do not appear to have been altered, Evelina Brown and Emma Small's names appear to be newly added by Emma Smalls. Again, there is no evidence as to whose names, if any, used to be in the place where Evelina Brown and Emma Smalls names are now.

Assuming no alterations were made to Thomas Brown and Patricia Brown's names, all the court knows about the testator's intent is that Thomas Brown and Patricia Brown were to receive some unknown property under the will and that all other property not disposed of would pass under the laws of intestacy. Without any evidence as to what the intent of the testator was with respect to what property was to be devised, the court is only left to speculate as to what property original will devised which is prohibited under *Cornelson. Id.* As a result, the will before the court cannot be probated. As a result, all of the testator's property including the Property, must pass through the laws of intestacy and this court should reverse the Probate Court and find that the will cannot be probated, that the decedent died intestate and/or that the Property passes through the laws of intestacy by way of S.C. Code §62-2-103.

III. The Probate Court erred as a matter of finding that Emma Smalls perpetrated a fraud on Respondents by concealing the will when it is admitted and the court found that the Respondents had possession of a copy of the will within three years of death and failed to timely offer it for probate.

In its 2011 remand order, the Court of Appeals ordered that the Probate Court “for further proceedings consistent with this opinion.” (8/8/2011 Order, R. p. ____). While the Court of Appeals that good cause was shown to reopen the estate, this does not preclude the Probate Court from making further determinations that the concealment that was found did not harm the Respondents. As a result, Appellants contend that the Probate Court could make additional findings on this issue at the November 9, 2016 hearing.

While Appellants do not dispute the finding that Emma Smalls concealed the will, this concealment did not harm the Respondents since they had a copy of the will no later than 3 years after the decedent’s death and tried to probate it. (Depo. of Thomas Brown, Jr., p. 14, R. p. ____). While Emma Smalls tried to harm Respondents, she was unsuccessful. Appellants can see where the court would want to punish a bad actor, the most that can be said about Emma Smalls’ behavior is that she attempted to conceal the will, but failed. Since the Respondent’s had a copy of the will well within the 10 year statute of repose, the statute of repose should not be tolled in this case and the court should reverse the Probate Court on this issue and find that the will is barred by S.C. Code Ann. §62-3-108.

CONCLUSION

Since the Respondents had a copy of the will within three years of the death of the decedent, as a matter of law, no concealment of the will could have extended beyond this time. As a result, the will should be barred from being accepted for consideration for probate under S.C. Code Ann. §62-3-108.

If the will is allowed for consideration, Appellants challenged the validity of the alleged will in this case the first time it was offered to the court for probate which was September 4, 2015. Appellants could not have challenged the validity of the will at any time prior to this as the will had not been formally offered to the Court. The fact that there was 10 years of litigation surrounding unrelated issues prior to the will being first offered is irrelevant to this analysis.

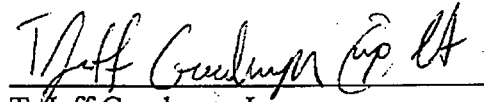
Outside of the will itself, there has been no evidence at all presented as to the valid execution of the will. The will is not notarized or self-proved and no witness testimony or other evidence was presented as to the will's execution. As a result, the will cannot be considered valid and probated and this ruling should be overturned and an order entered that the decedent died intestate.

The will presented to the court for probate is not the original will and the Probate Court has found that Emma Smalls altered the original will to be able to obtain home owner's insurance benefits. No evidence has been presented to the court as to what property the original will devised or to which beneficiaries the original will left the property to. As a result, the law prohibits the court from speculating as to what property the testator intended to leave or which beneficiaries she intended to take. As a result, the Probate Court cannot probate the will that has been offered to the court. This court should reverse the Probate Court on this issue and enter an order declaring that the decedent died intestate.

(Signature next page)

Respectfully Submitted,

GOODWYN LAW FIRM, LLC

A handwritten signature in cursive script, reading "T. Jeff Goodwyn, Jr.", written over a horizontal line.

T. Jeff Goodwyn, Jr.

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Attorney for Appellants

Columbia, South Carolina

April 13, 2017

IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
PROBATE COURT

Irvin G. Condon, Probate Court Judge

Case No. 2017-CP-10-00398

FILED
2017 APR 17 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT

MARY P. SMITH, Maezell Mitchell Jefferson, individually and as Personal Representative of the ESTATE OF ANNABELLE THORNTON, SHIRRESE B. BROCKINGTON, as Special Administrator of the ESTATE OF JANINE GOURDINE, EMMA SMALLS, VIOLA PRINGLE, CEPHUS THORNTON, ARTHUR GRADDICK, III, an imprisoned person, VENETRA WATSON, and any known or unknown persons or entities claiming any interest in the ESTATES OF LUCINDA PRINGLE, ODESSA GRADDICK, ARTHUR GRADDICK, Jr., ANNABELLE THORNTON and JANINE GOURDINE.....Appellants,

v.

ANGUS M. LAWTON, Personal Representative of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and Unknown PR REBECCA PATRICIA BROWN Respondents.

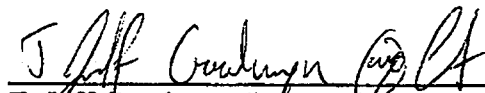
DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following to be included in the Record on Appeal:

1. Application for Informal Appointment made May 5, 1999;
2. Deed of Distribution dated April 6, 2000;
3. Order of Probate Court dated June 25, 2001;
4. Certificate of Discharge dated June 26, 2001;

5. Order of Probate Court dated October 20, 2008;
6. Brief of Appellant to Court of Appeals from October 20, 2008 Order;
7. Order from the Court of Appeals filed August 9, 2011;
8. Order of Probate Court dated June 25, 2015;
9. Petition for Appointment and for Informal Probate of Will filed September 4, 2015;
10. Petition for Formal Testacy dated February 9, 2016;
11. Transcript of Hearing dated November 9, 2016;
12. Order of Probate Court dated January 18, 2017;
13. Excerpts of Deposition of Thomas Brown, Jr., p. 14.
14. All prior orders of the Probate Court or Circuit Court
15. All Pleadings and Motions in the case by all parties;
16. Last Will and Testament of Lucinda Pringle.
17. Testimony and evidence related to Emma Smalls insurance claim in 1989.

Pursuant to Rule 209(c), SCACR, I certify that this Designation contains no matter which is irrelevant to the appeal.



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Attorney for Appellants

April 13, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,
MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE
B. BROCKINGTON, as Special
Administrator of the ESTATE OF JANINE
GOURDINE, EMMA SMALLS, VIOLA
PRINGLE, CEPHUS THORNTON,
ARTHUR GRADDICK, III, an imprisoned
person, VENETRA WATSON, and any
known or unknown persons or entities
claiming any interest in the ESTATES OF
LUCINDA PRINGLE, ODESSA
GRADDICK, ARTHUR GRADDICK, Jr.,
ANNABELLE THORNTON and JANINE
GOURDINE,

Petitioners,

vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

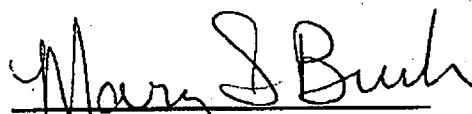
Respondents.

FILED
2017 APR 17 PM 1:38
JULIE J. ARMSTRONG
CLERK OF COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 13, 2017, copies of the foregoing Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

Angus M. Lawton Personal Representative of the Estate of Lucinda Pringle 496 Bramson Court, Suite 100 Mt. Pleasant, SC 29464	Stephen M. Slotchiver, Esquire Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
Jonathan S. Atlman, Esquire Derfner & Altman 575 King Street, Suite B Charleston, SC 29403	Ayesha Washington, Esquire P.O. Box 30026 Charleston, SC 29417



Mary S. Bush
Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517 Phone

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mary P. Smith, et.al.

vs.

Angus M. Lawton, et. al.

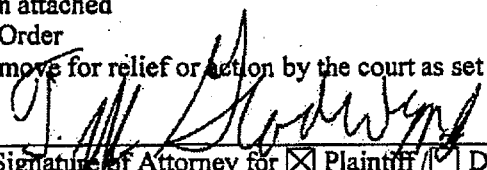
Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-00398

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: T. Jeff Goodwyn, Jr., Bar No. 73789 Address: 2519 Devine Street, Columbia, SC 29205 Phone: (803) 251-4517 Fax (803) 251-4527 E-mail: JGoodwyn@goodwynlaw.com Other:		Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion to File Initial Brief & Designation of Matter and Order Granting Extension Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant April 20, 2017 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)

Jefferson, individually and as Personal)

Representative of the ESTATE OF)

ANNABELLE THORNTON, SHIRRESE)

B. BROCKINGTON, as Special)

Administrator of the ESTATE OF JANINE)

GOURDINE, EMMA SMALLS, VIOLA)

PRINGLE, CEPHUS THORNTON,)

ARTHUR GRADDICK, III, an imprisoned)

person, VENETRA WATSON, and any)

known or unknown persons or entities)

claiming any interest in the ESTATES OF)

LUCINDA PRINGLE, ODESSA)

GRADDICK, ARTHUR GRADDICK, Jr.,)

ANNABELLE THORNTON and JANINE)

GOURDINE,)

Appellant(s),)

vs.)

ANGUS M. LAWTON, Personal)

Representative of the Estate of Lucinda)

Pringle, EVELINA BROWN MOSES,)

THOMAS P. BROWN, JR., and Unknown)

PR REBECCA PATRICIA BROWN,)

Respondent(s).)

MOTION TO HAVE INITIAL BRIEF
OF APPELLANTS AND
DESIGNATION OF MATTER
CONSIDERED TIMELY FILED

While Appellant contends that its Initial Brief and Designation of Matter were timely filed, to the extent it may be determined that Appellant's Initial Brief and Designation of Matter were not filed timely, Appellants herein respectfully move this Court for an Order allowing Appellants to file its Initial Brief of Appellants and Designation of Matter to be Included in the Record on

Appeal out of time or in the alternative, an order finding that the Initial Brief and Designation of Matter served on Respondent April 13, 2017 and filed April 17, 2017 to be considered filed timely.

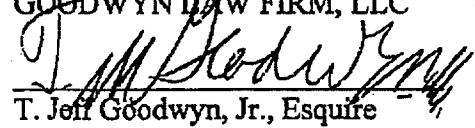
Appellant has a pending motion before the court for an extension to file its Initial Brief and Designation of Matter that has not yet been ruled on. Both the pending motion and this motion are based on the fact that Appellant's counsel did not receive the hearing transcript until March 14, 2017. Pursuant to Section 62-1-308(c), Appellant's initial brief is due 45 days after receipt of the written order, sentence, or decree of the probate court. The undersigned did not receive the transcripts until March 14, 2017 and could not have begun preparing the brief until this date.

Appellant submits that it is the intent of the rules to allow an appellant at least 30 days after receiving the transcript to prepare and file its initial brief. The issues in this case are relatively complex and counsel for Appellants needed the additional time to properly research and prepare the brief and designation. Appellant submits that any delay in filing will not cause any prejudice on Respondent.

As a result, Appellants respectfully request that the Initial Brief and Designation of Matter served on Respondent April 13, 2017 and filed April 17, 2017 to be considered filed timely.

Respectfully Submitted,

GOODWYN LAW FIRM, LLC


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Attorney for Appellant(s)

Columbia, South Carolina

April 20, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,

MARY P. SMITH, Maezell Mitchell
Jefferson, individually and as Personal
Representative of the ESTATE OF
ANNABELLE THORNTON, SHIRRESE B.
BROCKINGTON, as Special Administrator
of the ESTATE OF JANINE GOURDINE,
EMMA SMALLS, VIOLA PRINGLE,
CEPHUS THORNTON, ARTHUR
GRADDICK, III, an imprisoned person,
VENETRA WATSON, and any known or
unknown persons or entities claiming any
interest in the ESTATES OF LUCINDA
PRINGLE, ODESSA GRADDICK,
ARTHUR GRADDICK, Jr., ANNABELLE
THORNTON and JANINE GOURDINE,

Appellant(s),

vs.

ANGUS M. LAWTON, Personal
Representative of the Estate of Lucinda
Pringle, EVELINA BROWN MOSES,
THOMAS P. BROWN, JR., and Unknown
PR REBECCA PATRICIA BROWN,

Respondent(s).

**ORDER DEEMING APPELLANT'S
INITIAL BRIEF AND DESIGNATION
OF MATTER AS FILED TIMELY**

For good cause having been shown, Appellant's Initial Brief and Designation of Matter served on Respondent April 13, 2017 and filed April 17, 2017 are hereby considered filed timely.

IT IS SO ORDERED.

Judge

_____, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,)

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

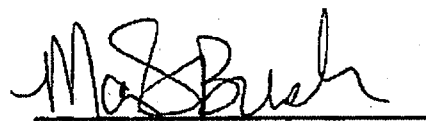
ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondents.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 20, 2017, copies of the foregoing Motion to File Initial Brief of Appellants and Designation of Matter to be Included in the Record on Appeal were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

Angus M. Lawton Personal Representative of the Estate of Lucinda Pringle 496 Bramson Court, Suite 100 Mt. Pleasant, SC 29464	Stephen M. Slotchiver, Esquire Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
Jonathan S. Atlman, Esquire Derfner & Altman 575 King Street, Suite B Charleston, SC 29403	Ayesha Washington, Esquire P.O. Box 30026 Charleston, SC 29417



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517 Phone

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-00398

Mary P. Smith, et.al.

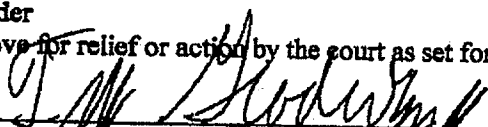
Plaintiff,

vs.

Angus M. Lawton, et. al.

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: T. Jeff Goodwyn, Jr., Bar No. 73789 Address: 2519 Devine Street, Columbia, SC 29205 Phone: (803) 251-4517 Fax (803) 251-4527 E-mail: JGoodwyn@goodwynlaw.com Other:		Defendant's Attorney: Jonathan S. Altman, Bar No. _____ Address: 575 King Street, Charleston, SC 29403 Phone: (843) 723-9804 Fax _____ E-mail: jaltman@derfneraltman.com Other: _____	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Consent Motion and Order Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant May 4, 2017 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE B.)
BROCKINGTON, as Special Administrator)
of the ESTATE OF JANINE GOURDINE,)
EMMA SMALLS, VIOLA PRINGLE,)
CEPHUS THORNTON, ARTHUR)
GRADDICK, III, an imprisoned person,)
VENETRA WATSON, and any known or)
unknown persons or entities claiming any)
interest in the ESTATES OF LUCINDA)
PRINGLE, ODESSA GRADDICK,)
ARTHUR GRADDICK, Jr., ANNABELLE)
THORNTON and JANINE GOURDINE,)

Appellant(s),)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondent(s).)

CONSENT MOTION RELATING TO
TIMING OF FILING INITIAL BRIEFS
AND DESIGNATIONS OF MATTER

WHEREAS, Petitioners have appealed the Order of the Probate Court dated January 18, 2017,
and

WHEREAS, Petitioners have filed their initial brief and designation of matter April 17, 2017
(served on Respondents April 13, 2017), and

WHEREAS, Respondents' designation of matter has not been filed as of the date of the filing of this Consent Order and Respondents' initial brief is currently due May 17, 2017 and counsel for Respondents is seeking an additional 15 days to file its initial brief and designation of matter, and

WHEREAS, Petitioner has two pending motions related to extending the time for them to file their initial brief and designation of matter, and

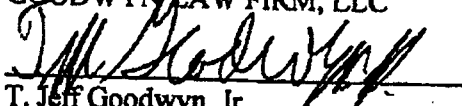
WHEREAS, counsel for Petitioners and Respondents have conferred regarding the timing of the filing of the briefs and designation of matter and have reached the following agreement.

Counsel for Petitioners and Counsel for Respondents agree that Petitioners' initial brief and designation of matter was timely filed; that the deadline for Respondents' initial brief and designation of matter will be extended to June 1, 2017; and that this agreement will resolve both of Petitioners' pending motions related to the timing of the filing of its initial brief and designation of matter.

By signing below, both Counsel for Petitioners and Counsel for Respondents ask the court to sign the attached proposed order to this effect.

WE SO MOVE AND CONSENT:

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr.

2519 Devine Street

Suite A

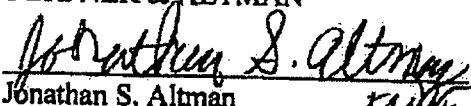
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(803) 251-4517

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Attorney for Petitioners

DERFNER & ALTMAN



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Charleston, SC 29403

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Attorney for Respondents

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE B.)
BROCKINGTON, as Special Administrator)
of the ESTATE OF JANINE GOURDINE,)
EMMA SMALLS, VIOLA PRINGLE,)
CEPHUS THORNTON, ARTHUR)
GRADDICK, III, an imprisoned person,)
VENETRA WATSON, and any known or)
unknown persons or entities claiming any)
interest in the ESTATES OF LUCINDA)
PRINGLE, ODESSA GRADDICK,)
ARTHUR GRADDICK, Jr., ANNABELLE)
THORNTON and JANINE GOURDINE,)

Appellant(s),)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondent(s).)

ORDER GRANTING CONSENT
MOTION TO TIMING OF FILING
BRIEFS AND DESIGNATIONS OF
MATTER

This order comes before me upon the Consent Motion of the parties and for good cause shown that:

1. Petitioners' initial brief and designation of matter was timely filed;
2. Respondents' initial brief and designation of matter is due on or before June 1, 2017; and
3. As agreed Petitioners' pending motions relating to the timing of filing are resolved.

IT IS SO ORDERED

Judge

_____, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

RE: ESTATE OF LUCINDA PRINGLE,)

Civil Action No. 2017-CP-10-00398

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
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LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 4, 2017, copies of the foregoing Consent Motion Relating to Timing of Filing Initial Briefs and Designations of Matter along with a proposed Order were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

Angus M. Lawton Personal Representative of the Estate of Lucinda Pringle 496 Bramson Court, Suite 100 Mt. Pleasant, SC 29464	Stephen M. Slotchiver, Esquire Slotchiver & Slotchiver, LLP 44 State Street Charleston, SC 29401
Jonathan S. Atlman, Esquire Derfner & Altman 575 King Street, Suite B Charleston, SC 29403	Ayesha Washington, Esquire P.O. Box 30026 Charleston, SC 29417



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517 Phone

IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
PROBATE COURT

Irvin G. Condon, Probate Court Judge

Case No.: 2017-CP-10-00398

FILED
2017 JUN -1 PM 4:47
JULIE S. ADAMS, CLERK
CLERK OF COURT

MARY P. SMITH, MAEZELL MITCHELL JEFFERSON, individually and as Personal Representative of the ESTATE OF ANNABELLE THORNTON, AYESHA WASHINGTON, as Special Administrator of the ESTATE OF JANINE GOURDINE, EMMA SMALLS, VIOLA PRINGLE, CEPHUS THORNTON, ARTHUR GRADDICK, III, an imprisoned person, VENETRA WATSON, and any known or unknown persons or entities claiming any interest in the ESTATES OF LUCINDA PRINGLE, ODESSA GRADDICK, ARTHUR GRADDICK, JR., ANNABELLE THORNTON, and JANINE GOURDINE.....Appellants,

v.

ANGUS M. LAWTON, Special Administrator of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and the Estate of Rebecca Brown..... Respondents.

INITIAL BRIEF OF RESPONDENTS

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Derfner & Altman, LLC
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(843) 723-9804

Stephen S. Slotchiver, Esq.
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Attorney for Respondents

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Probate Court properly deny Appellants' Petition for Formal Testacy after considering evidence of the will's validity, its prior orders and findings, and the Court of Appeals' opinion and remand instructions?
- II. Did Appellants fail to file their Petition for Formal Testacy within the eight month time limit set forth in S.C. Code Ann. § 62-3-108(3) rendering Appellants' petition untimely?
- III. Did the Probate Court properly deny Appellants' Petition for Formal Testacy and accept the will for probate in light of the fraud perpetrated by Appellants in concealing Decedent's will?

STANDARD OF REVIEW

"An action to contest a will is an action at law," *Neely v. Thomasson*, 365 SC 345, 349, 350, 618 S.E.2d 884, 886 (2005). When a Probate Court proceeding is an action at law, the Circuit Court and the Appellate Court may not disturb the Probate Court's findings of fact unless a review of the record discloses that there is no evidence to support it. *Id.* at 350, 618 S.E.2d 886.

STATEMENT OF THE CASE and STATEMENT OF FACTS

Decedent's will was executed on July 30, 1988. At the time of Decedent's death, she was vested with an undivided fifty percent (50%) in a ten and a half (10.5) acre tract of land located on US Highway 17N in Mount Pleasant, SC. Appellants filed an Application for Informal Appointment in the Probate Court for Charleston County under Case Number 1999-ES-10-689 in 1999. The Probate Court administered the estate as "informal" assuming intestacy in accordance with S.C. Code Ann. § 62-3-3014.

On August 3, 2005, Respondent Evelina Brown Moses received the original will from Appellant Emma Smalls and immediately filed it with the Probate Court for Charleston County on August 4, 2005¹.

On October 19, 2005, Respondents filed an Application/Petition for Subsequent Administration and sought the appointment of a Special Administrator for Decedent's estate. In their application, Respondents stated, "*Decedent's will was concealed and, therefore, the Personal Representative made distributions in accordance with the laws of intestacy rather than pursuant to the terms of the will of Decedent.*"

On October 20, 2005, Appellants filed a Petition for Recovery of Improper Distribution. By Order dated January 4, 2005, the Court granted Appellants' application and appointed Shirrese B. Brockington as Special Administrator.

On January 18, 2007, Respondents filed a Motion for Vacation of Order and sought the issuance of an order finding that Appellants knowingly and intentionally concealed Decedent's will. On April 18, 2008, Respondents filed a memorandum detailing evidence of the will's

¹ The record reflects that Appellants, including Emma Smalls, subsequently denied producing the will and even knowing of the will's existence.

validity which included Appellant Emma Smalls' filing of an insurance claim with the Public Savings and Fire Casualty Company for damage to Decedent's property from Hurricane Hugo².

A hearing was held on October 20, 2008, after which the Probate Court issued an order denying Respondents' motion to vacate based on the ten (10) year time limit set forth in S.C. Code Ann. § 62-3-108. In its order, the Court made the following factual findings:

1. *The parties acknowledged the awareness of the will within several days of Decedent's death; and*
2. *Appellant Emma Smalls processed the above referenced hurricane claim and utilized Decedent's will in doing so.*

Respondents appealed this order. In their Final Brief, Appellants did not dispute the validity of the will and, in fact, argued that Appellants Annabelle Thornton and Mary Smith had copies of the will which they showed to Respondent Thomas Brown several days after Decedent's death. Appellants, also in their Final Brief, acknowledged that Appellant Viola Pringle provided a copy of the will to Respondent Thomas Brown about three (3) years after Decedent's death. Until the filing of Appellants' Petition for Formal Testacy, Appellants never questioned the validity of Decedent's will. Rather, Appellants have repeatedly argued that the ten (10) year statute of limitations set forth in S.C. Code Ann. § 62-3-108 bars the will's admission.

On August 9, 2011, the Court of Appeals reversed the Probate Court and made the following findings:

1. *Decedent was predeceased by one of her five daughters, Evelina Brown, the mother of Respondents;*

² The record includes a copy of a check for an insurance claim delivered to Emma Smalls in the amount of \$3,000.00 payable to Respondents Thomas Brown, Patricia Brown and Evelina Brown, and Appellant Emma Smalls, as Executor of the Estate of Lucinda Pringle. Decedent's will nominates Respondents and Appellant Emma Smalls in the same order as listed in the insurance draft.

2. *One by one, Decedent's other daughters lived their lives and passed away until the last surviving daughter confessed to Evelina's children that she and her sisters had hidden the existence of the Will in order to live out their lives on the property; and*
3. *Decedent intended Respondents to inherit from her will.*

The Court of Appeals remanded the case to the Probate Court for further proceedings consistent with its opinion.

In accordance with the Court of Appeals' remand, on November 9, 2012 the Probate Court held a final hearing as to all matters at issue. On March 24, 2013, the Probate Court issued an Order in which it "*accepts for probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988.*"

On April 5, 2013, Appellants filed a Notice of Intent to Appeal to the Circuit Court and a Notice of Motion and Motion to Alter/Amend. On April 15, 2013, Appellants filed a Notice of Motion and Motion to Dismiss. In each of these filings, Appellants argued that the Probate Court's acceptance of the will was barred by S.C. Code Ann. § 62-3-108. On December 20, 2013, a hearing was held as to Appellants' motions and the Probate Court again issued an order finding that it was "*required to accept and probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988.*"

On February 20, 2015, Appellants filed a Notice of Motion, Motion to Dismiss and Brief in Support of Motion again arguing that Respondents' efforts were barred by S.C. Code Ann. § 62-3-108. By Order dated June 21, 2015, the Probate Court denied Appellants' motion and found that "*by order dated March 24, 2013, the Court had previously accepted for probate the Last Will and Testament of Lucinda Pringle dated July 30, 1988.*" On July 14, 2015, Appellants filed a Notice of Motion to Amend or Alter which was later withdrawn.

On February 9, 2016, Appellants filed a Petition for Formal Testacy. On January 18, 2017, the Probate Court issued an order denying Appellants' petition. In doing so, the Court referred to the considerable record in this case including the deposition transcripts of Thomas P. Brown, Jr., Evelina Brown Moses, Viola Pringle, Maezell Mitchell Jefferson, Emma Smalls, Robert Pringle, Cephus Thornton, and Mary P. Smith. The Court also referred to the procedural history of this case and the Probate Court's prior acceptance of the will. Despite these prior findings and orders, the Court again inquired into the matters raised by Appellants and denied Appellants' petition by order dated January 18, 2017. Appellants have appealed this order.

ARGUMENT

I. The Probate Court properly denied Appellants' Petition for Formal Testacy after considering evidence of the will's validity, its prior orders and findings, and the Court of Appeals' opinion and remand instructions.

In its Order, the Probate Court specifically addressed the allegations set forth in Appellants' Petition for Formal Testacy including those involving the validity of the will and whether prejudice resulting from Appellants' concealment. The Probate Court properly noted that the validity of the will had been considered prior to the filing of Appellants' petition including, but not limited to, in its order of October 20, 2008 in which the Probate Court made specific findings of fact as to the will and its concealment. In its opinion, the Court of Appeals also addressed the will and Decedent's intent. While the Probate Court concurred with Respondents' contention that no further inquiry as to the validity of the will was required, the Probate Court, in an abundance of caution, again considered the issues raised by Appellants and made the below specific findings as to Appellant Emma Smalls' use of the will to pursue an insurance claim:

1. *Emma Smalls, in the aftermath of Hurricane Hugo in late 1989, processed a claim with the Public Savings and Fire Casualty Insurance Company with reference to damages which resulted to the house she resided in on the Decedent's property.*
2. *As a result of the claim, the insurance company issued a check naming as payees the Respondents and Emma Smalls, as executors of the Estate of the Decedent on January 15, 1990.*
3. *The payees on the insurance check match in order and number the apparent nomination of the executors listed in Item 4 in Lucinda Pringle's Will.*

The Probate Court noted that it had previously found that Appellants had concealed the will from Respondents. The Probate Court reaffirmed this finding and further found the

Appellants' concealment prejudiced Respondents and prevented Respondents from offering the will for probate. Lastly, the Court found that in light of Appellants' concealment, the ten (10) year statute of limitations set forth in S.C. Code Ann. § 62-3-108 did not bar the admission of the will.

The Probate Court correctly interpreted S.C. Code Ann. § 62-3-406(3) in denying Appellants' Petition for Formal Testacy. At the hearing of November 9, 2016, counsel for Appellants and Respondents advised the Probate Court that the witnesses to the will were deceased. In its order, the Probate Court made specific reference to the witnesses' unavailability and stated that S.C. Code Ann. § 62-3-405 and 62-3-406 requires *"one of the attesting witnesses to establish proper execution if the witnesses are within the state and are competent to testify."* In their brief, Appellants, for the first time, now argue that Respondents *"should not be relieved of the requirement to produce testimony of one of the witnesses to the will if the witnesses were living during the pendency of the case."* Appellants' argument is contrary to S.C. Code Ann. § 62-3-406(3). Moreover, the audacity of Appellants' argument is striking. Appellants hid Decedent's will for over sixteen (16) years. The circumstance of which the Appellants now complain is entirely of their own making.

The Probate Court had considerable evidence before it to find that Decedent's will was sufficiently proved in accordance with S.C. Code Ann. § 62-3-407. Significantly, much of the evidence relied upon by the Probate Court was testimony and documentary evidence provided and produced by Respondents. The Probate Court referenced this evidence, as well as the considerable record in this case in its order.

The at issue will is a three page document entitled the "*Last Will and Testament of Lucinda Pringle*" on pages 1 and 3. Appellants maintain that further inquiry was required in light of the reference to "*Lucinda Springer*" on page 2 of the will.

In its order, the Probate Court addressed this issue and noted that the nominating provision of page 2 of the will is identical to the nominating provision of page 1. The Court found the reference to Lucinda Springer to be a scrivener's error warranting no further inquiry. Furthermore, the will is identical to the copy submitted by Appellant Emma Smalls to the Public Savings Fire and Casualty Insurance Company shortly after Decedent's death. It is also identical to the copy of the will that was shown to Respondent Thomas Brown by Appellants Mary P. Smith and Annabelle Thornton within days of Decedent's funeral and provided to Respondent Thomas Brown by Appellant Viola Pringle three years after Decedent's death. Appellant Emma Smalls later produced the original will to Respondent Evelina Brown Moses in 2005. The record in this case provides considerable support for the Probate Court's ruling.

Appellants argue that the Probate Court erred in denying their petition in light of the Court's finding that the will had been altered and that Appellant Emma Smalls made these alterations. The Probate Court made no such finding. In his order, Judge Condon stated that:

"Petitioners maintained that Decedent's will was altered and that the beneficiary executor designations were changed. Appellants contend that if the will was altered, any alteration was committed by Emma Smalls who had possession of it."

The Probate Court order contains no finding that Decedent's will was altered or that Appellant Emma Smalls was responsible for such alterations. Rather, the Court notes that Appellants argue that the will was changed. As set forth herein, the record in this case reflects that following Decedent's death, at least four Appellants possessed copies of the will and

disseminated it to third parties and family members. Those copies were identical to the original will filed by Evelina Brown Moses on August 4, 2005.

In its Opinion, the Court of Appeals found that Decedent intended Respondents to inherit from Decedent's Last Will and Testament. The only party reflected as a beneficiary in the will other than Respondents is Appellant Emma Smalls. As set forth in the order, Respondents indicated that they did not question Appellant Emma Smalls' status as an heir.

Appellants are correct that, "*the paramount rule of will construction is to determine and give effect the testator's intent.*" Throughout this case's lengthy history, Decedent's intent has never been an issue. Appellants' defense has been singular in focus; utilizing the ten (10) year time limit set forth in S.C. Code Ann. § 62-3-108, to prevent Decedent's intent from being honored. Appellants' failure to raise the issues set forth in their Petition for Formal Testacy in the twenty-six years following Decedent's death was not an oversight. None of the Appellants questioned the will's validity in their deposition testimony or at any hearings. Appellants' attempt to now do so speaks for itself.

II. Appellants failed to file their Petition for Formal Testacy within the eight month time limit set forth in S.C. Code Ann. § 62-3-108(3) rendering Appellants' petition untimely.

Appellant Emma Smalls produced the will to Respondent Evelina Brown Moses on August 3, 2005. By the time the will was produced, Appellants had concealed its existence for sixteen (16) years. In the ten (10) plus years that followed, Appellants filed a series of motions asserting that the will's admission was barred by S.C. Code Ann. § 62-3-108. Appellants' Petition for Formal Testacy, filed twenty-seven (27) years after Decedent's death, was the first time that Appellants questioned the will's validity. While not addressed by the Probate Court,

Respondents contend that Appellants' petition failed to comply with the eight (8) month time limit set forth in S.C. Code Ann. § 62-3-108(c) which states:

"a proceeding to contest an informally probated will and to secure appointment of the person with legal priority for appointment in the event the contest is successful may be commenced within eight months from informal probate or one year from the decedent's death, whichever is later."

Appellants' Application/Petition for Informal Subsequent Administration was filed on October 19, 2005. On January 4, 2006, the Probate Court issued an Order appointing Shirrese Brockington as Special Administrator and ordering her to proceed with the administration of the estate. Within eight (8) months of that appointment, Appellants should have proceeded to contest Decedent's will if they wished to do so. The record reflects that Appellants waited over ten (10) years before filing their petition.

By opinion dated August 9, 2011, the Court of Appeals reversed the Probate Court and remanded the case. By orders dated March 21, 2013 and December 20, 2013, the Probate Court accepted Decedent's will for probate. Rather than commence a proceeding to contest the accepted will or raise any of the issues set forth in their Petition for Formal Testacy, Appellants filed a series of motions to dismiss which Appellants contended the Court of Appeals had erred. Each of these motions were denied.

The eight (8) month limitation period set forth in S.C. Code Ann. § 62-3-108(3) runs from the time a will is admitted to probate. See Wooten v. Wooten, 235 S.C. 228, 110 S.E. 2d 922 (1959). Moreover, the language in S.C. Code Ann. § 62-3-301, *et seq.* clearly envisions that a will is "*informally probated, upon admission by the Court.*" See also In the Matter of George Theisen, 314 S.C. 140, 442 S.E.2d 179 (1994). In Thiesen, the Supreme Court noted that "*legal treaties are in accord at the time limitations in which to challenge a will run with the time it is admitted to probate.*" See 95 CJS Wills, § 533 [time limitation on right to seek review of a will

commences from the date of its proof, or, in other words, the day it was admitted to probate or refers to the act of the Clerk accepting the will for probate, rather than the date upon which the estate is closed.] Emphasis added.

Decedent's will was filed in 2005 and a Special Administrator was appointed to administer the estate in 2006. The Probate Court issued two (2) orders accepting the will for probate in 2013. While Appellants contend that the prior hearings in this case were limited to consideration of the ten (10) year time limit set forth in S.C. Code Ann. § 62-3-108, many of these hearings were "final hearings" in which all matters at issue were considered. Respondents submit that Appellants' Petition for Formal Testacy did not satisfy the eight (8) month limitation period set forth in S.C. Code Ann. § 62-3-108(3).

III. The Probate Court properly denied Appellants' Petition for Formal Testacy and accepted the will for probate in light of the fraud perpetrated by Appellants in concealing Decedent's will.

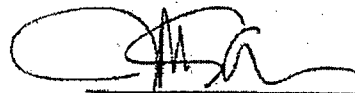
In their Brief, Appellants, for the first time, acknowledge that Appellant Emma Smalls concealed the will. However, Appellants maintain that Appellants' concealment did not prejudice Respondents as Appellants provided Respondent Thomas Brown with a copy of the will. The uncontradicted testimony of Respondent Thomas Brown was that he timely attempted to file the copy of the will but was told that the Probate Court would not probate a copy. Respondents Evelina Brown Moses and Rebecca Patricia Brown had no knowledge of the existence of this copy or their brother's efforts. It is against public policy to penalize Respondents for relying on an improper and inaccurate statement from the Probate Court. Moreover, if any time limit applied to the subject scenario, Appellants' fraud estops Appellants from asserting any statute of limitations.

S.C. Code Ann. § 62-3-1005 and 62-3-1006, otherwise providing limitations for remedies by heirs and devisees against Personal Representatives and distributees, expressly do not bar an action to recover for fraud, misrepresentation or inadequate disclosure. More generally, S.C. Code Ann. § 62-1-1006 creates a fraud related time period to bring an action which is two years from the discovery of the fraud. As discussed, herein, Respondents promptly filed Decedent's Will upon discovery of the fraud.

CONCLUSION

For the reasons set forth herein, Respondents respectfully request that the order of the Probate Court be affirmed.

June 1, 2017



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Attorney for Respondents

IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
PROBATE COURT

Irvin G. Condon, Probate Court Judge

Case No.: 2017-CP-10-00398

2017 JUN -1 PM 4:48
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

MARY P. SMITH, MAEZELL MITCHELL JEFFERSON, individually and as Personal Representative of the ESTATE OF ANNABELLE THORNTON, AYESHA WASHINGTON, as Special Administrator of the ESTATE OF JANINE GOURDINE, EMMA SMALLS, VIOLA PRINGLE, CEPHUS THORNTON, ARTHUR GRADDICK, III, an imprisoned person, VENETRA WATSON, and any known or unknown persons or entities claiming any interest in the ESTATES OF LUCINDA PRINGLE, ODESSA GRADDICK, ARTHUR GRADDICK, JR., ANNABELLE THORNTON, and JANINE GOURDINE.....Appellants,

v.

ANGUS M. LAWTON, Special Administrator of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and the Estate of Rebecca Brown.....
Respondents.

DESIGNATION OF MATTER
TO BE INCLUDED IN THE RECORD ON APPEAL

Respondents propose the following to be included in the Record on Appeal

1. Probate Court file In Re: Estate of Lucinda Pringle: Case No.: 1999-ES-10-689 including, but not limited to, the following:
 - a. Application for Appointment (Lucinda Pringle) dated 05/05/1999
 - b. Renunciation of Right (Emma Smalls) dated 05/05/1999
 - c. Renunciation of Right (Mary P. Smith) dated 05/05/1999
 - d. Renunciation of Right (Annabelle Thornton) dated 05/05/1999
 - e. Death Certificate (Elizabeth Washington) dated 05/05/1999
 - f. Notice to Creditors dated 05/05/1999

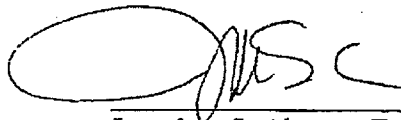
- g. Fiduciary Letters dated 05/05/1999
- h. Certificates of Appointment dated 05/05/1999
- i. Affidavit of Publication dated 07/19/1999
- j. Proof of Delivery dated 08/17/1999
- k. Inventory and Appraisement dated 08/17/1999
- l. Notice of Hearing dated 07/11/2000
- m. Renunciation of Right (Emma Smalls) dated 03/22/2001
- n. Application for Successor Personal Representative dated 03/22/2001
- o. Death Certificate (Jannie Gourdine) dated 03/22/2001
- p. Renunciation of Right (Mary P. Smith) dated 03/22/2001
- q. Fiduciary Letters dated 03/22/2001
- r. Probate Court's Affidavit dated 04/17/2001
- s. Deed of Distribution dated 04/17/2001
- t. Deed of Distribution dated 04/17/2001
- u. Probate Court Package Returned dated 04/20/2001
- v. Accounting dated 05/25/2001
- w. Proposal for Distribution dated 05/25/2001
- x. Petition for Settlement dated 05/25/2001
- y. Notice of Right to Demand Hearing dated 05/25/2001
- z. Proof of Delivery dated 05/25/2001
- aa. Certificate of Discharge dated 06/26/2001
- bb. Death Certificate (Lucinda Pringle) dated 08/04/2005
- cc. Notice of Hearing dated 10/21/2005
- dd. Proof of Delivery dated 11/21/2005
- ee. Fiduciary Letters dated 01/04/2006
- ff. Proof of Delivery dated 01/19/2006
- gg. Motion for Extension dated 05/15/2006
- hh. Notice of Hearing dated 05/04/2007
- ii. Proof of Delivery dated 05/07/2007
- jj. Affidavit of Publication dated 06/05/2007
- kk. Order dated 03/24/2013
- ll. Order dated 12/20/2013
- mm. Order dated 03/14/2014
- nn. Petitioners' Memorandum in Opposition to Respondents' Motion to Dismiss dated 03/18/2015
- oo. Order dated 06/28/2015
- pp. Notice of Motion and Motion to Amend or Alter Order of Probate Court dated 07/14/2015
- qq. Notice of Hearing dated 08/25/2015
- rr. Motion for Extension dated 09/08/2015
- ss. Motion to be Relieved as Special Administrator and Appointment of New Special Administrator (Janine Pringle) dated 09/11/2015
- tt. Petition for Formal Testacy dated February 9, 2016
- uu. Probate Court Order date January 18, 2017

2. Transcript of Proceedings dated November 9, 2016; and

3. Transcript of Record dated April 29, 2009 before the Honorable Roger M. Young;
4. Transcript of Record dated April 18, 2008 before the Honorable Irvin G. Condon;
5. Last Will & Testament of Lucinda Pringle;
6. All briefs and filings by parties relative to the appeal to the Court of Appeals including, but not limited to:
 - a. Respondents' and Appellants' Final Briefs;
 - b. Record on Appeal; and
 - c. Designations of Matter to be Included in the Record on Appeal.
7. Court of Appeals' Order filed August 9, 2011;
8. All deposition transcripts of parties and witnesses; and
9. All testimony and evidence relative to the post-Hugo insurance claim.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 1, 2017



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IN THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
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Irvin G. Condon, Probate Court Judge

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JULIE J. ARMS, CLERK
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BY _____

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v.

ANGUS M. LAWTON, Special Administrator of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and the Estate of Rebecca Brown..... Respondents.

CERTIFICATE OF SERVICE

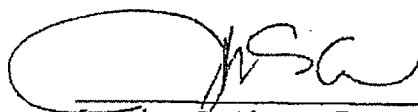
I hereby certify that Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal has been served via U.S. Mail, properly addressed to the following counsel of record on June 1, 2017:

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v.

ANGUS M. LAWTON, Personal Representative of the Estate of Lucinda Pringle, EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and Unknown PR REBECCA PATRICIA BROWN Respondent.

REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY

I. THE PROBATE COURT NEVER MADE FINDINGS OF FACT AND CONCLUSIONS OF LAW RELATED TO THE VALIDITY OF THE WILL PRIOR TO THE WILL BEING FIRST OFFERED FOR PROBATE SEPTEMBER 4, 2015.

In their first argument, Respondents argue that the issue of the validity of the will had previously been raised and ruled on and as a result, it was proper for the court to not even consider addressing these arguments again. Appellants fully address this issue in argument I. A. of their initial brief and refers the court thereto.

To summarize, the only issue raised by Appellants prior to the will being formally offered for probate on September 4, 2015 was the 10-year statute of limitations issue under S.C. Code §62-3-108. Appellants did not and could not have raised any issues related to the validity of the will prior to it formally being offered for probate. As a result, none of the prior court orders and findings could relate to the validity of the will or should preclude Appellants from challenging the validity of the will. As a result, Appellant's arguments are timely and proper and the Probate Court had an obligation to address the merits of these arguments.

II. THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT A FINDING THAT THE WILL HAS BEEN SUFFICIENTLY PROVED.

Respondents argue that the court had "considerable evidence before it to find that Decedent's will was sufficiently proved". Other than the will itself, Respondents do not point to any specific evidence in the record and states that the "Probate Court referenced this evidence, as well as the considerable record in this case in its order."

Appellants fully address this issue in argument I. B. of their initial brief and refers the court thereto. To directly address these contentions, Appellants bring the court's

attention to the Order and the record. A close reading of the January 8, 2017 Order from the Probate Court shows that the only evidence the court refers to in support of its finding that the will is valid is the will itself. The court also references the fact that the witnesses to the will were represented to be dead, but this fact cannot be considered evidence of the validity of the will.

Appellants concede that the record has many pages of testimony and documents, however, Respondent would have to concede that all of this evidence and testimony was generated and submitted to the court in reference to the prior arguments relating to the 10-year statute of limitation set forth in S.C. Code §62-3-108. No new evidence was submitted by either party at the November 9, 2016 hearing. Because the issue of the validity of the will had not been raised prior to Appellants February 9, 2016 petition, one would naturally not expect that any evidence submitted prior to that would relate to the validity of the will.

While it is possible that some of the evidence submitted on the in S.C. Code §62-3-108 issue could relate to the validity of the will, Respondents fail to point to any such evidence in their brief other than the will itself and the copies of the will. A review of the record also shows no evidence that the court could have relied upon in finding the will to be valid. With no evidence in the record to support a finding that the will is valid, this court should reverse the Probate Court's findings and Order on this issue, find that the will was not properly proved, and remand the case to the Probate Court for further handling consistent with this ruling.

III. THE WILL SUBMITTED TO THE PROBATE COURT IS THE VERSION THAT WAS TAMPERED WITH AND IS NOT THE ORIGINAL WILL. RESPONDENTS HAVE ARGUED THAT THE WILL OFFERED FOR PROBATE HAS BEEN TAMPERED WITH AND ARE JUDICIALLY ESTOPPED FROM ARGUING OTHERWISE. WITH NO EVIDENCE IN THE RECORD AS TO WHO THE BENEFICIARIES WERE AND WHAT PROPERTY WAS DEvised IN THE ORIGINAL WILL, THE WILL OFFERED CANNOT BE PROBATED.

Appellants argue that the will offered for probate has clearly been altered, is not the original will, and that since there is no evidence of what the original will stated, the version offered cannot be probated. Respondents argue at the end of the first argument of their initial brief essentially that the will presented for probate on September 4, 2015 is the original will and that the court has not found that it is not the original. To be clear, Appellants are not arguing that the will offered is a copy of the original, but rather that it has been modified or tampered with, specifically the critical sections where the beneficiary designations and the property being devised have clearly been altered.

Respondents argue in their Memorandum in Support of Motion to Vacate dated April 11, 2008,

"In addition, it is important to note that a cursory review of Mrs. Pringle's will suggests that it was tampered with in order to add Emma Small' name as a devisee so as to aid in her efforts to obtain the insurance proceeds, to wit:

- The will has clearly been altered via typewriter erasure to add the name of only one of Mrs. Pringle's daughters, Emma Smalls, as a devisee;
- While Emma Smalls is not appointed co-executor in a complex paragraph where such typewriter erasure is not feasible, she is added in a later paragraph that appoints executors via typewriter erasure."

(R. P. 60).

Respondents' description of the will above is a perfect description of the will that was offered for probate September 4, 2015 and Respondents' position that the will has "clearly been altered" is exactly Appellants' position in this case. It is disingenuous for Respondent to now be arguing that the will presented is not the original and that is has not been altered.

The following elements are necessary for the doctrine of judicial estoppel to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another, (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other, (3) the party taking the position must have been successful in maintaining that position and have received some benefit, (4) the inconsistency must be part of an intentional effort to mislead the court, and (5) the two positions must be totally inconsistent. Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004).

Because Respondent has already taken the position that the will was altered by Emma Smalls in this case, received benefit of winning their argument to have the property transfer reversed and the will be allowed to be offered for probate, Respondent is judicially estopped from arguing that the will has not been altered. To allow Respondent to reverse its position now would be an affront to the integrity of the court.

Respondent argues that multiple people received a copy of the will since Mrs. Pringle's death, but the only version of the will that is in the record is the one that was offered for probate September 4, 2015. Since both parties agree that this will has clearly been altered from its original form and there is no evidence in the record as to what the original will stated, the Probate Court erred in finding this will to be the last will of Lucinda

Pringle and this court should reverse this finding and remand to the Probate Court for further administration consistent with this ruling.

IV. RESPONDENTS WAIVED THE ARGUMENT RELATING TO THE TIMELINESS OF APPELLANTS PETITION CHALLENGING THE VALIDITY OF THE APPEAL BY FAILING TO RAISE THE ISSUE OR ASK THE PROBATE COURT FOR A RULING ON IT. IN ANY EVENT, APPELLANTS TIMELY FILED ITS PETITION TO CHALLENGE THE VALIDITY OF THE WILL.

Respondent's argument that Appellants have not timely filed its petition to challenge the validity of the will was not preserved and is without merit. Respondents acknowledge in this argument that "While not addressed by the Probate Court..." Appellants' petition was not timely. The Probate Court did not address this issue because it was never raised by Respondents. Since this argument was never raised and ruled on and is unappealed, it is waived and this court should not inquire into this argument further.

Should the court decide to address this issue on the merits, it is clear that Appellants' petition was filed within the 8 month time limit. Respondents state in their brief that the petition must be "commenced within eight months from informal probate or one year from the decedent's death, whichever is later." S.C. Code §62-3-108 (c).

Respondents point to the Application/Petition for Subsequent Administration filed October 19, 2005 and the subsequent appointment of Chirrese Brickington as Special Administrator as the filing that Appellant's should have filed a petition to challenge the validity of the will from. Appellants point out that no will was attached to the October 19, 2005 filing and a will is not supposed to be filed with this filing. The filing simply requests that a subsequent administration be opened. Mrs. Brickington never offered the will for probate either.

This is not the proper time to challenge the validity of the will. The proper time is when a will is first offered for probate and in this case, this was September 4, 2015. With Appellants' Petition being filed February 9, 2016, this is well within the 8 month time limit. Respondents misread the language in *Wooten v. Wooten*. The language in relevant case law states that the time limit to challenge a will is when the will is admitted to probate or when the clerk accepts the will for probate. Wooten v. Wooten, 235 S.C. 228, 110 S.E.2d 922 (1959); In the Matter of George Theisen, 314 S.C. 140, 442 S.E.2d 179 (1994).

In this case, the will was not admitted and the clerk could not have accepted the will for probate until it was first offered. While the Probate Court had previously ordered that the clerk accept the will, it was not formally offered until September 4, 2015. This is the date that the clerk accepted the will and this is the date the time limit to challenge the will must run. As a result, this court should consider Appellants' arguments on the merits of the validity of the will.

V. THE ALLEGED FRAUD BY EMMA SMALLS IS NOT RELEVANT TO THE ANALYSIS OF THE VALIDITY OF THE WILL. THE FACT THAT THE WILL OFFERED FOR PROBATE IS NOT THE ORIGINAL WILL WITH NO EVIDENCE OF THE CONTENTS OF THE ORIGINAL WILL MEANS THAT THE WILL OFFERED CANNOT BE PROBATED.

With respect to the assertion by Respondent that "Appellants hid Decedent's will" and that the "circumstances of which Appellants now complain is entirely of their own making", Appellants point out that the only person that has been alleged to have concealed the will was Emma Smalls, and she is now deceased. Thomas Brown did admit to having a copy of the will within three years of the Mrs. Pringle's death negating any damage Mrs. Smalls concealment may have crated.

None of the living Appellants have done anything wrong or have done anything to create this situation. There is no reason for a court to look up on the Appellants in the case with an eye to punish for bad behavior since none of the surviving Appellants have unclean hands. Even if the court was interested in punishing bad actors, other than Emma Smalls, it is impossible to tell who the original beneficiaries were and what property was to be received. As a result, the court would have to speculate as to the testator's intent.

It is unfortunate for both Appellants and Respondents that no one has a copy of the original will and that no one even can testify as to who the beneficiaries in the original will were and what property was devised in the original will. Given the will that has been presented, however, the court would have to engage in pure speculation to determine what the testator's intent was, and this is prohibited by Cornelson v. Vance, 220 S.C. 47 (66 S.E.2d 421 (1951)).

As a result, the court must find that will cannot be probated as is and that there is no evidence of the testator's intent, reverse the Probate Court on this issue and remand the case for further findings consistent with this ruling.

Respectfully Submitted,

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June 12, 2017

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In the Circuit Court

APPEAL FROM CHARLESTON COUNTY
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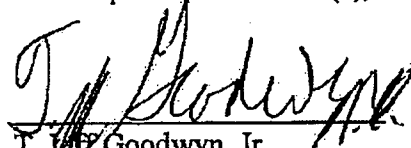
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CERTIFICATE OF COUNSEL

The undersigned certifies that this Reply Brief of Appellants complies with Rule 211(b), SCACR.



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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2017-CP-10-00398

RE: ESTATE OF LUCINDA PRINGLE,)

MARY P. SMITH, Maezell Mitchell)
Jefferson, individually and as Personal)
Representative of the ESTATE OF)
ANNABELLE THORNTON, SHIRRESE)
B. BROCKINGTON, as Special)
Administrator of the ESTATE OF JANINE)
GOURDINE, EMMA SMALLS, VIOLA)
PRINGLE, CEPHUS THORNTON,)
ARTHUR GRADDICK, III, an imprisoned)
person, VENETRA WATSON, and any)
known or unknown persons or entities)
claiming any interest in the ESTATES OF)
LUCINDA PRINGLE, ODESSA)
GRADDICK, ARTHUR GRADDICK, Jr.,)
ANNABELLE THORNTON and JANINE)
GOURDINE,)

Petitioners,)

vs.)

ANGUS M. LAWTON, Personal)
Representative of the Estate of Lucinda)
Pringle, EVELINA BROWN MOSES,)
THOMAS P. BROWN, JR., and Unknown)
PR REBECCA PATRICIA BROWN,)

Respondents.)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **June 12, 2017**, copies of the foregoing **Reply Brief of Appellant** were served on the following party(s) by placing a copy of the same via the United States Regular Mail, post prepaid, at the address shown below:

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON IN THE PROBATE COURT

3
 4 EVELINA BROWN MOSES, THOMAS P. BROWN, JR., and
 5 DAVID L. MICHAEL as guardian Ad Litem for
 6 REBECCA PATRICIA BROWN,

Petitioners,

7 vs. CASE NO. 1999-ES-10-689-2

8 MARY P. SMITH, individually and as Personal
 9 Representative of the ESTATE OF LUCINDA
 10 PRINGLE, MAEZELL MITCHELL JEFFERSON,
 11 individually and as Personal Representative of
 12 the ESTATE OF ANNABELLE THORNTON, SHIRRESE B.
 13 BROCKINGTON, as Special Administrator of the
 14 ESTATE OF JANINE GOURDINE, EMMA SMALLS, VIOLA
 15 PRINGLE, CEPHUS THORNTON, ARTHUR GRADDICK, III,
 16 an imprisoned person, VENETRA WATSON, and any
 17 known or unknown persons or entities claiming
 18 any interest in the ESTATES OF LUCINDA PRINGLE,
 19 ODESSA GRADDICK, ARTHUR GRADDICK, JR.,
 20 ANNABELLE THORNTON and JANINE GOURDINE,

Respondents.

21 BEFORE: HONORABLE IRVIN G. CONDON
 22 DATE: April 18, 2008
 23 TIME: 10:17 A.M.

24 A. WILLIAM ROBERTS, JR., & ASSOCIATES

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1 LOCATION: Charleston County Probate Court
2 84 Broad Street
3 Charleston, SC

4 REPORTED BY: Donna Liptak,
5 Court Reporter
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1 APPEARANCES OF COUNSEL:

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 4 and DAVID L. MICHAEL as guardian Ad
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 individually and as Personal
 16 Representative of the ESTATE OF
 ANNABELLE THORNTON, SHIRRESE B.
 17 BROCKINGTON, as Special Administrator of
 the ESTATE OF JANINE GOURDINE, EMMA
 18 SMALLS, VIOLA PRINGLE, CEPHUS THORNTON,
 ARTHUR GRADDICK, III, an imprisoned
 19 person, VENETRA WATSON, and any known or
 unknown persons or entities claiming any
 20 interest in the ESTATES OF LUCINDA
 PRINGLE, ODESSA GRADDICK, ARTHUR
 21 GRADDICK, JR., ANNABELLE THORNTON and
 JANINE GOURDINE:

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and

EDWARD P. GUERARD, JR.
BY: EDWARD P. GUERARD, JR.
1 Carriage Lane
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(843) 723-8887

ALSO PRESENT:

Professor Medlin

David L. Michel, Esq., GAL for
Rebecca Brown

Shirrese E. Brockington, Esq.
Special Administrator of the Estate
of Janine Gourdine, Emma Smalls,
Viola Pringle, Cephus Thornton,
Arthur Graddick, III, an
imprisoned person, Venetra Watson.
and any known or unknown persons or
entities

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IN THE ESTATE OF LUCINDA PRINGLE

1 THE COURT: Please be seated.

2 Good morning. My name is Irvin Condon,
3 your probate judge for Charleston County. Welcome.
4 This is the matter of the Estate of Lucinda
5 Pringle, Charleston County Probate case number
6 1991-ES-10-689-2.

7 I met with counsel in chambers. We
8 generally meet there to see if there's any way to
9 resolve the dispute prior to going forward with the
10 litigation. They indicated to me that you've tried
11 mediation with retired Judge Fields and that did
12 not work. I'll again ask if there's any way this
13 matter can be settled, if the parties want more
14 time, and I'll ask counsel if they've had a chance
15 to talk with the parties.

16 It looks like in this case, once the
17 court makes the decision, there will be three
18 takers the way it stands now. I guess there were
19 five children, five daughters, and those five would
20 share under the intestate stature now. Otherwise,
21 if it goes according to the will, then the three
22 grandchildren would share.

23 Counsel, have you had a chance to talk
24 to them again, or are we ready to go forward?

25 MR. GUERARD: Your Honor, we've

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IN THE ESTATE OF LUCINDA PRINGLE

1 Discussed it at length, and we are ready to go

2 forward.

3 THE COURT: Okay. He's indicating the
4 desire to go forward, and I guess it's the same for
5 both sides?

6 MR. ALTMAN: That's correct, your
7 honor.

8 THE COURT: Thank you, Mr. Altman. Are
9 you ready to go forward, Mr. Guerard? This is
10 actually a Motion to Vacate by Mr. Altman's side,
11 here, if you would to proceed, then.

12 MR. ALTMAN: Thank you, your Honor.
13 Before we get into the argument itself, I believe
14 there are some housekeeping issues that we wanted
15 to put on the record relative to this estate. I
16 don't know if you want to address those or hear
17 arguments first.

18 THE COURT: It's my understanding is
19 that Ms. Smith passed away this past week. Again,
20 I am sorry to hear that. She was serving as the
21 personal representative of Ms. Pringle's estate. I
22 believe her daughter is here.

23 MR. GOLDBERG: This is Shirley Howard,
24 who is the daughter of Mary Smith.

25 THE COURT: Ms. Howard, good morning.

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IN THE ESTATE OF LUCINDA PRINGLE

1 I'm sorry for your loss. We were looking at
2 appointing you as Special Administrator for the

3 Estate of Ms. Pringle. Are you willing to accept
4 that role?

5
6 MS. HOWARD: Yes, I am.

7 THE COURT: Okay. We'll have some
8 paperwork for you to sign afterwards. Does anybody
9 contest the appointment of Ms. Howard as the
10 Special Administrator of Ms. Pringle's estate at
11 this time?

12 MR. GOLDBERG: Your Honor, her brother
13 is Robert Pringle, and he has no objection to
14 Shirley serving.

15 THE COURT: Thank you. So Ms. Howard
16 will be appointed as the Special Administrator of
17 Ms. Pringle's estate at this time.

18 Okay; Mr. Altman.

19 MR. ALTMAN: Thank you, your Honor.
20 The way we would like to handle this hearing is I
21 am going to speak somewhat briefly regarding
22 background and facts at issue, then I'm going to
23 turn it over to my co-counsel, Professor Medlin,
24 who's going to speak on the underlying legal issues
25 relative to the Petitioner's Motion to Vacate, and

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IN THE ESTATE OF LUCINDA PRINGLE

1 that is the motion that we're here for today. In
2 this motion, we are primarily asking that Ms.
3 Pringle's will be --

4 THE COURT: Mr. Altman, one second; Mr.
5 Goldberg, any objection to them proceeding that
6 way?

7 MR. GUERARD: No, we don't have any
8 objection.

9 THE COURT: Okay. Go ahead, Mr.
10 Altman.

11 MR. ALTMAN: In our motion, we are
12 asking that Ms. Pringle's will be admitted to
13 probate, and asking for our clients, Evelina Brown
14 Moses, who's in the courtroom today, Thomas Brown,
15 who is sitting to her left, and their sister,
16 Rebecca Patricia Brown, who is not here but her
17 guardian ad litem, Mr. Michel, is present in the
18 courtroom on her behalf, due process rights be
19 preserved.

20 Now, I think the court is relatively
21 familiar with the facts of this case, particularly
22 the family lineage, and I don't think there are any
23 issues, but Lucinda Pringle had five daughters,
24 Janine Gourdine, who died in 2001. Ms. Gourdine
25 was the first personal representative of Ms.

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IN THE ESTATE OF LUCINDA PRINGLE
1 Pringle's estate.

2 Annabelle Thornton, who passed away in
3 2004, also was a daughter and succeeded Ms.
4 Gourdine as successor personal representative.

5 Emma Smalls, who is still living, not present in
6 the courtroom today, and Mary Smith, who recently
7 passed away at the end of last year.

8 Now our clients' daughter was Evelina
9 Brown, and she predeceased Ms. Pringle. It is my
10 understanding she died '86, '87. Now, Evelina
11 Brown was incapacitated for much of her life -- she
12 had a nervous breakdown -- and her children, Miss
13 Rebecca and Evelina were raised by their
14 grandmother on the family -- on Ms. Pringle's
15 property, which is 50 percent of ten acres we
16 discussed in chambers. Now, my understanding is a
17 number of family members still live on that
18 property, and Ms. Thornton and Ms. Gourdine lived
19 on the property until their deaths, and Ms. Smalls
20 still resides on the property along with some of
21 their children.

22 Now, Thomas and Evelina left
23 Charleston, left the low country, in the late 60's
24 and didn't return until -- Thomas didn't return
25 until 2000, 2001. Evelina returned in 1999. So

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IN THE ESTATE OF LUCINDA PRINGLE

1 they were outside of South Carolina for a good 30
2 to 35 years, during which many of the matters at
3 issue in this case occurred. Thomas was in New
4 York working in a factory, and also in Louisiana.
5 Evelina was in the Bronx, not living with Thomas.

6 but also in New York.

7 Now, I don't believe there's any issue
8 regarding Rebecca's capacity, and I would ask --

9 MR. GUERARD: There's none, your Honor.

10 MR. ALTMAN: Thomas, I believe,
11 finished the ninth grade, Evelina may have finished
12 the tenth grade, but that is the extent of their
13 education.

14 Now, the time line in this case is well
15 set forth in the memorandum that we submitted in
16 the motion before the court, as well as
17 Petitioner's Petition for recovery and final
18 distribution. I don't believe there's any dispute
19 regarding material facts. I'm going to try and run
20 through those quickly so we can include those on
21 the record.

22 Ms. Pringle's will was dated July 30,
23 1988, and it is part of the probate record in this
24 case.

25 MR. GUERARD: Objection to that. That

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IN THE ESTATE OF LUCINDA PRINGLE

1 will has not been admitted. That's what this whole
2 process is about, is whether that will is in fact
3 entitled to probate.

4 THE COURT: Mr. Altman.

5 MR. ALTMAN: The will at issue in this
6 case, and I'm not asking for it to be admitted

7 today, carries a date of July 30, 1988. Now, in
8 September, 1989, hurricane Hugo hit Charleston.
9 Ms. Pringle was still living in September of 1989;
10 she passed away the following month, I believe on
11 October 11, 1989, if I'm correct.

12 Her death in October sets forth the
13 series of events that brings us here today. But
14 also, some of the critical events that happened in
15 this case happened in the three or four months
16 following hurricane Hugo and gives rise to critical
17 evidence at this juncture. Ms. Pringle's property
18 was damaged in hurricane Hugo. And before she had
19 a chance to make those repairs, she passed away.
20 Now, the depositions qualify that, and I think the
21 parties would agree to submit them.

22 In particular, the respondents deny any
23 knowledge of the will until the start of this case,
24 deny any preparation of the will. Many of them
25 deny any knowledge of estate activity in the late

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IN THE ESTATE OF LUCINDA PRINGLE

1 1990s and 2000.

2 We have a dramatically different take,
3 which is two of our folks were obviously back up --
4 Evelina knew nothing of the will. Thomas's
5 position in the deposition transcripts have been
6 humbled up that he saw a copy of a will and asked
7 for it, but was always rebuked in his efforts to

8 get the original will until it was produced and
9 filed in 2005.

10 What the parties know and what is on
11 dispute is, in 1989, Emma Smalls, one of the
12 Respondents, undertook her pursuit in an insurance
13 claim to repair the house that she was living in.
14 Now, she did this after her mom passed away,
15 because her mom died three or four weeks after
16 hurricane Hugo, but knew Ms. Pringle had insurance
17 on her home.

18 Now, what we've obtained from the
19 Respondents in the course of discovery is
20 documentation relative to that insurance claim.
21 And that documentation, I believe, is attached as
22 Exhibit B to Petitioner's Memorandum of Support.

23 Now, ultimately what happened is the
24 insurance company known as Public Safety and Fire
25 Casualty issued a check in the amount of \$3,000 for

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IN THE ESTATE OF LUCINDA PRINGLE

1 hurricane damage. That check was issued on January
2 15, 1990 and was delivered to Emma Smalls. And
3 it's important for the court to look at how that
4 check was issued, because the check was issued to
5 the Petitioners and Emma Smalls as executor for Ms.
6 Pringle's estate.

7 Now, there's only one logical
8 conclusion as to why those parties appear on that

9 check. The estate had not been opened -- wasn't
10 even intended to be open for another nine years at
11 that point. That check and the names on it are in
12 identical order in form as to how they appear on
13 Ms. Pringle's will. Strong evidence that Emma
14 Smalls submitted that check -- submitted the will
15 to the insurance company in furtherance of her
16 claim because she wanted to get her house repaired.

17 Now, our folks weren't even living in
18 South Carolina at that time. They were up in New
19 York, which gives rise to additional documentation
20 that's also included with the Petitioner's Exhibit
21 B. The check delivered to Ms. Smalls had our folks
22 name on it. She had to get that check endorsed to
23 cash it.

24 So what Ms. Smalls did, she had her son
25 and grandson, who were also both in New York, go

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IN THE ESTATE OF LUCINDA PRINGLE

1 and meet with the Petitioners separately -- the
2 petitioners being Thomas and Evelina and Rebecca,
3 who had no idea and no understanding of anything
4 that was going on during this period. The
5 Petitioners wanted to help their aunt get her house
6 repaired, they endorse the check, the check comes
7 right back to Emma. Emma cashes the check and does
8 whatever she does with the money.

9 These documents are the critical

10 evidence in this case. There is no way this
11 insurance company would have cut these checks in
12 the order that they did, or pay this claim, without
13 the submission of the will, the same will that the
14 Respondents have denied any knowledge of -- that
15 they deny producing, that they deny knowing
16 anything about until this case. We think the
17 checks are determinative as to the underlying
18 issues in this case.

19 Nothing happened between 1990 and 1999.
20 Thomas asked for the will; his efforts were
21 refused. Evelina knew nothing; Rebecca knew
22 nothing.

23 In 1999, unbeknownst to the Respondents
24 -- unbeknownst to the Petitioners, the Respondents
25 undertake to probate Lucinda Pringle's estate as an

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IN THE ESTATE OF LUCINDA PRINGLE

1 intestate estate. Janine Gourdine petitions the
2 court for appointment and files renunciations from
3 all of her sisters. No communication with our
4 folks. No renunciations filed, nothing to reserve
5 their rights, even though they are listed as heirs
6 on the application.

7 Now, notably on the application,
8 there's no address given for our clients. In fact,
9 Evelina Smalls' name is mis-identified. And
10 Rebecca has no address, as well, nor for the

11 guardian ad litem for her.

12 But that sets in course the series of
13 events relative to the respondents' attempt to
14 probate this estate as an intestate estate, when in
15 fact it wasn't. Either way, it was in incorrect.

16 And our folks never got any notice of
17 those proceedings. No information to the heirs was
18 ever sent. No renunciations relative to that
19 misguided intestate effort, because Janine Gourdine
20 died at some point, I believe, in 2000 -- either
21 the end of 1999 or the beginning of 2000.

22 So even when the successor Annabelle
23 Thornton was appointed, our folks had no notice.
24 In fact, until the will was produced and filed,
25 they didn't even -- until we got involved, they

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IN THE ESTATE OF LUCINDA PRINGLE

1 didn't even know about any estate activity. They
2 didn't receive any closing documents, no
3 information of heirs and devisees outside of the
4 area. It's a wholly improper effort. And the
5 estate was closed sometime in 2000.

6 Now, the parties' versions of events
7 are different relative to the production of the
8 will. Evelina Brown Moses has testified that Emma
9 Smalls called her, asked her to come over to the
10 house in August of 2005. Said she had something
11 for her, and gave her the original will, and said

12 she didn't want it weighing on her conscience.

13 Ms. Brown Moses immediately went to the
14 probate court and filed that will of record, and
15 that produced the series of events where the court
16 issued -- or sent certified letters to all
17 interested parties, advising them that the will had
18 been filed.

19 Now, Emma Smalls's testimony denies
20 that event took place. She denies producing the
21 will. She denies having any knowledge of the will.
22 She denies signing the renunciations that
23 accompanied the prior probate filings. She denies
24 having any knowledge of the insurance documents.

25 And that's pretty consistent with

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IN THE ESTATE OF LUCINDA PRINGLE

1 Respondents' position regarding the probate. They
2 didn't know anything about it until this case
3 started. They never heard about it. They never
4 saw it. They never withheld it. They never
5 suppressed it. And there's no explanation given
6 for how this will suddenly materialized.

7 I think the parties have talked about
8 the record that's been submitted. Obviously we've
9 got it -- the exhibits have been attached to our
10 Memorandum of Support. The affidavits of Thomas
11 and Evelina, deposition transcripts will also be
12 admitted, I think, without objection on a mutual

13 basis of all parties.

14 MR. GUERARD: Right.

15 MR. ALTMAN: Unless the court has any
16 questions regarding the facts, I'm going to turn it
17 over to Professor Medlin to talk about how these
18 facts apply.

19 THE COURT: Thank you, Mr. Altman.

20 Mr. Medlin.

21 MR. MEDLIN: Thank you, your Honor.

22 Good morning.

23 As I see it, there are two general
24 issues with respect to the ability to admit the
25 will that has been described as Mr. Altman into

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IN THE ESTATE OF LUCINDA PRINGLE

1 probate. First, whether there is a mechanism by
2 which to do. Second, there is a time within which
3 one might permissibly do it has expired. I want to
4 address each of those issues, and I'm afraid I
5 might be long-winded as usual, so I apologize in
6 advance.

7 But as a preliminary matter, let me
8 note that unless I've missed something, which I may
9 have, I don't know that anybody has disputed the
10 validity of the will other than the ability to
11 probate it at this time. And I would suggest that
12 the primary purpose of probate is to honor the
13 testator opinions. And I would suggest that we

14 would keep that in mind as we discuss the
15 mechanisms and the time limits within which we can
16 probate a will that, to my knowledge, no one has
17 otherwise denied that it expresses the intention of
18 the testator.

19 Now, the first general issue deals with
20 the mechanism of being able to probate the will.
21 And assuming that there is an order finding that
22 there was an intestacy, a formal order, which I
23 would like to address later.

24 I'm aware of two mechanisms by which
25 the Petitioners could nevertheless submit the will

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IN THE ESTATE OF LUCINDA PRINGLE

1 to probate and have it accepted for probate. The
2 first is pursuant to Section 62-3-412, Paragraph 1,
3 which effectively gives two reasons for which the
4 Petitioners could submit the will. The first is
5 that they were unaware of the existence of the will
6 at time of earlier proceeding.

7 And Mr. Altman has addressed that.
8 First of all, the undisputed testimony, as I
9 understand it, is that Evelina Brown, one of the
10 Petitioners, never knew of the existence of the
11 will.

12 Second, Rebecca, who is not competent,
13 could not legally know about the existence of the
14 will.

15 Third, Thomas has testified that he saw
16 a copy of the will, but despite several requests,
17 the original was never produced. So he, too, was
18 unaware of the existence of any document during the
19 earlier proceeding.

20 The second reason that Section 62-3-412
21 would authorize the probate of this document is
22 that the petitioners were unaware of the earlier
23 proceeding and they received not notice except by
24 publication. Now, our clients have all testified
25 that they were unaware of the earlier proceeding,

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IN THE ESTATE OF LUCINDA PRINGLE

1 the original probate, the subsequent administration
2 after it was reopened once it was closed under Rule
3 4.

4 There are, as I see it, a couple of
5 proofs of delivery of the file, but our clients
6 deny having received any notice whatsoever of the
7 earlier administration. And so, under either of
8 these permissible legs of Section of 62-3-412, our
9 clients qualify. They satisfied both, but they
10 don't have to satisfy both. They have to satisfy
11 only one. And they clearly satisfied at least one
12 of those.

13 THE COURT: Let me just stop you there.
14 The other side, I guess, are arguing that one of
15 your clients knew of a copy of the will. Was he

16 under a duty to attempt to probate that copy of the
17 will?

18 MR. MEDLIN: Well, your Honor, if he
19 was, he was thwarted in that attempt in a couple of
20 ways. Number one, he did testify that he tried to
21 get the original and no one produced an original to
22 him. Number two, he testified that he brought the
23 copy to this court and tried to probate it and was
24 advised that a copy of a will could not be
25 probated.

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IN THE ESTATE OF LUCINDA PRINGLE

1 Again, not being a probate lawyer, he
2 accepted that at face value and didn't pursue it.
3 So even if he did have a duty, he did everything
4 within reason that he could have done to carry out
5 that duty. Although, I'm not sure that he had a
6 duty.

7 THE COURT: And then your second, I
8 guess, mechanism, as far as him receiving notice,
9 would be the filing of the Deed of Distribution
10 giving him notice, if it's on the public record?

11 MR. MEDLIN: Your Honor, he would have
12 no reason to go down to check the public record to
13 see that he had received, allegedly, some interest
14 in a Deed of Distribution. The purpose of
15 62-1-112 is to let the parties know for due process
16 reasons that there's a probate process going on

21 earlier portion of the will as devisees. Our three
22 clients are listed in the body of the document as
23 executors, nominated executors. Our three clients
24 are listed later on in the will as nominated
25 executors.

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IN THE ESTATE OF LUCINDA PRINGLE

1 In the first instance and the last
2 instance, there is clearly some alteration of the
3 document, and Ms. Smalls name appears as a devisee
4 and as a nominated executor. But in the body of
5 the paragraph where there is also a nomination of
6 executors where one could not easily add Ms.
7 Smalls' name without calling attention to it, only
8 our three clients' names are listed as executors.
9 So we, too, are going to argue that this document
10 has been tampered with, but that it's valid and
11 that Ms. Smalls is the one who did the tampering.

12 Now, having discussed those two
13 mechanisms, your Honor, let me suggest some
14 arguments about why this probate would not be
15 valid. And if I could, try to dispel those
16 arguments.

17 First of all, in their brief in their
18 earlier pleadings, the respondents argue Section
19 3-412 has a time limit within which any attempt to
20 probate a will to vacate the earlier formal testacy
21 proceeding must be done, and I would admit at first

22 blush, that the time limit would apparently not to
23 have been met by our clients.

24 But I think at this point, we have to
25 address a couple of other issues. First of all,

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IN THE ESTATE OF LUCINDA PRINGLE

1 there is an overriding theme in the probate code
2 found both in Sections 3-1005 and 3-1006; and
3 earlier in the general introductory provisions of
4 the probate code in Section 3-106 -- and of course,
5 I'm referring to Title 62 for all these cites --
6 where time limits don't apply when fraud is
7 involved. And we allege that clearly fraud is
8 involved here because of the insurance check, and
9 all of that was explained to us.

10 3-1005 and 3-1006, of course, talk
11 about the ability to recover against a personal
12 representative and the ability to recover against
13 distributees who have received improperly
14 distributed property. All of the respondents fall
15 into at least one of those categories, distributees
16 and a couple of them fall into the other category,
17 personal representatives. So by the very language
18 of the probate code, when fraud is involved, the
19 time limit cessation 3-412 would not be a bar at
20 this point to admitting the will vacating the order
21 that may exist with respect to intestacy that may
22 already be in place.

23 I keep talking about the order of
24 intestacy as possibly being in existence for a
25 reason I'll get to in just a minute. Consistent

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1 with this idea is that Section 3-1008 allows a
2 subsequent administration, which, in fact, your
3 Honor has already approved a subsequent
4 administration in this estate. 3-1008 allows the
5 subsequent administration, usually when additional
6 property has been found, but also, alternatively,
7 for good cause.

8 And 3-1008 does not have a time limit.
9 3-1008 anticipates exactly what's going on here
10 today, that because of circumstances beyond the
11 control of the petitioners, and the intestators
12 intention to do justice, we're going to allow in
13 certain cases the probate of a will later than one
14 might normally suggest.

15 We have, among our various pleadings
16 and our previous filings, asked for a return of the
17 improperly distributed property. As I mentioned,
18 we've already asked for a subsequent
19 administration, which has been granted. And so, we
20 are really doing more than just asking to vacate
21 the order that might exist. We're asking for a
22 combination of relief, all of which would honor the
23 testator's intentions, and which vacates provisions

24 which I cited in the probate code would recognize
25 as still being valid.

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1 But perhaps most importantly is the
2 mechanism under Section 3-413. Again, the
3 mechanism that allows your Honor to accept this
4 will for good cause shown and to vacate whatever
5 other order may exist. Our clients have testified,
6 and there's undisputed testimony here as I
7 understand it, that they never received an order of
8 formal intestacy. They've testified they haven't
9 received anything.

10 As I noted before, there are proofs of
11 delivery in the file, but those proofs of delivery
12 do not indicate that any order of formal intestacy
13 was sent to our clients. And that is the lynch pin
14 of the time limit under Section 62-3-413, because
15 one has to look at Section 1-308 for the time limit
16 within which one may begin an appeal, which your
17 Honor of course knows is ten days after receipt of
18 a written order.

19 We haven't received any such written
20 order. That time limit has never started to run.
21 So consequently, it's not too late to appeal, and
22 consequently, it's not too late for your Honor to
23 vacate whatever order may be existing under Section
24 3-413.

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1 been alluding to on a couple of previous occasions.
2 Not only do I think that there is an undisputed
3 testimony of our clients, uncontradicted by
4 anything in the probate court record that I'm aware
5 of, that they have not received the order of formal
6 intestacy -- unless I missed it, and I have not
7 personally gone through the probate court file,
8 your Honor. I want to make clear that I don't make
9 a representation to you.

10 But in looking at the copies of the
11 documents provided to me and in discussing with my
12 co-counsel, we're not aware of the existence of an
13 order finding that the decedent died intestate.
14 There's a certificate of discharge in the file, and
15 it discharges the personal representative from her
16 duties, and it refers to complying with orders.
17 But unless your Honor has a Form 413 or similar
18 such order in the original, then I'm not aware of
19 the existence of any such order.

20 In fact, even on the probate court
21 checklist, I see no such designation for such an
22 order. So, I would argue that if no such order
23 exists, we don't even need to ask you for a motion
24 to vacate. This case is still wide open, and it is
25 perfectly appropriate for you to accept the later

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1 offered will to honor the intentions of the
2 intestate.

3 Now, there are some other sections
4 in --

5 THE COURT: I'm going to stop you there
6 because you said there's no order of informal
7 probate?

8 MR. MEDLIN: Unless I've missed it in
9 my copy, your Honor. But I have a copy of the
10 checklist which doesn't indicate that. And I
11 haven't seen a copy. We had come by this morning
12 to double check if one was filed.

13 MR. GUERARD: Your Honor, if I may.
14 The reference has been repeatedly made to 3-413.
15 That pertains to formal intestacy. There would be
16 no formal, as such, in the informal intestate at
17 this stage.

18 MR. MEDLIN: Your Honor, if I may. Not
19 to be argumentative, but Mr. Guerard, you can't
20 have an informal probate intestate estate, Section
21 62- --

22 MR. GUERARD: But this is not a testate
23 estate, your Honor. It's an intestate.

24 MR. MEDLIN: It's intestate. Section
25 62-3-401(a) provides that the only way for the

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1 court to order that there was an intestacy is
2 through a formal intestacy proceeding.

3 So there would have to be such an order
4 to find -- and in fact, the petition for settlement
5 offered by the personal representative asked the
6 court to determine formally that there is an
7 intestate estate, but there is no such order. And
8 it's the only way for the probate code to have an
9 intestacy determined by the court.

10 Now, your Honor, there are other
11 sections that Section 3-1000 of the probate code
12 might be argued to prohibit the admission of the
13 will at this stage. And again, I would say these
14 would be worth representing only if there is an
15 order of formal intestacy.

16 But assuming there is, 3-108 talks
17 about the commencement of a formal testacy
18 proceeding within ten years of the decedent's
19 death. It doesn't talk about the culmination of
20 the formal testacy proceedings. And in fact, I
21 would suggest that there would be many states that
22 run afoul of that rule, including this one, if it's
23 the culmination that had to occur within that ten
24 year time period.

25 Every time that ten year time period is

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1 referred to in Section 3-108, it talks about the
2 commencement of a formal testacy proceeding. There
3 was a commencement of an administration of this
4 estate within the ten year time period. The
5 respondents were kind enough to do that for us.
6 They satisfied the time limit.

7 Either there is no order of a formal
8 testacy, which means the administration is ongoing
9 and we're simply proffering a later offered will,
10 or there was an order, in which case, we're simply
11 asking you to correct that order because of the
12 later offered will, not to commence a new
13 administration of the estate. So we would suggest
14 that 3-108 is not a bar.

15 In fact, when you look at some of the
16 other provisions of 3-108, you would see the policy
17 of the general assembly in recognizing that exactly
18 what we're asking to occur, assuming that there is
19 a formal order of intestacy take place today.

20 There are two exceptions to the ten
21 year rule without getting into too much detail,
22 your Honor, dealing with the mistaken death of the
23 intestate. In either case, it is certainly
24 permissible under 3-108 to probate a will beyond
25 the ten year date of death time period.

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1 MS. BROCKINGTON: Excuse me, your
2 Honor. There's been a request that this man speak
3 a little louder.

4 THE COURT: We also have some
5 equipment, if you need.

6 MR. MEDLIN: Your Honor, would it help
7 if I came around here?

8 THE COURT: That's fine.

9 MR. MEDLIN: Ma'am, can you hear me
10 now? And your Honor?

11 THE COURT: Yes.

12 MR. MEDLIN: The probate code also
13 provides in Section 3-108 that it is incontestable
14 that the decedent left no will and died intestate
15 if two things don't occur within that ten year from
16 date of death time period: no informal probate; no
17 formal testacy proceeding.

18 So the trigger under 3-108 requires the
19 absence of two proceedings. We have both of those
20 here. We had an informal probate. And in fact, it
21 is a formal testacy proceeding which is defined in
22 the probate code as a proceeding to determine
23 whether a will exists. A determination of
24 intestacy, of course, includes within its
25 consideration, a determination of whether the

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1 testator had a will.

2 So 3-108 does not prevent what
3 petitioners ask for today because of that ten
4 years' time period. It talks about commencement;
5 it doesn't talk about culmination, or correction of
6 an order.

7 We would also argue that because we
8 allege fraud exists, and again, I refer to the
9 insurance check scenario, which is our critical
10 argument there, that statutes of limitation, even
11 if the underlyingly would apply, we suggest they do
12 not. Statutes of limitation do not apply if fraud
13 has occurred, and our memo cites the cases, your
14 Honor. I won't bore the court with those cites.

15 Even if fraud doesn't exist, then there
16 can be an estoppel argument to prevent the
17 advocation of any applicable statute of
18 limitations, because we reasonably relied on the
19 words of respondents, or, in our case, the lack of
20 words in certain situations, and there are some
21 case cites from there.

22 I've also cited in the memorandum a
23 couple of cases from other jurisdictions, your
24 Honor, so I want to make it clear that we're not
25 suggesting that these would be finding precedents

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1 as to these last couple of cases. But situations

2 that would be very much on point with what we
3 suggest would be the case today, assuming that
4 there is a formal intestacy order.

5 We've also listed the elements of fraud
6 and our position on the facts as to why we think
7 fraud applies in this case. I'm not going to take
8 the court's time to go through those point by point
9 unless the court would like us to. But I would
10 point out there is one more indicia of fraud, both
11 in the petition to probate the will and in the
12 appraisalment.

13 The property was listed as being valued
14 at one hundred dollars. No serious fiduciary
15 carrying out the job and attempting to inform the
16 parties of the reality of this probate could begin
17 to suggest that property was worth a hundred
18 dollars. Probably in history, but certainly not
19 since 1989.

20 THE COURT: I'll have to refer back to
21 it. I thought it was \$100,000.

22 MR. MEDLIN: I believe it was \$100,
23 your Honor. I could be mistaken. Even that would
24 be quite a low-ball based on information that we
25 received.

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1 I mentioned at the outset of this
2 discussion that --

3 THE COURT: I think they had it as
4 \$100,000.

5 MR. MEDLIN: Is it \$100,000?

6 THE COURT: But 100 then it looks like
7 a period -- it should be a comma -- then three
8 zeros after it.

9 MR. MEDLIN: Then I apologize. I would
10 also suggest to you that \$100,000 is far below the
11 fair market value of the property.

12 Now, the public policy considerations,
13 again, need to be considered because even though we
14 don't think that any of these issues would serve as
15 a bar to the probate of the will, the public policy
16 behind all of these provisions in the probate code
17 is to do two things. Number one, to honor
18 intestators' intentions. Number two, to the extent
19 that there are time bars, to allow there to be an
20 orderly and efficient administration of the estate,
21 which, of course, is intended to allow the
22 determination of title so the title can become
23 [inaudible].

24 Now, your Honor, if I'm correct in my
25 understanding -- and I have not conducted or seen a

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1 title search -- I don't believe any of the parties
2 who claim ownership to the property have tried to
3 convey the property. And so consistently, it

4 doesn't harm any of the parties to recognize the
5 testators' intentions in order to make the property
6 marketable in a more speedy and efficient manner.
7 And in fact, that would be relayed by the fact that
8 ten years, almost, passed from the time any of the
9 respondents even decided to try to probate the
10 estate as an intestate estate.

11 Nor do any equitable prohibitions apply
12 in our ability to probate the will by estoppel,
13 because, first of all, we have to have some
14 reliance. And in fact, it's the opposite case.
15 We've done nothing because of our being unaware of
16 the situation to confuse the respondents about the
17 rights. And secondly, they certainly haven't
18 suffered any detrimental reliance because they've
19 been using the property for all this time that we
20 would argue they are not entitled to use.

21 So the under-opinions of any laches or
22 estoppel arguments do not exist in this case. In
23 fact, they are in our favor in this case.

24 And finally, any argument that South
25 Carolina Rules of Civil Procedure, Rule 60 would

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1 prevent a Motion to Vacate being approved would not
2 be a compelling argument, because first of all, the
3 language itself in Rule 60 prevents someone from
4 committing Fraud and then applying Rule 60. And

5 once again, we argue fraud.

6 But even without the fraud, the Rule 60
7 argument is inapplicable because Section 62-1-304
8 of the probate code specifically provides that the
9 Rules of Civil Procedure apply unless the specific
10 provisions of the probate code otherwise indicate.
11 And as I've already discussed, there are numerous
12 situations where the probate code has set out its
13 own rules, specifically in Section 62-3-412 and
14 62-3-413. So that Rule 60 would not be applicable
15 for those reasons.

16 If we don't admit the proffered will to
17 probate, I would suggest we set a dangerous
18 precedent. We tell people that they can hide
19 wills, not bring them forward, and prevail. And I
20 don't think that's a precedent that we want to set
21 in this case.

22 So for all these reasons, your Honor,
23 we suggest that, first of all, the estate
24 administration is still open. Secondly, even if it
25 has been ordered closed, that it's not too late to

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1 vacate that order and to accept the proffered will.

2 THE COURT: Thank you, Mr. Medlin.

3 MR. MEDLIN: Thank you.

4 THE COURT: Mr. Guerard, Mr. Goldberg.

5 MR. GUERARD: Your Honor, I'm going to

6 digress and give the court a frame of reference,
7 and I'll do it briefly.

8 We've heard fraud, fraud, fraud. So
9 let's get that out of the way first. Number one, I
10 look to the petition that was originally filed as
11 an Order to Obtain Allegedly Inappropriate
12 Dispersed Assets. They mention fraud on a number
13 of occasions. They basically adopted the petitions
14 format for their motion to vacate. The two
15 documents are almost identical.

16 Number one, the submission of the
17 briefs today in support of the respective positions
18 is simply argumentative. There's nothing
19 evidentiary of the two affidavits submitted. And
20 they went through great efforts to detail what they
21 see as acts of fraud and elements of fraud in the
22 brief -- in their motion.

23 Evidentiary wise, that's really not
24 before the court. The petition, in and of itself,
25 which started all of this, does not set forth an

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1 actual cause of action and fraud for the following
2 reason.

3 One, under the Rules of Civil
4 Procedure, Rule 9 says that fraud is to be set
5 forth in detail and affirmatively alleging not only
6 the elements of the fraud, but the factual basis

7 sustained details of the fraud. The burden is on
8 them. We don't have to prove anything. They've
9 got the obligation to present to this court enough
10 evidence and law to shift the burden to us.

11 And we maintain that that burden has
12 never been shifted, in that, number one, fraud has
13 not been properly proven. And also, the burden is
14 not just by preponderance of the evidence, it's
15 clear and convincing evidence.

16 Chief Justice Cole, she said, her
17 definition of clear and convincing evidence is
18 somewhere between predominance of the burden of
19 truth and the preponderance of the evidence and
20 beyond reasonable doubt. She said somewhere around
21 75 percent would work for her. So it's a greater
22 burden and it's not been proved.

23 The alleged fraud as presented to the
24 court this morning, inherently acknowledges the
25 awareness of the Browns. The -- excuse me one

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1 second. I've got too many papers here.

2 The deposition of Thomas Brown, we
3 excerpted it in our brief, repeatedly that has been
4 for not acknowledging to the court as to what he
5 knew when, where, how and why. Also, while I'm
6 addressing that, he had been handling, basically,
7 the needs of the family. As far as the disabled

8 sister, they had -- Thomas Brown and Evelina had
9 been acting as her natural guardian within those
10 parameters for all of her life. So all of those
11 determinations, notice, knowledge were -- if you
12 got it to one, then you got it to all.

13 The deposition of Mr. Brown, he
14 acknowledged that he saw, quote, the will. He
15 acknowledged that he had gotten a copy of the will
16 within two to three years after his grandmother's
17 death. He testified that shortly after that, he
18 took that copy to the probate court and attempted
19 to probate it.

20 The insurance transaction that they
21 refer to, number one, the check is not amenable to
22 the terms of the will. Ms. Smalls was not an
23 executor of the will -- of the estate as nominated
24 in the will.

25 THE COURT: Mr. Guerard, I'm going to

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1 stop you. I thought in part of it, she was. In
2 the -- I think there's two provisions nominating
3 individuals as personal representatives or
4 executors. The first part where it says
5 [inaudible], and there's one on the second page. I
6 thought she was on that will.

7 MR. GUERARD: Again, your Honor, it's
8 irrelevant because the awareness runs to both

9 parties. At that point, the Browns were just as
10 much notified that there was possibly a death
11 benefit out there under which they would benefit.
12 And they participated in that process. So who's on
13 there, it really doesn't matter, because again,
14 they were aware of what was in front of them. So,
15 you know, there was no fraud.

16 A quick digression. As far as this
17 matter --

18 THE COURT: Let me stop you there. If
19 there was a will, are you saying that the will did
20 exist, that it did not exist?

21 MR. GUERARD: Our people say they do
22 not know anything about it. But what I am saying
23 is if you take --

24 THE COURT: Don't we have an original
25 of this that has come to the court, this alleged

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1 will here? Or are you challenging if this is her
2 last will and testament?

3 MR. GUERARD: I'm sorry?

4 THE COURT: You are challenging whether
5 this is her last will and testament?

6 MR. GUERARD: I don't know, your Honor.
7 I cannot say. We did not really address that
8 aspect of it, because whatever it is, and whether
9 it's validly executed or not or whether it's a

10 proper will or not is really not before the court.
11 And ultimately, it won't be, because, one, we've
12 all been referring to the document, but that
13 document is not in evidence in this case.

14 THE COURT: Right, I understand that.

15 MR. GUERARD: And so by us doing so, I
16 don't want to in any way imply we waive that
17 position.

18 The point being that with that
19 testimony coming from Mr. Brown, there's no way to
20 sustain a fraud action because he knew -- he had
21 attempted -- the only reason, if you believe his
22 testimony, the only reason that he didn't get to
23 probate the will was because he didn't understand
24 what the probate court was talking about. That
25 wasn't our fault. We weren't -- we had nothing to

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1 do with it. We didn't know that he had it. We
2 didn't know that he was doing anything with it.

3 THE COURT: Well, if I understand the
4 testimony is that he saw a copy of the original, he
5 didn't have the original. He attempted to probate
6 a copy of the will. We don't accept copies. Then
7 later, someone produced the original will, and
8 that's what's come forward to the court -- the
9 alleged original will.

10 MR. GUERARD: But, your Honor, there's

11 a specific code section that allows the probate of
12 a copy. Again, the fact, if you take him at face
13 value, we don't know, but this was his sworn
14 testimony. He said he had a copy. He said he
15 presented it to the probate court.

16 Now, if it didn't get probated for
17 whatever reason, it certainly was not our fault.
18 And it could have been and should have been, if in
19 fact that happened. I'm just taking his testimony
20 as he presented it. Whether I believe it or not is
21 irrelevant. This is what he swore to under oath.

22 But the whole underlying concern is,
23 one, the whole question of the fraud is totally
24 irrelevant. It has nothing to do with what's
25 before the court today.

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1 In the brief -- I'll just read to the
2 court the last item we had in regard to his
3 testimony from the deposition: About three years
4 after the death, they give me a copy. You know, I
5 took it down to probate court and nothing they
6 could do. So I just leave and go home. I went
7 back again and they tell me no, nothing can be done
8 unless I have the original.

9 So he's been totally aware of what was
10 going on.

11 The attempt of the petitioners to,

12 quote, open the intestate estate, is simply an
13 attempt to push the will forward. The probate of
14 this estate, according to the records on the
15 estate, the records that were filed in this court,
16 are in compliance with the procedure for an
17 intestate proceedings of the contested succession
18 of the real estate in question. And there's more
19 than ample case law that says if it's proper on the
20 face then it is not subject to collateral attack.

21 The estate was completed and there is a
22 presumption that notice was given -- as to whether
23 it was required to be given. There were no return
24 documents.

25 Subsequently, when this matter came

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1 before the court, when they did file the appeal,
2 some notices went out to Thomas Brown, and they
3 sent it to the same address in Louisiana where he
4 had been, and those came back because he had moved
5 back to New York. But during the administration of
6 the intestate estate, there's nothing on the face
7 of that record that shows anything was improperly
8 done or not done.

9 Now, the motion to vacate, again, is
10 simply an attempt to get the intestate estate
11 reopened. The intestate estate, as far as the
12 determination of heirs, and who were the proper

13 heirs of the real estate in question, there's no
14 dispute. That's fine. It was done properly. The
15 Browns were not eliminated. They were not omitted.
16 They were not conspiratorially absent from the
17 process.

18 THE COURT: Right. I don't think
19 there's any objection there that if the will is not
20 admitted, that the intestate has been properly -- I
21 guess, the deed was properly recorded and divided
22 to the proper heirs. I don't think that's their
23 dispute. The dispute is over whether to allow this
24 will into probate.

25 MR. GUERARD: They have been raising

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1 questions as to why it should be reopened and
2 trying to use those, quote, alleged deficiencies as
3 a basis for reopening. But we maintain there's
4 nothing to be gained by reopening.

5 The whole question is, is the will
6 probatable? And it is absolutely not.

7 Under the -- under 62-3-412, they filed
8 a motion to vacate, which is not possible. And it
9 says Petition for Vacation, under Paragraph Number
10 2, and as the court just stated, that was a
11 properly administered intestate estate. It says in
12 order to descend or attach an estate, you must file
13 prior to the earlier of the following limits. It

14 gives three different time periods.

15 The brief goes through, and we've
16 filled out that time. In the earlier of the three
17 events is sub two -- subparagraph (3)(ii), one,
18 one. Whether or not a personal representative has
19 been appointed for the estate of the decedent, the
20 time prescribed by Section 62-3-108 when it was no
21 longer possible to initiate an original proceeding
22 to probate a will of the decedent.

23 That directly ties in to the ten year
24 alternate statute of limitations. Under that
25 statute, the time would have expired in October of

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1 1999. And the time limits -- I can go through it,
2 but you can read, and I won't burden the court.
3 It's very straightforward.

4 Now, there is case law --

5 THE COURT: Mr. Guerard, let me
6 indicate, if fraud is involved, those time limits
7 are discarded.

8 MR. GUERARD: I'm sorry.

9 THE COURT: If fraud is involved, then
10 it doesn't start. The time limits in that statute
11 of limitation you're referring to.

12 MR. GUERARD: No, sir, because 108 has
13 no fraud exception. It has no exception to
14 anything -- incapacity, fraud -- any way you want

15 to --

16 See, that's why I said that's the
17 earlier of the three possibilities. Actually, they
18 didn't meet the time period under any of them, one,
19 two or three. But two, in particular, because it
20 was the earlier. So that throws you into the
21 ultimate statute of the limitations.

22 THE COURT: Wait a minute. They're
23 going to indicate a probate was commenced, and that
24 moves it back further.

25 MR. GUERARD: But your Honor, if you go

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1 to --

2 THE COURT: 3-108?

3 MR. GUERARD: Right. And 3-108 says,
4 if no informal probate and, and, no formal testacy
5 proceedings are commenced within ten years. So the
6 fact that --

7 THE COURT: Let me see where are you
8 reading. Were you reading 3-108?

9 MR. GUERARD: I'm sorry; it's the lower
10 part of the section, it's about the last part.

11 MR. MEDLIN: Your Honor, if I may, I
12 have it.

13 MR. GUERARD: Yes. It's the last two
14 lines, your Honor.

15 THE COURT: Okay.

16 MR. GUERARD: Well, if you look at the
17 last third of the section -- have you got the whole
18 section in front of you?

19 THE COURT: Yes, sir.

20 MR. GUERARD: If you come down to
21 subparagraph 3, it's got the three, one, two,
22 three --

23 THE COURT: Right.

24 MR. GUERARD: Come down to subparagraph
25 3, then the second sentence: If no informal

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1 probate and no formal testacy proceedings are
2 commenced within ten years after the decedents
3 death.

4 And then the exceptions are one and
5 two, and they are not really applicable.

6 And then it says, the date on which --
7 I'm sorry.

8 Yes, it says, if no informal probate,
9 no formal testacy proceeding commences in ten years
10 after the decedent's death. And then skip to where
11 it says, it is uncontested if the decedent left
12 no will and the decedent's estate passes by
13 intestacy. And that's exactly where we are.

14 And there's a case cited in the brief
15 Martin v. Martin, and it's directly in point; it's
16 just not a South Carolina case. But they -- the

17 court ruled that where the -- there was an attempt
18 to probate an untimely filed will, that this was
19 the ultimate statute of limitations. And their
20 case was just a five year statute; South Carolina
21 has gone to ten year.

22 And also, the finality of that statute
23 of limitations is specifically eliminated in the
24 reporter's comments, in that they took the model,
25 changed the time limit from three years to ten

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1 years. And they took the model, and where it said,
2 and such a will shall not be -- which would have
3 been mandatory, as opposed to may be permissive.
4 They took the shall not out and put in the is.
5 They did not give the court the option to go any
6 further. It went from a mandate to an absolute
7 jurisdictional state. This court has no power and
8 no jurisdiction within which to consider or admit a
9 will that has not been submitted to probate within
10 ten years of the death of the decedent.

11 THE COURT: Mr. Guerard, I know you
12 have other points. Do you mind if I hear from Mr.
13 Medlin on that point at this time?

14 MR. GUERARD: Your Honor, I -- just
15 one -- all of the equitable considerations that he
16 raises would not be viable or applicable or
17 appropriate within the ten year period. They're

18 absolutely not allowed any discretion to be imputed
19 to the ten year period.

20 THE COURT: So you're reading that
21 statute as, if a will is not filed with the probate
22 court within ten years, then it's presumed that
23 you -- or it's collusive that you died intestate?

24 MR. GUERARD: Absolutely. Like I said,
25 it's jurisdiction. It says, not shall be or may

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1 be, but if it is not submitted to probate within
2 ten years, it's an incontestable intestate
3 succession situation.

4 THE COURT: Mr. Medlin, do you want to
5 address that point?

6 MR. MEDLIN: Your Honor, I would like
7 to address that point as well as another point.

8 THE COURT: Mr. Guerard, have you got
9 any other points to raise, too?

10 MR. GUERARD: Your Honor, everything is
11 in that brief.

12 THE COURT: Okay.

13 MR. GUERARD: But if you track 62 --

14 THE COURT: 1-412?

15 MR. GUERARD: Exactly. And it goes
16 right into 109.

17 THE COURT: Mr. Guerard, Mr. Goldberg,
18 anything else?

19 MR. GUERARD: Your Honor,
20 Mr. Goldberg -- they've relied on 62-3-413, but
21 that statute clearly deals with formal testacy,
22 which is not before this court and has no
23 application to what we're dealing with today.
24 This is whether to -- under their
25 motion and petition, they are simply trying to open

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1 up the intestate estate. And the sole reason,
2 obviously, is for them to introduce this will. And
3 the ship sailed in October of '99. Here we are in
4 2008. There's no basis precedential wise or
5 statutorily allowed that that could happen.

6 THE COURT: Thank you, Mr. Guerard.

7 Mr. Medlin.

8 MR. MEDLIN: Your Honor, if I may, let
9 me first address the issue you asked me to address.
10 Of course, we disagree with Mr. Guerard's reading
11 of Section 62-3-108.

12 First of all, again, it talks about
13 commencement of the administration. It doesn't put
14 a time limit on this court, if for example, someone
15 presented a will one month short of the ten year
16 anniversary of the decedent's death as an original
17 probate and make you determine that will is valid
18 and close the estate in a month. It talks about
19 the commencement of the administration and the

20 respondents were kind enough to commence the
21 administration for us in that time limit.

22 Secondly, the language that Mr. Guerard
23 quoted to the court makes our point for us. It
24 says that two things have not to happen for the
25 decedent to be incontestably determined to die

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1 intestate. That within the ten year period that
2 there be no informal probate or no formal testacy
3 proceeding. Both of those things occurred within
4 the ten year period.

5 And again, I'm going to disagree with
6 Mr. Guerard's statement that he raised in a
7 different section, 3-413, that this is not a formal
8 testacy proceeding. That's exactly what this is.
9 A formal testacy proceeding, as defined under
10 Section 62-3-401 is litigation to determine whether
11 the decedent left a valid will. Inherent in that
12 determination by the court in determining intestacy
13 is whether there's a valid will. And the only way
14 under 3-401(a) that one can have a order from a
15 probate court determining intestacy is a formal
16 order. There is no informal procedure to determine
17 intestacy.

18 Your Honor can appoint an administrator
19 assuming intestacy, that would be informal. And by
20 the way, I want to point out the petitioners didn't

21 have any of the boxes checked, formal or informal,
22 in the original administration, if I am not
23 mistaken. But the formal testacy proceeding is
24 exactly what this is all about.

25 Now, we did talk a lot about fraud in

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1 our discussion, but we're not suing on fraud. We
2 are relying on the fraud as one of the numerous
3 exceptions that we see to the imposition by the
4 respondents by some time bar on our proffered will,
5 because the probate code itself recognizes fraud as
6 an exception to these time limits and those
7 situations that I discussed earlier. How else
8 could we let your Honor know that that exception
9 applied without discussing fraud.

10 Mr. Guerard noted that fraud isn't at
11 issue here today, but it certainly is. He talks
12 about Mr. Brown's saying what he knew. I admitted
13 to the court, Mr. Altman admitted to the court
14 that -- and Mr. Brown has admitted to the court --
15 that he had seen a copy of the will. But that's
16 not what's at issue here. We're trying to proffer
17 an original will. And he, although he attempted to
18 discover the existence of an original, was
19 thwarted.

20 The issue is not the copy. The issue
21 is the original. And in fact, he brought a copy

22 and tried to probate it and was told by a clerk
23 that this court does not accept copies. I don't
24 know what more a layperson could do at that point
25 than listen to a court and assume that unless he

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1 found an original, he wasn't going to be able to
2 probate the will. He certainly isn't at fault
3 himself. Regardless of whether the respondents are
4 at fault, he certainly isn't at fault.

5 Secondly on that issue, Mr. Guerard
6 wants to tie in our other two clients with
7 Mr. Brown. Even assuming he had knowledge, and
8 even assuming that for some reason it mattered that
9 he knew about the copy of the will, he's not a
10 fiduciary for his sisters.

11 He's had the care of his incompetent
12 sister since 2004. The events mostly occurred
13 before then. He's not formally the guardian, if I
14 understand correctly. In fact, we have a guardian
15 ad litem here representing her today.

16 Nor is he in any fiduciary relationship
17 to his sister Evelina who is not in court today.
18 You can't bind her just because they happen to be
19 brother and sister. You can't impute knowledge of
20 one person to another. So even if that mattered,
21 and it doesn't, you can't bind the other two to our
22 client, certainly without knowledge of the will.

23 The document is before the court. Your
24 Honor has judicial notice of the existence of that
25 document that has been delivered and filed and not

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1 probated yet. Now, I just want to make that
2 distinction. That document is before the court,
3 and you may take judicial notice of that document.
4 It's in your files. The issue is whether we're
5 going to be able to probate that, and that
6 correctly has not been done yet. That's what we're
7 asking to do.

8 We talk about the insurance check is
9 critical to our case. And Mr. Guerard wants to
10 somehow impute knowledge to Mr. Brown and his
11 sister Evelina and to his sister Rebecca who is not
12 competent and whose mark appears on that check as
13 somehow being able to know that because they are
14 listed on an insurance check as executors -- and
15 again, I would suggest, in exactly the same order
16 as in the latter part of that will -- that they're
17 supposed to figure out that there's an estate
18 administration going on. There wasn't. So even if
19 they had checked, they wouldn't have found that.

20 He already knew that there was a copy
21 of the will, which he asked for and couldn't get.
22 It's the original, again, which is critical here.
23 Signing that check as an accommodation to his son

24 is now being turned against him to try to thwart
25 the intentions of his grandmother.

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1 But most importantly, none of this
2 really matters. We don't need fraud to accept one
3 of the time limits. It's just one of our many
4 arguments as to why there's no time bar to what we
5 ask. Most importantly, we argue 3-413. And again,
6 this is a formal testacy proceeding. It is defined
7 as such under 3-401. And 3-413 clearly applies.
8 And all your Honor has to find is there's good
9 cause to vacate an order, if in fact the order
10 exists.

11 But we also argue the estate is still
12 open, unless I am missing something. There is no
13 form 413 terminating the estate, finding as a
14 formal matter that the decedent died intestate. We
15 really don't even need to vacate an order that
16 doesn't exist. But if it does exist, 3-413 will
17 allow you to vacate that order to determine the
18 decedent's intentions.

19 Now, I agree with Mr. Guerard that at
20 some point in time, he may want to argue about the
21 validity of that will. And there will be a time
22 and a place for that if you let us do it. We're
23 trying to do one thing here. We're trying to honor
24 the decedent's intent. We're trying to recognize

25 the decedent's intent. We're not trying to get in

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1 the way of recognizing the decedent's intent for
2 selfish reasons, and that's the primary purpose for
3 probate.

4 THE COURT: Thank you, Mr. Medlin.

5 Mr. Guerard, Mr. Goldberg.

6 MR. GUERARD: Your Honor, the case that
7 is cited in the brief, that's exactly what the
8 courts dealt with an attempt to make the argument
9 that this is what we should have gotten, and this
10 is what we have been denied with the unprobated
11 will. And those courts consistently disallow
12 [inaudible] with the implications. It's too bad.

13 One of the cases debarred two claimants
14 who were minors at the time of the probate of the
15 estate. And they attempted to later file a will
16 which would have given the property totally to
17 them, and the court held the probate record on the
18 estate was appropriate and that they did not allow
19 subsequent administration of the will.

20 In Martin, which I read and quoted
21 parts to the court, and I drafted an opinion
22 because it's just absolutely directly related to
23 the case. It doesn't deviate one centimeter from
24 what we're dealing with here today. And they said,
25 it's too late. This is a jurisdictional mandate.

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1 The court does not -- it's a direct quote -- it
2 says the court does not have the power nor the
3 jurisdiction.

4 THE COURT: Thank you, Mr. Guerard.

5 I'll ask Mr. Michel and Ms. Brockington
6 if you want to be heard on the matter.

7 MS. BROCKINGTON: Your Honor, Shirrese
8 Brockington as Special Administrator for the Estate
9 of Janine Gourdine.

10 We would join in with the position of
11 Mr. Guerard and Mr. Goldberg on behalf of the
12 respondents.

13 THE COURT: Mr. Michel.

14 MR. MICHEL: Your Honor, just very
15 briefly, your Honor. On behalf of Rebecca Brown,
16 I've been appointed as the Guardian Ad Litem, your
17 Honor. I would just, again, join in Professor
18 Medlin, Mr. Altman, Mr. Slotchiver and their
19 petition on behalf of my client, your Honor.

20 And I think, going back to the notice,
21 even if you follow their chain of thought -- the
22 respondents' chain of thought -- regarding
23 Mr. Brown, potentially having notice of a will,
24 clearly my client was never appointed a guardian ad
25 litem. Prior to this, she would have had no way

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1 for someone like me to stand here and argue on her
2 behalf to protect her rights, which has not been
3 done. And that any idea that a ten year statute on
4 a technicality would undue her grandmother's will
5 and undue the will of others is totally egregious,
6 and I can't imagine this court would uphold that.

7 Thank you, your Honor.

8 THE COURT: Thank you, Mr. Michel. Let
9 me ask, anyone here not represented by one of the
10 attorneys that would like to be heard? I think
11 everybody is represented by counsel here today.

12 Mr. Guerard.

13 MR. GUERARD: Your Honor, if I could
14 just rebuttal on comment. What Mr. Michel raised
15 to the court is exactly what's encompassed in the
16 ten year ultimate, final statute of limitations.
17 Infirmitities, incapacities, fraud, all of the
18 equitable theories that would run to the benefit of
19 the petitioners is not allowed. It is absolutely
20 what it says it is. It is an ultimate, absolute,
21 final termination of the rights of the parties.

22 THE COURT: Thank you, Mr. Guerard.

23 Anyone else want to be heard? Anything
24 else for -- Mr. Medlin, Mr. Altman, Mr. Slotchiver?

25 MR. MEDLIN: No, your Honor.

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1 MR. GOLDBERG: Enough has been said,
2 your Honor.

3 THE COURT: Why don't we do this. I
4 know you've got briefs that probably mirror any
5 proposed order. Maybe can just e-mail those to the
6 court. E-mail those to the law clerk here --
7 Peter Kooten. It's: pkooten@CharlestonCounty.org.
8 He's got a business card he will give you.

9 Then we'll get you a decision,
10 hopefully, as quickly as you get the proposed
11 orders to us, say in two or three weeks. I am not
12 sure what counsel's work schedules are, but we will
13 try to do it as quickly as possible.

14 In the interim, if the family wants to
15 get together, the probate code does allow for a
16 private family settlement agreement if you come to
17 a resolution in the matter. I'll throw that out
18 one more time. But that's another way of resolving
19 the case.

20 Anything else from counsel today?

21 MR. SLOCHIVER: I don't believe so,
22 your Honor.

23 THE COURT: Thank you. Everyone, have
24 a good day.

25 (The hearing was concluded at 11:55 A.M.)

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CERTIFICATE OF REPORTER

I, Donna Liptak, Court Reporter and Notary
Public for the State of South Carolina at
Large, do hereby certify that the foregoing
transcript is a true, accurate and complete
record.

I further certify that I am neither
related to nor counsel for any party to the
cause of pending or interested in the events
thereof.

Witness my hand, I have hereunto affixed my
official seal this 18th day of April, 2008 at
Charleston, Charleston County, South Carolina.

Donna Liptak
Court Reporter
My Commission Expires
April 17, 2017

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