RECEIVED
Oct 08 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No.: 2018-000562
Opinion No.: 5859

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 Personal Representative of the Estate of Rebecca Patricia Brown, ...Respondents.

RETURN TO APPELLANTS' PETITION FOR REHEARING

Jonathan S. Altman, Esquire
Derfner & Altman, LLC
575 King Street, Suite B
Charleston, SC 29403

Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Attorneys for Respondents

Pursuant to Rule 221(a), SCACR, Respondents ("Grandchildren") respectfully move the Court for the issuance of an order denying Petitioners' ("Children") Petition for Rehearing with respect to this Court's decision in Mary P. Smith, et al. v. Angus M. Lawton, et al., Opinion No. 5859 filed September 21, 2021 in which the Court affirmed the circuit court's order affirming the probate court's order as to issues raised by Children involving decedent's intent, the purported alteration of the will, the timeliness of the proceedings, and a scrivener's error. The Court reversed and remanded for the probate court to conduct a hearing to determine whether the will was duly executed. As the Court neither overlooked or misapprehended the points raised by Children in their Petition for Rehearing, it should be denied.

I. Due Execution of Will

At the hearing of November 9, 2016, counsel for Children and Grandchildren advised the Court that the witnesses to decedent's will were deceased (R.p.534). Children maintained that Grandchildren "*should not be relieved of the requirement to produce testimony of one of the witnesses to the will*" and noted that "*The witnesses were living during the pendency of the case.*" (R.p.372)

The probate court found Children's argument to be contrary to S.C. Code Ann. § 62-3-406 and did not require the Grandchildren to present evidence on this issue. In its order, the probate court addressed the witnesses' unavailability and stated that S.C. Code Ann. § 62-3-405 and 62-3-406 only required "*one of the attesting witnesses to establish proper execution if the witnesses are within the state and are competent to testify*" (R.p.41).

In affirming the probate court, the circuit court noted that Children had "*not cited to any rule or requirement to Respondents to obtain an affidavit in anticipation of the circumstances in which live testimony could not be given*" (R.p.47).

In its Opinion, the Court referred to South Carolina's adoption of the Uniform Probate Code and found that even if the witnesses were deceased, "*due execution of a will may be proved by other evidence.*" The Court's Opinion included citations to a number of cases in which "*other evidence*" of due execution was considered and remanded this case for an evidentiary hearing on this issue. Such a remand is well within the Court's discretion and consistent with the policy of ensuring that a decedent's intent is honored. However, contrary to Children's contention, the record includes considerable evidence of decedent's due execution of the will, a summary of which is detailed below.

Decedent died on October 11, 1989. Nearly sixteen (16) years later, decedent's will was produced by Emma Smalls to Evelina Brown-Moses, who promptly filed it with the probate court. During this lengthy period of concealment, Children produced the will to third parties and represented it to be valid. These actions were detailed in the opinions of this Court and include the following:

1. *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 she resided in on decedent's property; and*

2. *As a result of the claim, the insurance company issued a check naming as payees Emma Smalls and the Grandchildren 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 IV on decedent's will; and*

4. *Appellant Emma Smalls used the money received from this check to repair the home on decedent's property in which Appellant Emma Smalls resided.* (R.p.38)

Thus, the record reflects that as early as 1989, Emma Smalls had provided the will to an insurance company and affirmed its validity.

The record also includes other acts undertaken by Children or on their behalf which provide further evidentiary support for the due execution of the will. Annabelle Thornton and Emma Smalls had shown the original will to Thomas Brown after decedent's death but refused to release it to him. Approximately three (3) years after decedent's death, Annabelle Thornton's daughter, Viola Pringle, provided a copy of the will to Thomas Brown who unsuccessfully attempted to file the copy with the probate court (R.pp.253-254).

In the 2011 appeal, Children did not dispute the validity of decedent's will. Rather, Children argued that the relief sought by Grandchildren was barred by S.C. Code Ann. § 62-3-108 and the ten (10) year statute of limitations set forth therein. In that appeal, Children maintained that Emma Smalls, Annabelle Thornton, and Viola Pringle's disclosure of the will and production of a copy of it established that Grandchildren knew of the will's existence and that such knowledge barred Grandchildren's claim. While Children's argument was unsuccessful, the evidence supporting Children's former position provides compelling support for its due execution.

The record also includes testimony regarding one (1) of the witnesses to the will, John M. Smalls. At her deposition, Emma Smalls was questioned about this witness and testified as follows:

Q: Give me the names of your four (4) living children?
A. John Smalls, James Smalls, Loretta Richardson...
Q: What about John Smalls?
A: John Smalls lives in Mt. Pleasant.

(R.pp.686-687)

Emma Smalls' testimony establishes that one (1) of the witnesses to decedent's will was her own son and decedent's grandson, who lived in the same town as decedent.

Mary Smith was also questioned about John Smalls at her deposition:

Q: *Do you know John Smalls?*
A: *John Smalls?*
Q: *Yes Ma'am.*
A: *Yeah.*
Q: *Who is John Smalls?*
A: *That's my sister's son.*
Q: *Is that Emma's son?*
A: *Yeah, that's one of my favorite boys.*

(R.p.776)

At the hearing of November 9, 2016, counsel for the parties agreed that all evidence comprising the record, including the deposition testimony of Emma Smalls and Mary Smith, would remain part of the record for the purposes of that hearing (R.p.544). While the Probate Court concluded that S.C. Code Ann. § 62-3-405 and 62-3-406 did not require Grandchildren to present additional evidence, Grandchildren respectfully submit that the record includes considerable evidence of the due execution of decedent's will. Grandchildren respectfully disagree with Children's assertion that the Court overlooked or misapprehended any point regarding this issue.

II. Intent of Decedent/Alteration

In the Court's 2011 Opinion, it held that "*Decedent intended her grandchildren to inherit from her Last Will & Testament*" and remanded the case to the Probate Court. Children did not seek a writ of certiorari as to the 2011 opinion and the Court's finding as to decedent's intent became the law of the case. As set forth in the Court's opinion, "*an unappealed ruling is the law of the case and requires affirmance.*"

Decedent's intent was a central issue in the 2011 appeal. In the 2011 opinion, the Court made the following findings:

1. *Decedent was predeceased by one of her five daughters, Evelina Brown, the mother of Respondents;*

2. *Appellants had hidden the existence of the will in order to live out their lives on decedent's property;*

3. *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*

4. *Decedent intended Respondents to inherit from her will.* (R.pp.24-28)

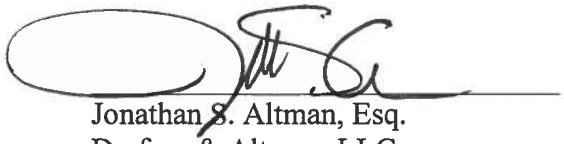
In their Petition for Rehearing, Children argue that the validity of the will had not been raised prior to the November 9, 2016 hearing and reference a statement by Grandchildren's counsel in support of their argument. In fact, the first time there had been any suggestion of the will's "*invalidity*" occurred at the November 9, 2016 hearing. Prior thereto, Children had argued that the Grandchildren's knowledge of the will's existence barred Grandchildren from the relief sought. Children repeatedly cited S.C. Code Ann. § 62-3-108 and the ten (10) year statute of limitations contained therein in support of their position. With this argument having been unsuccessful, the "*invalidity*" argument raised at the November 9, 2016 hearing reflected a shift in Children's position.

Children also revisit the "*alteration*" argument in their Petition for Rehearing. Grandchildren respectfully submit that that the Court properly found that decedent's will had been presented and that its contents could be determined from the document. The record provides considerable support for this finding from which Children did not seek a writ of certiorari.

IV. Conclusion

Children have failed to establish that the Court overlooked or misapprehended any point of law or fact. In addition, Children have repeated arguments previously made and which were considered and addressed by the Court. Children's petition does not meet the criteria for the granting of a rehearing. For the above reasons, the Petition for Rehearing must be denied.

Respectfully submitted,



Date: October 8, 2021

Jonathan S. Altman, Esq.
Derfner & Altman, LLC
575 King Street, Suite B
Charleston, SC 29403

Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Attorneys for Respondents

RECEIVED
Oct 08 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Circuit Court

Kristi Lea Harrington, Circuit Court Judge

Appellate Case No.: 2018-000562
Opinion No.: 5859

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 Personal Representative of the Estate of Rebecca Patricia Brown, ...Respondents.

PROOF OF SERVICE

I certify that I have served Respondents' Return to Appellants' Petition for Rehearing via electronic mail, on October 8, 2021, properly addressed to their attorney(s) of record as follows:

T. Jeff Goodwyn, Jr., Esq.
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
jgoodwyn@goodwynlaw.com

Attorney for Appellants

Angus M. Lawton, Esq.
496 Bramson Court, Suite 100
Mt. Pleasant, SC 29464
angus@lawtonlawfirm.net

PR of the Estate of Lucinda Pringle

Ayesha T. Washington, Esq.
The Washington Law Firm, LLC
P.O. Box 30026
Charleston, SC 29417
ayeshawashington@wlf-llc.com

Attorney for Appellants/
Special Administrator

October 8, 2021

Jonathan S. Altman, Esquire
Derfner & Altman, LLC
575 King Street, Suite B
Charleston, SC 29403

Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401

Attorneys for Respondents