IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
CIRCUIT COURT

Kristi Lea Harrington, Circuit Court Judge

Opinion No. 5859
(S.C. Ct. App. Filed September 1, 2021)
Court of Appeals Case No. 2018-000562

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.

REPLY BRIEF OF APPELLANTS

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I. Grandchildren make no argument to refute the fact that they were afforded due process at the November 9, 2016 hearing.

In reviewing the one-page argument in response to the Grandchildren's argument that the case should not have been remanded to the Probate Court for a second evidentiary hearing on due process, Children see no attempt to refute the proposition that they were afforded a full and fair hearing to present all the evidence they desired at the November 9, 2016 hearing.

Grandchildren begin by arguing that "[t]hroughout the lengthy history of this case, Children have consistently undertaken to dishonor Decedent's wishes." This is not only not factually true, but it is logically impossible. No one in this case knows what the testator's intent was. The only version of the testator's will any party has ever seen is one that all parties agree had the beneficiary and property being devised portions whited out and typed over by Emma Smalls with what Emma Smalls needed the will to say for her to make her insurance claim. Children have been arguing that this will cannot be probated for this reason among others.

Grandchildren argue that Children wrongfully contend that the Court of Appeals relied solely on Massachusetts's law. Children understand that the Court of Appeals' opinion cited multiple statutory and case law authorities. Children agree that the Court of Appeals cited and followed S.C. Code §62-3-406 in finding that Grandchildren did not present any evidence of due execution. It is the portion of the opinion relating the remand of the case Children argue was based in part on *In Re King*. In Re King, 156 N.E.3d 220, 98 Mass.App.Ct. 332 (Mass. App. 2020).

Grandchildren go on to make a conclusory statement that the Court of Appeals did not err in remanding the case to ensure the requirements of S.C. Code §62-3-406 were met. There is no attempt by Grandchildren to support this statement by law, authority or argument and there is no attempt to refute Children's arguments set forth in their Petition for Certiorari. As a result, the Supreme Court should accept this case and reverse the Court of Appeals ruling to remand the case to the Probate Court for a second evidentiary hearing and declare that this estate shall proceed as an intestate estate.

II. Grandchildren present no argument against the proposition that the opinions expressed in the 2011 Court of Appeals decision related to the intent of the testator were dicta

Children argue that in making their timeliness argument to the Probate Court, Grandchildren make Children's case as to its argument that they issue of the validity of the will and the testator's intent was not before court in making its 2011 decision. Children show in their Petition for Certiorari that in support of his timeliness argument, Counsel for *Grandchildren* states, "This is the first time that there's been any suggestion or challenge as to the validity or acceptability of this particular Last Will and Testament." (R. p. 538, ll. 11-14). He goes on to state, "And I will – I will note for the record at no point in the 11-and-a-half-year history of this case has anyone challenged what transpired. The issues have always been legal issues, as to whether or not the respondents, or now the petitioners, are barred by time, by the sequence of events. *But at no time has there been any argument that the Will isn't the Last Will and Testament of Lucinda Pringle...*". (Emphasis added) (R. p. 541, ll. 8-15). Children argue that because both sides agree the issue of the validity of the will and the testator's intent had been raised for the first time in 2015, these issues

could not have been before the Court of Appeals in 2011 and therefore, any opinions on these issues must be dicta.

In their Return to Children's Petition for Certiorari, Grandchildren again assert Children have always only argued that the ten (10) year statute of limitation in §62-3-108 rendered the Decedent's intent irrelevant. Not until the will was actually offered for probate did they make a new argument relating to the validity of the will. The Court of Appeals held that Children's validity arguments were timely and this finding has been unappealed making it law of the case. With both sides still arguing that the validity of the will and the testator's intent had never previously been raised, opinions related to the testator's intent in the 2011 Court of Appeals decision can only be fairly characterized as dicta.

Grandchildren go on to state without a cite that the Court of Appeals found that Grandchildren's "*presentation of the Will satisfied the requirements of 62-3-402(a) as the contents can be determined from this document.*" (See Return Petition for Cert., p. 9). This finding is not found in either the 2011 or 2021 Court of Appeals decisions and as a result, is not applicable to the issues before the court.

Grandchildren also argue that the Court of Appeals correctly held that the law of the case doctrine applied to the § 62-3-108 argument. Children would point out that they notified the court that it was not petitioning for certiorari on these grounds in footnote 2 on page 12 of their petition. As a result, this argument is not relevant to the issues before the court.

Grandchildren also argue that Children's argument is simply and attempt to prevent the testator's wishes from being honored. As stated above, no one in this case knows what

the testator's intent was. Because Emma Smalls whited out and typed over the beneficiary and property to be devised sections of the will, all anyone in this case knows is what Emma Smalls intent was, which is that she needed to be an heir to Decedent's real property for her to make her insurance claim.

For the above reasons, the Supreme Court should accept this case, reverse the Court of Appeals on this issue and find that the will cannot be probated since the identity of the beneficiaries in the will has been altered from its original state and the testator's true intent as to who is to inherit and the property to be devised is unknown. Any opinions the Court of Appeals made in its 2011 opinion are dicta since both parties agree that the issue of the testator's intent was not raised for the first time until 2015. Because the will cannot be probated, the Supreme Court should find that the estate should proceed as an intestate estate.

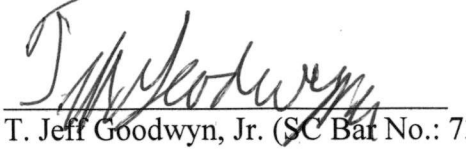
CONCLUSION

Grandchildren present no argument to refute Children's contention that Grandchildren were afforded due process at the November 9, 2016 hearing. Having been afforded due process, it was an error of law for the Court of Appeals to remand the case to the Probate Court for a second evidentiary hearing and the Supreme Court should accept this case, reverse the Court of Appeals on this issue, and find that the estate should proceed as an intestate estate.

Grandchildren again support Children's argument that the issues of the validity of the will and the testator's intent were never raised prior to 2015. Grandchildren's timeliness argument failed, this ruling by the Court of Appeals is not appealed and is now law of the case. Because both parties agree that the issues of validity and the testator's

intent were not before the Court of Appeals in 2011, any opinions related to the testator's intent can only be fairly characterized as dicta. As a result, the Supreme Court should accept this case, reverse the Court of Appeals on this issue and find that the testator's intent cannot be determined due to the alterations made by Emma Smalls. Because of this, the estate must proceed as an intestate estate.

GOODWYN LAW FIRM, LLC



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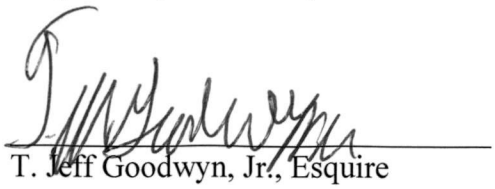
Dated: February 15, 2022

Certificate of Counsel

The undersigned hereby certifies that the Reply Brief of Appellants contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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