

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

DOCKET No.: 2020-CP-02-01704

SUSAN M. JONES A/K/A SUSAN M.  
TAYLOR ALDRIDGE,

PETITIONER,

vs.

JENNIFER ASHLEY MARALIT,  
ANGELA JONES LOCHSTAMPFOR,

RESPONDENTS.

**ORDER**

(Motion for Remand)

**RECEIVED**

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**SC Court of Appeals**

Petitioner filed two matters in probate court, which were removed to the circuit court on motion of Respondents. Petitioners moved to remand the matters to the probate court. The motion for remand came on for hearing via Cisco Webex on October 26, 2020. Present at the hearing were Bradford M. Owensby, Attorney for Petitioner, and Robert L. Buchanan, Jr., Attorney for Respondents.

Based on Respondents' motion to remove, Petitioner's objection, Petitioner's motion to remand, the memoranda submitted by attorneys for Petitioner and Respondents, and the arguments of counsel at the hearing, the Court makes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. On July 21, 2020, Petitioner filed a Summons and Petition for Formal Testacy and Appointment in the Estate of Jay H. Jones ("Decedent") in the Aiken County Probate Court.

2. Respondents answered and counterclaimed for the appointment of Ashley Maralit as personal representative (“PR”) of Decedent’s estate. Attached to and incorporated in the Answer and Counterclaim as Exhibit 1 is a copy of the Last Will and Testament (“Will”) of the Decedent in which Ashley Maralit is appointed PR of Decedent’s estate.

3. On August 14, 2020, Petitioner filed in the probate court a Summons and Petition Objecting to the Will, alleging four grounds, to wit:

- (1) The Will was improperly executed in that it lacked the original signature of Decedent or, alternatively, the proper formalities;
- (2) The Will was executed by the Decedent under duress and undue influence;
- (3) The Decedent lacked the capacity to execute the Will;
- (4) Petitioner is an omitted spouse.<sup>1</sup>

Respondents answered, denying all the allegations.

4. On August 27, 2020, Respondents moved to remove both matters to the circuit court on the following grounds:

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<sup>1</sup> Petitioner argues that a preliminary issue in the instant case is the validity of Petitioner’s common-law marriage to the Decedent. Memorandum for Remand, p. 2.

(1) Respondents moved to remove the Petition for Formal Testacy and Appointment as expressly authorized in S.C. Code Ann. Section 62-1-302 (d) (1); and

(2) Pursuant to S.C. Code Ann. Section 62-1-302 (d) (2) and (5), Respondents moved to remove the Petition Objecting to Last Will and Testament on grounds that they were entitled to a jury trial on at least the Petitioner's claims of undue influence or duress and lack of competency.<sup>2</sup>

5. The probate court removed both cases to the circuit court by order dated September 4, 2020. Petitioner then objected to the removal in the probate court. By amended order dated September 8, 2020, the objection itself was removed to the circuit court.<sup>3</sup> On September 16, 2020, Petitioner filed in the circuit court a motion for remand.

6. Petitioner argues the common-law marriage issue can only be adjudicated in the family court or the probate court and that issue must be remanded to the probate court for adjudication.

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<sup>2</sup> In the Petition for Formal Testacy and Appointment, Petitioner estimated under oath the value of the estate assets to be in excess of \$1,000,000.00, clearly indicating that more than \$5,000.00 was involved in her challenge to the Will.

<sup>3</sup> The two orders read together indicate the probate court's intent on its own to remove all of both matters to the circuit court.

7. The Formal Testacy and Appointment is expressly removable to the circuit court by statute, and Respondents have properly removed the matter to the circuit court. S.C. Code Ann. Section 62-1-302 (d) (1).

8. The Will contest is properly removable to the circuit court where there is a right to trial by jury and more than \$5,000.00 is at issue. S.C. Code Ann. Section 62-1-302 (d) (5). The Petitioner's sworn estimate of the amount in controversy confirms the matter meets the monetary threshold for removal. Petitioner contends, at least, that Maralit, one of the beneficiaries of the decedent's Last Will & Testament and an agent under a power of attorney executed by Decedent, had a confidential/fiduciary relationship with the testator and actually exerted undue influence upon the testator. An attack on the Will based on this ground entitles Respondents to a jury trial. *Howard v. Nasser*, 364 S.C. 279, 613 S.E.2d 64 (Ct. App. 2005). In addition, Aldridge contends the decedent lacked the requisite testamentary capacity to make the Will. Under these allegations, the proponents of the Will are entitled to a jury trial. *Finley v. Gravely*, 302 S.C. 220, 394 S.E.2d 847 (Ct. App. 1990).

9. Though S.C. Code Ann. Section 62-1-302 (c) provides that "[t]he probate court has jurisdiction to hear and determine issues relating to ...common-law marriage... in connection with estate...actions pending before it...", the very next section, 62-1-302 (d), provides: "Notwithstanding the exclusive jurisdiction of the probate court over the foregoing matters, any action or proceeding filed in the probate court and relating to the following subject matters, on motion of a party, or by the court on its own motion...must be removed to the circuit court and in these cases the circuit court shall proceed upon the

matter de novo: [listing sections (1) and (5) described above].” Moreover, Section 62-1-302 (f) expressly provides: “Notwithstanding the exclusive jurisdiction of the probate court over the matters set forth in subsections (a) through (c), if an action described in subsection (d) is removed to the circuit court by motion of a party, or by the probate court on its own motion, the probate court may, in his discretion, remove any other related matter or matters which are before the probate court to the circuit court if the probate court finds that the removal of such related matter or matters would be in the best interest of the estate or in the interest of judicial economy....” “The 2013 amendments...added subsection (f), which allows the probate court to remove any pending matter to circuit court in the event a party or the court removes a related matter pursuant to subsection (d), even if that pending matter is not otherwise covered by the removal provision of (d).”

Section 62-1-302, REPORTER’S COMMENTS.

10. Petitioner cites *Bell v. Progressive Direct Ins. Co.*, 407 S.C: 565, 757 S.E.2d 399 (2014), a case involving the question whether a passenger in a vehicle was entitled to UIM benefits under a policy of insurance owned by another whom he claimed to be his common-law wife. Petitioner argues that language in footnote 9, discussing the jurisdiction of the family court and the concurrent jurisdiction of the probate court on the issue of common-law marriage, makes clear that the circuit court does not have jurisdiction. However, footnote 9 cites three cases justifying the circuit court’s determination that jurisdiction was proper for reasons of judicial economy. In *Bell* the Supreme Court held that “the circuit court and court of appeals’ finding that no common-law marriage existed between Petitioner and Severn is supported by the evidence”

(finding that the evidence, including their cohabitation and sharing of domestic and financial responsibilities, indicted they were merely engaged to be married.). Bell, 407 S.C at 582, 757 S.E.2d at 408.

11. In addition to the common law supporting the “judicial economy” basis of subject matter jurisdiction in the insurance coverage case, in the instant case the statute authorizing removal from probate court to circuit court expressly approves removal “in the interest of judicial economy.” S.C. Code Ann. Section 62-1-302 (f). Respondents properly removed all matters related to the attack on the Will.

12. Apart from the matters removed from probate court, the Decedent, prior to his death, and others commenced an action to partition real estate, which was pending at the time of Decedent’s demise and in which Petitioner has interposed the marital issue in defense.<sup>4</sup>

13. “[T]he probate court has exclusive original jurisdiction over all subject matter related to: (1) estates of decedents, including the contest of wills, determination of property in which the estate of a decedent...has an interest, and determination of heirs and successors of decedent..., *except that the circuit court also has jurisdiction to determine heirs and successors as necessary to resolve real estate matters, including partition...and other actions pending in the circuit court[.]*” S.C. Code Ann., Section 62-1-302 (emphasis added). *See Thompson v. Swicegood*, 845 S.E.2d 920, 926, 2020 S.C. App. LEXIS 54 (Ct. App. 2020) (citations omitted) (“The parties’ marital status in and of

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<sup>4</sup> The partition action is pending in Case No.: 2020-CP-02-00760.

itself does not affect the circuit court's subject matter jurisdiction over a partition action between such parties.”).

14. The circuit court already has jurisdiction to try the marital issue. Based on the findings of fact and conclusions of law, the Court hereby orders:

- (1) The Motion for Remand is denied; and
- (2) The circuit court has subject matter jurisdiction of the matters removed from the probate court in this matter.

IT IS SO ORDERED.

November \_\_\_\_, 2020

\_\_\_\_\_, S.C.

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Honorable Clifton B. Newman  
Administrative Judge  
Second Judicial Circuit



Aiken Common Pleas

**Case Caption:** Susan M Jones VS Jennifer Ashley Maralit

**Case Number:** 2020CP0201704

**Type:** Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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