

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

3-7-22

Re: **In the Matter of the Estate of Thomas G. Moore (Michael D. Moore) vs. Thomas P. Moore, Francine L. Lawhon, Linda K. Moore, & Phillip F. Moore**
Case No.: 2018-001144
UP No.: 5887, Submitted November 1, 2021-FILED January 5, 2022

Dear Ms. Kitchings,

Enclosed for filing are original copies of the Respondent Pro-Se Heir Phillip Frederick Moore's Petition for Rehearing to be reviewed by the Appeals Judges in this case, as well as a Proof of Service and Rule 240 Certification. The Opinion affirming in Part and Reversing in Part was received U.S. Mail on Jan. 5, 2022. Enclosed I have sent the \$50.00 filing fee. I have already filed documents 2-23-22 to be reviewed by the appeal Judges in the Rehearing. I am forwarding the Last and Final documents to be filed and reviewed by the appeal Judges in the Petition for Rehearing. The documents that were filed 2-23-22 and the documents I am filing now, 3-7-22 will be the Last and Final documents to be reviewed in the Rehearing to reconsider their decision with the Separate Letter and Joint Tenancy with a right of survivorship. I am now Self Represented without a attorney after releasing James Snell and Vicki K. • Lastly - Ms. Kitchings it is still on the computer that Phillip F. Moore is represented by James Snell and Vicki K. • Would you please change that to Self Represented, as it was changed with Michael Dennis Moore.

Sincerely,
Pro-Se Heir Phillip Frederick Moore
Alternate Personal Representative

RECEIVED

MAR 08 2022

SC Court of Appeals

Enclosures

- cc: • C. Pierce Campbell (USmail)
• Michael Dennis Moore (USmail)
• Francine L. Lawhon (USmail)
• Linda K. Moore - (Deceased)

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

3-7-22

APPEAL FROM FLORENCE COUNTY
J. Munford Scott, Jr., Probate Court Judge
Thomas A. Russo, Circuit Court Judge

Appellate Case No: 2018-001144
Opinion No.: 5887
Submitted November 1, 2021-Filed January 5, 2022

IN THE MATTER OF:
THOMAS G. MOORE (Decedent)

Michael Dennis MooreAppellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore Respondents.

**RESPONDENT PHILLIP FREDERICK MOORE'S
PETITION FOR REHEARING**

Respondent Phillip Frederick Moore, hereby submits this Petition for Rehearing asking that
the Court reconsider its decision, as follows:

1. Did the Courts of Probate and Common Pleas err in ruling that the "doctrine of integration" is recognized and applied in South Carolina in cases involving decedents' wills?
2. Assuming, *arguendo*, that South Carolina recognizes and applies the doctrine of integration in cases involving decedent's wills, did the Courts of Probate and Common Pleas err in applying the doctrine in a case involving an undated, unsigned, and unwitnessed typewritten document that was not mentioned in a decedent's will and was allegedly found in a sealed envelope that was separate from the will?

TO: Appeals Judges that Presided over Case No. 2018-001144,

I have released my attorney James Snell. I will now be Pro-Se through-out this appeal even if there is a appeal to the Supreme Court. I submitted documents 2-23-22 to be reviewed in the hearing. Enclosed will be the last and final documents I will submit to the South Carolina Court of Appeals to be reviewed by the Appeals Judges in the hearing.

Enclosed I have submitted copies of documents from my files I am keeping due to the fact I am Pro-Se and there may be a possibility this appeal is submitted to the Supreme Court. All the briefs and the documents enclosed submitted to the South Carolina Court of Appeals through-out this appeal concerning the Separate Envelope were Dismissed and stricken from the record by Pierce Campbell submitting motions on behalf of his client Heir Thomas P. Moore. If this appeal goes to the Supreme Court, being Pro-Se, I will have All these documents in my files to submit that has been Dismissed and stricken.

This Probate opened Feb. 2014. Eight months into the Probate, Heir Thomas P. Moore retained P. Campbell.

TURNER PADGET Dec. 22, 2015 from what he stated below Oct. 10, 2014. Why did Pierce Campbell change his mind

S. Porter Stewart, II, Esquire ← Attorney for the Estate Accounting.
October 10, 2014 ← Before the 1st Hearing we had Dec. 22, 2015 Thomas Moore retained Pierce Campbell to submit the illegal letter.
Page 2

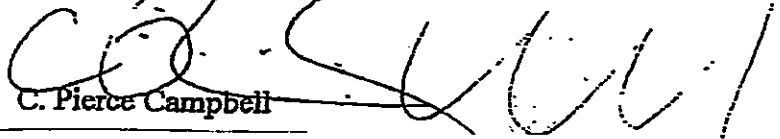
The next issue is how to deal with the church property in Richland County. I assume the estate will issue a Deed of Distribution of the decedent's interest to the five children equally. If any other plans for this property are contemplated, please let me know.

The final item of concern is your client's stated position that he will seek to obtain the additional 1/6 distribution of the estate assets. I have expressed our disagreement with this request based on the facts surrounding the care of Mr. Moore. We can certainly deal with our objections whenever a proposal for distribution is submitted; however, I wanted to note clearly now that we do object to such a plan and will request a hearing on the same if requested.

Please confirm your receipt of this letter and the steps your client is taking in this regard. I look forward to hearing from you soon.

Yours very truly,

TURNER, PADGET, GRAHAM & LANEY, P.A.


C. Pierce Campbell

CPC:kte

cc: Mr. Thomas P. Moore

TO: Appeals Judges that Presided over Case No. 2018-001144.

III. Separate Envelope

Appellant argues the circuit court erred in ruling a separate envelope containing a document with instructions devising the Church Property to Thomas should be integrated into Decedent's Will. We decline to consider this issue.

The alternate Personal Representative, Pro-Se Heir Phillip Frederick Moore, Sr. and the remaining 3 Pro-Se Heirs will make their pleas to the Appeals Judges, to please consider reviewing this issue in the Re-hearing. We will ask the Appeals Judges to review the documents enclosed and the documents submitted 2-23-22 to the South Carolina Court of Appeals on this issue Separate Envelope.

Appellant argues the circuit court erred in affirming the probate court, and the typed document should not have been integrated into the Will because the document was not signed, witnessed, dated, or notarized, and it was in a separate envelope not attached to the Will. The Appellant has not included a copy of the Will or the separate document in the record on appeal.

Are the remaining Heirs of our Parents going to be punished because the Appellant did not include a copy of the Will or the separate document. Enclosed is a copy of the Will and the illegal, undated, not notarized, unsigned letter without our Parents signature. Our parents Probate opened Feb. 2014 and the remaining Heirs were ambushed by this letter the day of our first hearing Dec. 22, 2015 submitted by Pierce Campbell, attorney for Heir Thomas P. Moore. Retaining Pierce Campbell 8 months after the Probate opened Thomas P. Moore's intention was to have Pierce Campbell to submit this illegal, undated, not notarized, unsigned letter the Day of the 1st Hearing we had Dec. 22, 2015 to receive All the Interest (\$350,000.00) in the Richland County Property.

NO Date

Thomas G. Moore and Lester P. Moore purchased five acres of land in Horrell Hill, SC out from Columbia, SC off of Highway 76. The land was deeded in Thomas G. Moore and Lester P. Moore's name at the Columbia Court House. It was purchased for the purpose of building a new church on it.

Thomas G. Moore has three plaques that were awarded to him from Horrell Hill Baptist Church for his support and donations and tithing in building of the church, plus his twenty-five years of attending and supporting the church. He has continued paying his tithes up to the writing of his LAST WILL AND TESTAMNT ON FEBRUARY 6, 1998.

If this church in Horrell Hill, SC is ever RENTED OR SOLD, Thomas G. Moore bequeaths his half INTEREST OR OWNERSHIP to go to Thomas P. Moore. I have paid one half of the land and church building on this land.

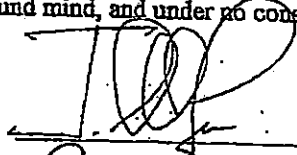
My oldest son, Thomas Paul Moore, is a licensed minister and if he decided to or was asked to run or help pastor the church, AFTER Lester P. Moore has DECEASED, I (Thomas G. Moore) would bequeath my one-half interest to go to Thomas P. Moore (My oldest son). If he does not want to pastor at the church, I would bequeath my one-half interest or ownership in the church and land to my son Thomas P. Moore, if the church is ever rented or sold.

NO signature

This is a copy of the illegal, un-dated, un-signed letter without our Parents signature that Thomas P. Moore typed himself or someone else typed the letter for Thomas and Pierce Campbell submitted this letter to the Court. This letter was in ALL the Briefs submitted to the S. C. Court of appeals by Phillip F. Moore, Francine Lawford and Linda Moore. Pierce Campbell did Not want the South Carolina Appeals Judges to see this letter. Pierce Campbell submitted Motions to Dismiss these Briefs.

...witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his Last Will and Testament and that he signs it willingly, and that each of us, in the presence and hearing of the Testator, hereby signs this Will as the witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

page 4

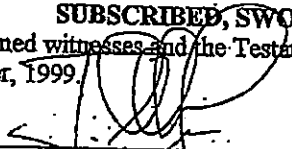


Susie Lloyd

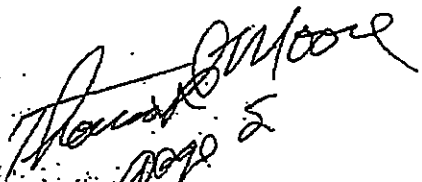
STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

SUBSCRIBED, SWORN to and ACKNOWLEDGED before me by the above named witnesses and the Testator, Thomas G. Moore, this 27 day of September, 1999.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/20/03


page 2

Both our Parents agreed to the statements in this Will (Enclosed) in the presence of a Florence, S.C. attorney. The Will plainly states - Equal to ALL five children.

There's NO Doubt in our minds, if they wanted Thomas P. Moore to receive their interest (\$350,000.00) in the Pickland County (Church Property) they would have stated this with Thomas P. Moore's name in the Will (Enclosed) page 304.

064000

Last Will and Testament

Page 5

of

THOMAS G. MOORE

FLORENCE COUNTY, SOUTH CAROLINA

2014 FEB 19 AM 11:19

FILED

I, Thomas G. Moore, a resident of and domiciled in the County of Florence, State of South Carolina, being of sound mind and disposing memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I

I direct my personal representative hereinafter named to pay all my just debts and funeral expenses, including the cost of a marker for my grave, as soon as practicable after my demise, and to that end do I charge my whole estate, real and personal.

Handwritten signature/initials

ITEM II

For and in consideration of the mutual bequest between my spouse and myself, it is clearly and unequivocally understood between us and the personal representative named hereinafter that this my Last Will and Testament is to be carried out exactly as it has been written and for our Wills to never be changed even after my death. It being the mutual consideration set forth hereinafter that neither I nor my spouse will change our Will without the written express consent of our spouse.

Handwritten initials

ITEM III

It is further understood between my surviving spouse and me as well as the personal representative of my estate, that there will never be any mortgages liens or other encumbrances placed upon the assets of this estate. That the assets of our estate will be preserved and never be given or loaned to anyone or any organization, charitable or otherwise, after I am deceased.

ITEM IV

It is further understood and agreed as part of the consideration between my spouse and I, that if either one of us decides to remarry or cohabitate with someone else then they would immediately forfeit and relinquish any right or interest to the real estate

*Recorded: Feb. 21, 2014
will bk. 73, Pg. 786*

EXHIBIT

18

006786

... which comprise the assets of this estate which would include furniture and personal belongings, excluding clothes, jewelry and automobiles.

page 6

ITEM V

Based upon the mutual covenants recited herein above and for those recitals to act as a contingency and condition for the terms of this my Last Will and Testament; I hereby give, devise and bequeath to my beloved wife, Earline B. Moore, all my right, title and interest in and to my property, both real, personal and mixed, or whatsoever nature and kind and wheresoever situate, of which I may die seized or possessed, or to which I may be entitled in fee simple.

ITEM VI

In the event my wife should predecease me or her death and mine occur simultaneously or as a result of a common accident or disaster, I then give, devise and bequeath all my estate and property as follows:

All of my property and estate both real and personal be liquidated including my residence and the furniture therein in an orderly manner and the monies obtained from the liquidation of my estate be placed in a trust fund at a bank or financial institution selected by the personal representative and distributed among my surviving children as follows:

Handwritten signature/initials

A. I hereby give, devise and bequeath to my beloved son, Thomas Paul Moore, an equal share of my estate, to be set forth herein. He is to receive \$25,000.00 in cash once the estate has been properly probated and the Probate Court has approved the disbursement of funds. In addition to the \$25,000.00, he is to draw a check each month in the amount of \$2,000.00 until such time as his equal share of the estate has been exhausted. In the event my son should predecease me and he has not exhausted his portion of the estate, the balance of his share of my estate is to be paid to my beloved grandson, Thomas Paul Moore, Jr.



Handwritten initials 'JP' and 'SP'

B. I hereby give, devise and bequeath to my beloved daughter, Francine M. Lawton, an equal share of my estate, to be set forth herein. She is to receive \$25,000.00 in cash once the estate has been properly probated and the Probate Court has approved the disbursement of funds. In addition to the \$25,000.00, she is to draw a check each month in the amount of \$2,000.00 until such time as his equal share of the estate has been exhausted. In the event my daughter should predecease me and she has not exhausted her

187000

C. I hereby give, devise and bequeath to my beloved son, Phillip F. Moore, Sr. an equal share of my estate, to be set forth herein. He is to receive \$25,000.00 in cash once the estate has been properly probated and the Probate Court has approved the disbursement of funds. In addition to the \$25,000.00, he is to draw a check each month in the amount of \$2,000.00 until such time as his equal share of the estate has been exhausted. In the event my son should predecease me and he has not exhausted his portion of the estate, the balance of his share of my estate is to be paid to my beloved grandchildren, Philip F. Moore, Jr., Adam W. Moore, and Charity D. Moore in equal shares.

[Handwritten signature]

D. I hereby give, devise and bequeath to my beloved daughter, Linda M. Fowler, an equal share of my estate, to be set forth herein. She is to receive \$25,000.00 in cash once the estate has been properly probated and the Probate Court has approved the disbursement of funds. In addition to the \$25,000.00, she is to draw a check each month in the amount of \$2,000.00 until such time as her equal share of the estate has been exhausted. In the event my daughter should predecease me and she has not exhausted her portion of the estate, the balance of her share of my estate is to be paid to my beloved grandchildren, Chad S. Owens, Brad T. Owens and Justin L. Owens in equal shares.

[Handwritten initials]

E. I hereby give, devise and bequeath to my beloved son, Michael Dennis Moore, an equal share of my estate, to be set forth herein. He is to receive \$25,000.00 in cash once the estate has been properly probated and the Probate Court has approved the disbursement of funds. In addition to the \$25,000.00, he is to draw a check each month in the amount of \$2,000.00 until such time as his equal share of the estate has been exhausted. In the event my son should predecease me and he has not exhausted his portion of the estate, the balance of his share of my estate is to be paid to my beloved grandchildren, Lauren Brittany Moore, Holland J. Moore, and Sydney Keswick Moore, in equal shares.

ITEM VII

In the event my wife should predecease me or her death and mine occur simultaneously or as a result of a common accident or disaster, then each of my children

884000

...estate. It is my wish and desire that I do not want to be put into a nursing or retirement home. I will ask, if it is possible, for one of my children and/or grandchildren to come in and live in my home and take care of me in my old age when I may need someone to take me to the doctor or other places I may want to go. Whoever does so until I am deceased, will at the time of my death receive 1/6 of all of my estate which I have at the time of my death. This bequest represents 1/6 of my estate which is to be shared equally with a 1/6 bequest to my other five children. In the event none of the children or grandchildren are able to take care of me in such a manner, then I will request that my son, Dennis Moore, the personal representative of the estate, to hire someone to keep my home and look after me and be paid a reasonable amount weekly from what is identified as estate funds and this will eliminate the six way division of my estate. In such event my five children will split my estate and property five equal ways.

page 8

Handwritten notes on the left margin, including a circled 'D' and the words 'page 4' written vertically.

ITEM VIII

I do hereby nominate constitute and appoint my beloved son Michael Dennis Moore, as Personal Representative of this my Last Will and Testament and direct that said appointee serve without bond or security and vest in my personal representative full authority and discretion to perform all acts and things deemed necessary, convenient or proper in the administration of my estate. Should, however, my said son fail or refuse to qualify as Personal Representative, or should predecease me, or in the event of both our deaths, I then appoint my son, Phillip Moore, as Alternate Personal Representative of this my Last Will and Testament and he serve without bond or other security.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27 day of September, 1999.

Handwritten initials 'JR SA' on the left margin.

Signature of Thomas G. Moore, Testator.

I, Thomas G. Moore, the Testator, sign my name to this instrument this 27 day of September, 1999, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Signature of Thomas G. Moore, Testator.

The South Carolina Court of Appeals

In the Matter of the Estate of Thomas G. Moore:

Michael Dennis Moore, Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhorn, Linda
Kaye Moore, and Phillip Frederick Moore, Respondents.

Appellate Case No. 2018-001144

It is a State Law a Person will be Prosecuted Committing Fraud.

Four of the Five Heirs believes that their Parents would NEVER give someone a Letter like this (Enclosed) without their signature. Four of the Five Heirs believes that Thomas P. Moore typed this Letter Himself or had it typed by someone else and Pierce Campbell, Thomas Moore's attorney Ambushed the remaining Four Heirs with this Letter the Day of the Hearing Dec. 22, 2015. Thomas Moore submitting this Fake, Illegal, un-dated, un-signed letter to receive ALL the Interest our Parents Owned in the \$350,000.00 Richland County Property Issue for Him and His Family, Thomas Moore has committed Fraud and should be Prosecuted.

after, Dec. 22, 2015 Hearing, The Statement in Judge Scott's Order States: Examine the Writings and Evidence by the Writings.

We would ask the Judges to Compare these (Letter Enclosed).

↓ ↓ ↓ ↓ ↓ ↓
1st Original Letter retrieved from our Parents Files
after T.G. Moore's funeral, typed and signed by our Parents.
after Dec. 22, 2015 Hearing, the Statement in Judge
Scott's Order States: Examine the Writings and Evidence
by the Writings.

Examine and Compare with the Letter
Pierce Campbell and Thomas P. Moore submitted to
the Court Dec. 22, 2015 Hearing. Totally Different.

Mirian Helver Accounting Services:

Mirian, when we get Moores Cars LLC bank statement for the month of January 2003, you will find T.G. Moore's Cars, Inc. bank statement for the month of January 2003. You will have to use both of these bank statements for Moores Cars L.L.C. accounting.

The purpose of using both bank statements is that we had to use T.G. Moore's Cars Federal I.D. number and State I.D. number to make our pay-roll tax deposits each week until the Crawford Law Firm give Moores Cars L.L.C. their Federal I.D. number. We have all of that straight now. The Federal gave Moores Cars, L.L.C. the same Federal I.D. number that T.G. Moores Cars had.

Dennis H. Moores wants you to do his accounting for Moores Cars L.L.C. like you did for T.G. Moores Cars.

↓ ↓ ↓
T.G. Moore, P.A.
[Handwritten signature]

after Dec. 22, 2015 Hearing the Statement in Judge Scott's Order.
"Examine the Writings and Evidence by the Writings"

page 11

↓ ↓ ↓ ↓ ↓ ↓
Second Original Letter retrieved from our Parents Files
after T.G. Moore's funeral, typed and signed by our Parents.
Examine and Compare with the Letter Pierce Campbell and Thomas Moore
submitted to the Court.

T.G. Moore
330 1/2 E. Palmetto Street
Florence, SC 29506
(843) 669-6866 Office (843) 669-3237 Fax

↓ ↓
Dec. 2002

Miriam McIver
Accounting Services

Dear Miriam,

You will find enclosed a copy of T.G. Moore's Cars, Inc. employees that has worked for my company in 2002; names, addresses, and social security numbers.

Also, you will find names, addresses, and social security numbers of people that have done work for T.G. Moore's Cars, Inc. in the year of 2002 that I had to give a 1099 form to.

Also, you will find people that have done work for T.G. Moore's Cars, Inc., did not make enough money to get a 1099 form. Furnishing you their names and addresses. Some of these people have moved out of State. Some of them have gone out of business. Cannot locate one or two of them.

T.G. Moore's Cars, Inc. is being dissolved with the Secretary of State as of January 1, 2003. T.G. is closing my business after 50 years in the business. I will not need no accountant after Dec. 31, 2002. I appreciate working with your accounting services. Miriam, we get our statement around the 10th of January. I will bring you. Figure our year end taxes and dividends, if any, for T.G. Moore's Cars, Inc.

My son, Dennis Moore, says that he is going to open up a car business, January 2003. I told him, if he did, I would recommend him using the Miriam McIver Accounting Services. If he opens up his new business, he will be up there to talk to you about it.

↓ ↓ ↓ ↓
T.G. Moore, P.A.
[Signature]

Page 17

Respondent Phillip Frederick Moore would express as follows the issue of whether an undated, unsigned, and unwitnessed typewritten document that was allegedly found in a sealed envelope that was separate from a decedent's will can be admitted for probate as being part of the will if the document is not mentioned in the will:

The late Thomas G. Moore's ("Mr. Moore's") Will, dated September 27, 1997, was admitted for probate in Florence County, South Carolina Probate Court on February 20, 2014. (R. ___, Probate Court Order at p. 1). Almost two years later, on December 22, 2015, at a hearing before the probate court, ^(Thomas Moore) Mr. Moore's attorney, Mr. Campbell, "move[d] to fully admit [a] document as a portion of [Mr. Moore's] will under the doctrine of integration that it being located with the will as presumed to have been present at the time of execution." (R. ___, Prob. Ct. Hearing, dated Dec. 22, 2015, Tr. at p. 161, ll. 13-15). The typewritten undated, unsigned, and unwitnessed document (the "Document") was accepted for probate as part of Mr. Moore's Will, even though the Document was not mentioned in the Will and was allegedly found in a sealed envelope that was separate from the Will (Id. R. ___, Tr. p. 160, ll. 9-12), is the subject of this Initial Brief of Respondent Phillip Moore.

The validity and admissibility of the Document for probate is critical in this case because it purports to bequeath or gift real property to only one of the late Mr. Moore's five surviving children. If this Court or a lower court, on remand, finds that the Document is invalid and not admissible for probate, Mr. Moore's five surviving children will receive equal shares of the subject realty, either under the residuary clause of Mr. Moore's 1997 Will or by virtue of the laws of intestate succession. (R. ___, Prob. Ct. Hearing Feb. 14, 2018 Tr. at p. 20, ll. 6-18).

In an Order that was filed on November 29, 2016, the probate court dodged the specific question of whether any South Carolina statute or court decision stands for the narrow proposition that the doctrine of integration is recognized in cases involving wills that were executed by South Carolina decedents. (R. ___, Prob. Ct. Order at pp. 2-6. Instead, citing to only one South Carolina court decision that was decided in 1850 and is not on-point here, three cases nationally that are not on-point, and secondary resources that are not on-point, the probate court summarily asserted that the doctrine of integration is followed by South Carolina courts in wills cases and that it applies in

a case involving an undated, unsigned, and unwitnessed typewritten document that was found in a sealed envelope that was separate from and not mentioned in a decedent's will. (Id. at pp. 2-3). page 13

The only South Carolina court decision that was cited and relied upon by the probate court for the propositions that the doctrine of integration is recognized in South Carolina in wills cases and that the doctrine applies in this case is an 1850 decision by a South Carolina appellate court, Martin v. Hamlin's Ex'rs, 35 S.C.L. 188, 4 Strob. 188, 1850 WL 2884 (Ct. App. 1850). In Martin, the South Carolina Court of Appeals never mentioned the doctrine of integration by name and simply recited the well-settled rule that a valid will can consist of multiple documents. Id.

On May 8, 2018, the common pleas court below affirmed the probate court's Order that the Document is part of the late Mr. Moore's Will. (R. ___, Com. Pleas Court Order at pp. 1-2). In reaching its decision, the court of common pleas stated that "[t]he Probate Court applied the law of integration" and that "the doctrine of integration has not been analyzed by many South Carolina courts" (Id. R. ___; at p. 1).

STANDARD OF REVIEW

"The circuit court, court of appeals, or Supreme Court shall hear and determine the appeal according to the rules of law." S.C. Code Ann. § 62-1-308(i) (Westlaw current through 2018 Act No. 292, subject to technical revisions by the Code Commissioner as authorized by law before official publication); Golini v. Bolton, 326 S.C. 333, 482 S.E.2d 784 (Ct. App. 1997) (in a case involving the validity of a decedent's will, an appeal from a probate court to a circuit court must be treated as a case at law); Campbell v. Christian, 235 S.C. 102, 110 S.E.2d 1 (1959) (in a case involving the validity of a decedent's will, an appeal from a probate court to a court of common pleas is considered to be a case at law rather than one in equity).

If the genuineness of testator's signature on an alleged will or other factual issues concerning the validity of a will exist, a party that appeals a probate court decision on such fact issues has an absolute right to a trial de novo in the circuit court and does not have to file a notice of demand for a trial de novo even if he or she waived his or her right to a trial by jury. Martin v. Skinner, 286 S.C. 527, 335 S.E.2d 252 (Ct. App. 1985). Similarly, the question of due execution of a will and other factual issues are properly submitted to a circuit court jury in a case involving an appeal to a circuit court from a probate court's decision. In re O'Neill's Estate, 259 S.C. 55, 190 S.E.2d 754 (1972). If it appears, on an appeal from a decree of the probate court in probate proceedings, that the case was decided on a question of law without considering the facts and issues of fact were involved, the circuit court can order a new trial in the probate court. Mordecai v. Canty, 86 S.C. 470, 68 S.E. 1049 (1910).

On an appeal from an order admitting a will or copy thereof for probate, the court of appeals will review the record to see if there was any evidence to reasonably support factual findings of

probate court. Golini, 326 S.C. 333, 482 S.E.2d 784; Finley v. Gravely, 302 S.C. 220, 394 S.E.2d 847 (Ct. App. 1990) (in a case that involves the validity of a decedent's will, although the court of appeals cannot weigh the evidence, it can and must determine whether the evidence in the record "reasonably supports" the judgment of the circuit court below); Goethe v. Browning, 146 S.C. 7, 18, 143 S.E. 362, 366 (1928) (since the question whether two separate sheets of paper constituted the will of a decedent involved underlying fact issues that were submitted to a jury, the South Carolina Supreme Court could properly determine whether the evidence supported the jury's factual findings—" [w]e find sufficient testimony to sustain the verdict of the jury, and there was no error on the part of the judge in refusing to disturb that verdict").

As the Statement of the Case, *supra*, and the Argument, *infra*, reveal, there were and still are unresolved issues of fact in this case as to whether the late Mr. Moore was the true author of the Document in question. There were and are fact issues as to the chain of custody, location, and finder(s) of the typewritten Document and why it was not signed and/or witnessed given that it was not typed at the same time or contemporaneously the Will was drafted and executed. There is absolutely no evidence in the record that shows one way or another whether Mr. Moore actually authored the undated, unsigned, and unwitnessed typewritten Document. There is evidence in the record that suggests that Mr. Moore did not have continuous custody of the Document, if he ever actually had any custody thereof and whether the Document changed locations.

ARGUMENT

I. THE COURTS OF PROBATE AND COMMON PLEAS BELOW ERRED IN RULING THAT THE "DOCTRINE OF INTEGRATION" IS RECOGNIZED AND APPLIED IN SOUTH CAROLINA IN CASES INVOLVING DECEDENTS' WILLS

At the outset, it is critical to note that the South Carolina Probate Code applies to this case because Mr. Moore's Will was executed on September 27, 1999 and he died on December 20, 2013:

§ 62-1-100. Effective date.

(a) Except as otherwise provided, this Code takes effect July 1, 1987.

(b) *Except as provided elsewhere in this Code, on the effective date of this Code:*

- (1) *the Code applies to any estates of decedents dying thereafter;*
- (2) *the procedural provisions of the Code apply to any proceedings in court then pending or thereafter commenced regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this Code;*

* * *

(c) *Section 62-2-502 [Execution] is effective for all wills executed after June 27, 1984, whether the testator dies before or after July 1, 1987.*

S.C. Code Ann. § 62-1-100(a), (b)(1, 2), (c) (Westlaw current through 2018 Act No. 266, subject to technical revisions by the Code Commissioner as authorized by law before official publication) (emphasis added).

The Probate Code provides that "[e]xcept as provided for writings within Section 62-2-512 and wills within Section 62-2-505, every will shall be: (1) in writing; (2) signed by the testator or signed in the testator's name by some other individual in the testator's presence and by the testator's

direction; and (3) signed by at least two individuals each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will." S.C. Code Ann. § 62-2-502 (emphasis added). For purposes of the rules for proper execution of a will, the Probate Code states that a "[w]ill" includes codicil and any testamentary instrument that merely appoints an executor or revokes or revises another will." Id. § 62-1-201(53) (emphasis added).

The Probate Code allows post-execution "self-proof" of a will by stating that "[a]n attested will may at any time subsequent to its execution be made self-proved by the acknowledgment thereof by the testator and the affidavit of at least one witness, each made before an officer authorized to administer oaths under the laws of the state where the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached, or annexed to the will in the following form or in a similar form showing the same intent . . ." Id. § 62-2-503(b). The Probate Code also allows a testator to incorporate by reference in his or her will, another writing that is already in existence by providing that "[a]ny writing in existence when a will is executed may be *incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.*" Id. § 62-2-509 (emphasis added). The Probate Code also recognizes that a testator can incorporate by reference in his or her will a separate *handwritten or signed writing* that disposes *only* the testator's "tangible personal property":

§ 62-2-512. Separate writing identifying bequest of tangible property.

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by the testator and must describe the items and the devisees with reasonable certainty. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing that

has no significance apart from its effect upon the dispositions made by the will.

S.C. Code Ann. § 62-2-512 (emphasis added).

The Probate Code contains no provisions that even remotely suggest that a testator can “integrate” a separate document or writing other than by including a provision in his or her will that expressly incorporates by writing the separate document. In South Carolina, a testator may alter or change his or her will as many times as he or she wants to do so and in any way that he or she sees fit as long as the alterations, changes, or modifications are carried out in compliance with the legal requirements for proper execution of a will. Guerin v. Hunt, 118 S.C. 32, 110 S.E. 71 (1921).

Since the Probate Code sets forth clear and straightforward rules as to proper execution of wills and codicils, allows for express incorporation by reference into a will other “writings” and “written statements or lists that dispose of items of tangible personal property,” but makes no mention of the concept of “integration” of other documents or writings, there is an issue in this case whether there are any exceptions to the above-described statutory requirements for executing a will or any other rules that would allow a South Carolina court to admit, as part of a testator's will, an undated, unsigned, and unwitnessed typewritten document that was not mentioned in the decedent's will and was allegedly found in a sealed envelope that was separate from the will. The proponent of the Document that is at issue in this case argues that the so-called "doctrine of integration" would permit the admission of the Document as part of Mr. Moore's Will and that the doctrine is recognized in South Carolina. (R. ___, Tr. Prob. Ct. Hearing, dated Dec. 22, 2105, p. 161, ll. 13-15).

The South Carolina Probate Code states that “[u]nless *displaced* by the particular provisions of this Code, the principles of law and equity *supplement* its provisions.” S.C. Code Ann. § 62-1-103 (emphasis added). “The common law is superseded by a statute, in so far as it is repugnant to the

latter." State v. McKettrick, 14 S.C. 346, 350 (1880). "In order to hold that a statute has abrogated common law rights existing at the date of its enactment, it must clearly appear that they are so repugnant to the act, or the part thereof invoked, that their survival would in effect deprive it of its efficacy and render its provisions nugatory." Smith v. Todd, 155 S.C. 323, 336-37 152 S.E. 506, 511 (1930).

In recent years, courts in other jurisdictions have expressly or impliedly ruled that statutory rules as how to execute a valid will and properly incorporate by reference another document or writing into a will operate to "displace," rather than "supplement," the common law "doctrine of integration." In other words, courts in other jurisdictions have declined to apply or recognize the so-called "doctrine of integration" unless the doctrine has been codified:

In the case from Tennessee, *In re Estate of Chastain*, [401 S.W.3d 612], 2012 WL 5838609 (Tenn., 2012), the issue before the court was, in the words of the court, 'whether the statutory requirements for execution of an attested will prescribed by Tennessee Code Annotated §32-1-104(1) (2007) were satisfied when the decedent failed to sign the two-page will but signed a one-page affidavit of attesting witnesses.' The trial court denied probate, but the Tennessee Court of Appeals, in a two-to-one decision, reversed the trial court. On further review to the Supreme Court of Tennessee, the decision of the court of appeals was reversed and the judgment of the trial court reinstated.

According to the Supreme Court of Tennessee, the Tennessee will execution statute, requiring the signature of the testator, gives the testator 'some latitude' in meeting the signature requirement in the case of an attested will: The testator may either sign the will in the presence of the attesting witnesses, or acknowledge a signature already made in the presence of attesting witnesses, or direct someone else to sign the will in the presence of the testator and of the attesting witnesses. On the other hand, the *Chastain* court noted that the Tennessee courts have required 'strict compliance' with the will execution statute.

The court explicitly declined to adopt the doctrine of integration (a process whereby a separate document becomes part of the will) stating that 'to adopt the doctrine of integration because doing so would amount to a relaxation of statutory requirements.' The court added that decision to adopt the doctrine of integration was a matter for the legislature.

Ronald R. Volkmer, 40 *Estate Planning* 46 (September 2013) (Copyright © 2013 Research Institute of America (RIA)) (emphasis added).

In a post-Chastain case, the Tennessee Court of Appeals reiterated the view that the doctrine of integration is nothing more than a prohibited means of ignoring statutes that prescribe rules for proper execution of a will:

In essence, Appellees are asking this Court to apply the doctrine of integration by which "a separate writing may be deemed an actual part of the testator's will, thereby merging the two documents into a single instrument." *In re Will of Carter*, 565 A.2d 933, 936 (Del. 1989). In *In re Estate of Chastain*, 401 S.W.3d 612 (Tenn. 2012), the Tennessee Supreme Court held that the decedent's signature on the affidavit did not satisfy the statute requiring the testator's signature on a will. The *Chastain* court explained that, in these types of cases, *Tennessee has not adopted the doctrine of integration "because doing so would amount to a relaxation of statutory requirements."* *Id.* at 622. The Supreme Court opined [that]:

the General Assembly has not enacted Section 2-504(c) of the Uniform Probate Code, which provides that '[a] signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.' (quoting *Unif. Probate Code* § 2-504(c) (2008)) the Legislature is the entity authorized to prescribe the conditions by which property may be transferred by will in this State, ... and courts have no authority to modify those conditions.... [*W*]e decline to adopt the doctrine of integration because doing so would amount to a relaxation of statutory requirements.

Id. at 621-22 (internal citations omitted).

* * *

Courts endeavor to effectuate a testator's intent "unless prohibited by a rule of law or public policy," *In re Estate of McFarland*, 167 S.W.3d 299, 302 (Tenn. 2005), and courts will sustain a will as legally executed if it can be done consistently with statutory requirements, *Leathers v. Binkley*, 264 S.W.2d 561, 563 (Tenn. 1954). However, courts may not ignore statutory mandates in deference to a testator's intent. *Chastain*, 401 S.W.3d at 621; *Ball v. Miller*, 214 S.W.2d 446, 449-50 (Tenn. Ct. App. 1948). "Tennessee courts have consistently interpreted statutes prescribing the formalities for execution of an attested will as mandatory and have required strict compliance with these statutory mandates." *Chastain*, 401 S.W.3d at 619. * * *

In re Estate of Morris, No. M2014-00874-COA-R3-CV, 2015 WL 557970, at *3-4 (Tenn. Ct. App. Feb. 9, 2015) (Slip Copy) (emphasis added), *appeal denied* (Tenn. June 15, 2015), *appeal after remand*, No. M2016-02557-COA-R3-CV, 2017 WL 5304464 (Tenn. Ct. App. Nov. 13, 2017), *appeal denied* (Mar. 15, 2018).

In a 2017 case, the Tennessee Court of Appeals noted that the decision in In re Estate of Morris was superseded in part by a new Tennessee statute that expressly recognizes that if a will itself is not signed by two attesting witnesses, the two witnesses can sign an affidavit that says that they witnessed the execution of the will. In re Estate of Stewart, 545 S.W.3d 458, 463 (Tenn. Ct. App. Oct. 20, 2017), *appeal denied* (Feb. 14, 2018). Thus, even though the decision in In re Estate of Morris may have been superseded in part by statute, that portion of the Morris decision that rejected the doctrine of integration was and has not been superseded.

In footnote 3 of its decision below, the probate court cited the provisions of the Restatement (Third) of Property that say that "[t]o be treated as part of a will, a page or other writing must be present when the will is executed and must be intended to be part of the will." Restatement (Third) of Property § 3.5. However, the probate court failed to cite any South Carolina statute or court decision in which the provisions of § 3.5 of the Restatement have been adopted or cited for the proposition that the doctrine of integration is recognized in this State.

As noted in the Statement of the Case, *supra*, the probate court below relied on an 1850 decision by the South Carolina Court of Appeals, Martin, 35 S.C.L. 188, 4 Strob. 188, 1850 WL 2884, for the proposition that the "doctrine of integration" is recognized in South Carolina and that it applies in this particular case. In re Estate of Thomas G. Moore, No. 2014-ES-21-00134, at pp. 3-6.

With all due respect to the probate court, the Martin court did not mention the “doctrine of integration,” much less invoke and rely on the doctrine for its decision. Instead, as stated previously, the main purposes of the Martin decision were to recognize that in order to comply with the statutory formalities for executing a multi-page or multi-sheet will that appears to be one single continuous document: (1) a testator does not have to sign each and every page of his or her will in order for the document to be a validly executed will, and (2) the witnesses do not have to attest to or sign each and every page of a will. Martin, 35 S.C.L. at 189-91, 4 Strob. at 189-91, 1850 WL 2884, at *2-3. According to the Martin court, “[o]ne signing by the testator, and one attestation only, are required by the statute, and it has never been contended that where there are several sheets every one should be separately attested, but only that every one should be signed.” Id. at 190, 4 Strob. at 190, 1850 WL 2884, at *2. The Martin court repeatedly emphasized in its decision that a testator still must comply with all statutory requirements for executing a valid will. As the Martin court pointed out, “if the [unsigned] separate writing be present, and the witnesses who attest can prove that it was a part of the general instrument which was signed and executed,” the separate writing can be admitted as part of the will that was signed because “neither testator nor witnesses can, after the execution, incorporate into a will anything which was not in it at the execution, without a renewal of the requisite formalities.” Id. at 190-91, 4 Strob. at 190-91, 1850 WL 2884, at *2-3.

The Martin court did not hold or rule that an undated, unsigned, and unwitnessed typewritten paper that is found in a separate sealed envelope and is not mentioned in a decedent's will can be deemed to be part of the will even though it was not executed in compliance with the South Carolina statutes that govern the making of a valid will. It is precisely because doctrine of integration flies in the face of statutory requirements for executing a valid will that very few states

actually have recognized and applied the doctrine in wills cases and that the doctrine has never been expressly applied in a South Carolina case that involved a decedent's will. In fact, courts nationally have expressly rejected the doctrine because it is contrary to statutory requirements for executing a valid will. For additional discussion of the Martin decision and its applicability in the present case, *see* Argument II, *infra*.

In short, the “doctrine of integration” has not been recognized in South Carolina and should not be adopted here because the doctrine is nothing more than a prohibited way to try to make an end run around the clear, plain, and simple statutory requirements for executing a valid will or codicil, or for incorporating by reference within the four corners of a properly executed will, a separate writing. In other words, the doctrine flies in the face of established statutory rules for executing valid wills and codicils and incorporating by reference therein other documents. It is up to the state legislature rather than the courts to adopt the doctrine of integration in this State.

II. ASSUMING, ARGUENDO, THAT SOUTH CAROLINA RECOGNIZES AND APPLIES THE DOCTRINE OF INTEGRATION IN CASES INVOLVING DECEDENT'S WILLS, THE COURTS OF PROBATE AND COMMON PLEAS ERRED IN APPLYING THE DOCTRINE IN A CASE INVOLVING AN UNDATED, UNSIGNED, AND UNWITNESSED TYPEWRITTEN DOCUMENT THAT WAS NOT MENTIONED IN A DECEDENT'S WILL AND WAS FOUND IN A SEALED ENVELOPE THAT WAS SEPARATE FROM THE WILL

Since there is no South Carolina statute or court decision in which the “doctrine of integration” has been expressly recognized and applied, it goes without saying that there is no primary South Carolina authority that explains the doctrine and how it must be applied in a given case. However, it is true that, in 1928, the Supreme Court of South Carolina acknowledged that a

testator's will can consist of multiple, separate pages or "sheets" and that each page or "sheet" of a will does not have to be individually signed and witnessed, but that the will nevertheless "must be executed in accordance with the formalities prescribed by the statute" that sets forth the requirements for executing a valid will:

The will in question is composed of two sheets. The first sheet contains "clauses" 1, 2, 3, and 4, and is not signed by the testatrix nor by either of the attesting witnesses. The second sheet contains clause 5, which merely appoints the executor, and the signature of the testatrix and the attestation clause. The appellants contend by their first exception that the sheet not signed by testatrix and attested and subscribed by three witnesses, as prescribed by the below-quoted section, is not part of the will. This contention is untenable. Section 5336, vol. 3, Code of 1922, is as follows:

"All wills and testaments of real and personal property shall be in writing, and signed by the party so devising the same, or by some other person in his presence and by his express directions, and shall be attested and subscribed in the presence of the said devisor, and of each other, by three or more credible witnesses, or else they shall be utterly void and of none effect."

The statute does not require the separate sheets composing a will to be signed by the testator and attested and subscribed by three witnesses. *The will itself must be executed in accordance with the formalities prescribed by the statute, but not each separate sheet making up the will.* *Pearson v. Wightman*, 1 Mill, Const. (8 S. C. L.) 336, 12 Am. Dec. 636; *Martin v. Hamlin*, 4 Strob. (35 S. C. L.) 188, 53 Am. Dec. 673. There can be no doubt but that it is a safe practice for a testator to affix his signature to each sheet composing his will, and it is a further act of precaution to have each separate sheet attested and subscribed by the attesting witnesses, but the statute does not so require, and this court has no power to go beyond the requirement of the statute in the execution and attestation of wills. *When a will is composed of more than one sheet, it may become a question of fact for a jury, in a trial of will or no will, to determine whether the unsigned sheet or sheets composing the purported will is or are in fact a part of the will of a testator.* The proof of such fact depends upon the rules of evidence, which require that *the separate unsigned sheets be identified at the time of the execution of the will, or upon the probate thereof, by all or any one of the attesting witnesses.* If the jury is satisfied by intrinsic evidence or otherwise that the purported will composed of one, two, or more sheets is the will of testator, and render their verdict accordingly, it is sufficient.

Goethe, 146 S.C. at 12-13, 143 S.E. at 363-64 (emphasis added).

As the Goethe court pointed out, although all pages or "sheets" of a multi-sheet will do not have to be signed and witnessed individually, "the separate unsigned sheets [must] be identified at the time of the execution of the will, or upon the probate thereof, by all or anyone of the attesting witnesses." Id.

In 1850, the South Carolina Court of Appeals similarly ruled that although each and every page or sheet of a multi-sheet will do not have to be individually signed and witnessed, "a separate [unsigned] writing not incorporated into the will by references" cannot be accepted as being part of the will unless "the separate writing be present, and the witnesses who attest[ed] can prove that it was a part of the general instrument which was signed and executed":

One signing by the testator, and one attestation only, are required by the statute, and it has never been contended that where there are several sheets every one should be separately attested, but only that every one should be signed. His signing of a sheet which is not attested, does not make it a will: it is a safe and prudent means of guarding against frauds, but in a question of execution under the statute, it serves only to indicate the intention of the testator to include that sheet in the execution, of which the formalities are written on another sheet. *Any other distinct act, indicating the intention, would serve the same purpose, even as to a separate writing not incorporated into the will by references, if the separate writing be present, and the witnesses who attest can prove that it was a part of the general instrument which was signed and executed.* In proportion as the identity of the separate paper and the intention to include it are otherwise manifested, may the memory of the witnesses be dispensed with. *Where it is exactly described in the attested paper, the separate paper need not be at all known to the witnesses, or present at the time of execution. Where the separate writing is not described, but is strongly connected by sense, and is signed by the testator, the case of Bond v. Seawell shows that it is sufficient if the edges of it were seen by the witnesses, and even if, although not at all seen by them, it was actually present.*

Shall it, then, it is asked, depend upon the honesty and memory of the witnesses to decide what is the will? As to all those matters which were necessary to the validity of a will at common law, the statute has made no alteration, as for instance the competency of the testator, his freedom from restraint, his understanding of the contents, the reading of the will to him if he is blind, and as to these a will, like any other instrument, must depend upon the testimony of witnesses, sometimes of a single witness. *The superadded requisites of the statute must be exactly complied*

with, but the compliance in each particular is a question of fact depending upon witnesses. In the question of attestation is involved the inquiry, what is attested? and that when the writing is all on one paper, no less than when it is on several papers. It is prudent to attach together in a firm manner beyond suspicion of unfairness, all the parts of a will or other instrument; and *where there is ground for suspicion, or any unusual circumstance, the proof of intention to include both in the execution, and of actual conjunction of them in the act, should be clear to connect detached papers as one instrument.* But if, where no unfairness can be suspected, and the union in the intention and act of the testator is manifest, a will must be defeated for want of some material connexion of different sheets which have not been separately signed by the testator, then the same result would follow if after execution, as in this case, on the last sheet, the testator should, himself, carefully bind the sheets together with tape and wax, and then sign his name on every page, all in the presence of the witnesses who had previously attested the last sheet whilst it was detached; for *neither testator nor witnesses can, after the execution, incorporate into a will any thing which was not in it at the execution, without a renewal of the requisite formalities.* By some possible freak or accident, separate devises and bequests, unconnected by reference or otherwise, might be written on separate slips of paper, and all being present and included in the intention and act of execution, be presented as a single will; and it might be hard for any witness to say which of these slips was and which was not included in the execution. The prudence of either witness or testator would prevent such a case. On the other hand cases may be imagined of a sheet which was pinned or otherwise attached to the attested sheet being detached-of a sheet which was signed, being in whole or in part abstracted or altered; of sheets which were signed, but afterwards rejected and not intended to constitute part of the will, *being at hand when other sheets were executed.* Frauds may be perpetrated, and the memory of witnesses must be invoked, whatever rules may be adopted. *All such cases only present questions of fact.* We cannot add to the requisites of the statute, by requiring indispensably that each sheet of a will, that as a whole has been properly executed, shall be either signed by the testator, tied to the paper upon which the attestation is written, or authenticated by any other formality which the statute has not presented.

Martin, 35 S.C.L. at 190-91, 4 Strob. at 190-91, 1850 WL 2884, at *2-3 (emphasis added).

As the Martin court pointed out, "if the [unsigned] separate writing be present, and the witnesses who attest can prove that it was a part of the general instrument which was signed and executed," the separate writing can be admitted as part of the will that was signed because "neither testator nor witnesses can, after the execution, incorporate into a will any thing which was not in it at the execution, without a renewal of the requisite formalities." Id.

As noted in Argument I, *supra*, the Probate Court relied in part on § 3.5 of the Restatement (Third) of Property, which is entitled "Integration of Multiple Pages or Writings Into a Single Will," and says that in order to "[t]o be treated as part of a will, a page or other writing *must be present when the will is executed* and must be intended to be part of the will." (emphasis added). It is critical to note, however, that Restatement (Third) of Property § 3.5 has never been adopted or applied by a South Carolina court and Respondent who is submitting this Brief is *not* recognizing that § 3.5 of the Restatement reflects the law in South Carolina. Phillip is citing § 3.5 of the Restatement for the sake of argument only.

In California, one of the very few states in which the doctrine of integration is recognized, the rule is that there can be no integration of a separate dispositive writing that is not itself a statutorily valid will or codicil unless that writing is actually *attached to a valid will* and its contents show that it was intended to be part of will. In re Callahan's Estate, 237 Cal. App. 2d 818, 47 Cal. Rptr. 220 (4th Dist. 1965). A leading national law encyclopedia says that, in those few states where the doctrine of integration is recognized, in order "[t]o invoke the doctrine of integration, under which a separate writing may be deemed an actual part of the testator's will, thereby merging two documents into a single instrument, *the separate writing must have existed at the time the will was executed*, and the testator must have intended it to constitute the will." 95 C.J.S. *Wills* § 213 (Westlaw current through December 2018 Update) (emphasis added) (footnote omitted). Furthermore, according to C.J.S., "[i]ntegration may not be utilized to alter the distributive portion of a valid will by way of an invalid codicil." Id.

In this case, the record is completely and totally devoid of evidence of any facts and circumstances that might suggest that the Document is admissible as part of Mr. Moore's Will under

the South Carolina Code, the doctrine of integration, or the rules set forth in the Goethe and Martin decisions. For example, there is no evidence in the record that: (1) the undated, unsigned, unwitnessed separate Document was identified when Mr. Moore executed his Will on September 27, 1999; (2) the Document was attached to Mr. Moore's Will; (3) the witnesses to the Will can or will attest to the fact that the Will and Document existed contemporaneously and that when Mr. Moore signed his Will, he intended that his signature was to cover the Document; (4) the Document and the Will are strongly connected by sense and form one single continuous and flowing Will that consists of multiple pages, e.g., the Document and Will are expressed in different tenses, the Will is in the first person and the Document is in the third person, the Document does not have a page number that would suggest it was part of the Will; (5) the Will incorporated by reference the Document, as required by S.C. Code Ann. § 62-2-509; and (6) the Document qualifies as a valid signed and witnessed codicil to the 1999 Will under S.C. Code Ann. §§ 62-1-201(53) (a codicil is a will) and 62-2-502 (signature and witnessing requirements for executing a valid will). Finally, since the doctrine of integration may not be utilized to alter the distributive portion of a valid will by way of an invalid codicil, the Document in this case cannot be used to negate Mr. Moore's bequest to all five of his children of 1/5 shares of real estate and instead give the land to only one child.

Although counsel for the proponent of the Document asserted during the December 22, 2015 hearing during which the Document was offered for probate that the Document was "located with" Mr. Moore's Will and is "presumed to have been present at the time of execution of the Will," transcripts of multiple proceedings before both the probate and common pleas courts below cast considerable doubt on the chain of custody and location of the Document and whether it truly was found at the same time and in the same place as Mr. Moore's Will. See R. ___, Tr. Com. Pleas Ct.

Hearing Feb. 14, 2018 Tr. p. 24, ll. 19-24 ("the [Document] itself, a copy of that letter was delivered to [the proponent] . . . physically delivered by his mother . . . but it could have been physically handed to him by his father . . . "); Id. Tr. at p. 64, ll. 19-23 ("Dennis found the Will and brought the Will with him for us to read it. . . [t]he [Document] was not with that Will, you know, and we never seen that letter until December the 22nd, 2015, whenever [the proponent] presented that [Document]"; Id. Tr. at p. 65, ll. 12-17 ("we believe three or four – I don't know whether Dennis does or not – three of us believe that [the proponent] typed this letter up, we don't know who done it – but had it typed up, and [the proponent] submitted it December 22, 2015"; R. ____, Prob. Ct. Hearing Dec. 22, 2015 Tr. p. 31, ll. 17-25, p. 32, ll. 1-3) (despite an agreement by all heirs to "go in the safe together" to "try to find the will," the proponent "went in the safe before we got there"); Id. R. ____, Tr. p. 160, ll. 21-23 ("[t]hat's my mother's handwriting" on the envelope that allegedly contained the Document); Id. R. ____, Tr. p. 164, ll. 11-15 ("they put the original [Document] with the will and ^{LIE}(my brother, he took it out) ^{Lie}(Dennis took it out of the will before it was presented to The Court")) In addition, there is nothing in the record that supports the unilateral and repeated assertions by counsel for the proponent of the Document that all parties agreed or have stipulated that the Document was drafted by Mr. Moore, found with and at the same time as the Will, and was executed contemporaneously with the Will. The fact that the separate undated, unreferenced, unsigned, and unwitnessed Document that was in a separate sealed envelope was not offered for probate until almost two years after the Will was accepted for probate is, in and of itself, strong evidence that the Document may not have been "located with" and found at the same time as the Will. In short, the above-described evidence in the record indicates that there is considerable doubt as to the veracity of the proponent's claims regarding both the authenticity and the location of the Document and where

and when it was found.

In short, even if it is assumed, for the sake of argument only, that the doctrine of integration is recognized in South Carolina, the facts and circumstances do not support the application of the doctrine in this particular case because: (1) there is no evidence that the Document was present when Mr. Moore executed his Will on September 27, 1999; (2) the Document seeks to alter the dispositive provisions of Mr. Moore's 1999 Will that left real property to all five of his children by instead leaving the property to only one of his five children; (3) Mr. Moore's Last Will and Testament and the separate Document are not strongly connected and do not form one single continuous, flowing Will that consists of multiple pages.

CONCLUSION

For the reasons stated, Respondent Phillip Frederick Moore respectfully asks this Honorable Court to reverse the decisions by the probate and common pleas courts below to admit as part of Mr. Moore's Will the undated, unsigned, and unwitnessed typewritten Document that was not mentioned in the Will and was allegedly found in a sealed envelope that was separate from the Will. This invalid Document should not have been admitted for probate as part of Mr. Moore's Will. In the alternative, Respondent Phillip Frederick Moore asks this Court to reverse the lower courts' decisions and remand the case to the probate or common pleas courts for a trial to resolve the numerous factual questions as to, inter alia, the circumstances surrounding the drafting, storing, and chain of custody of the Document. In addition, this Court is asked to grant any other relief to Respondent Phillip Frederick Moore that it deems to be just and necessary.

Respectfully submitted,

Pro-Se HEIR - Phillip F. Moore
Alternate Personal Representative

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

page 31
3-7-22

APPEAL FROM FLORENCE COUNTY
J. Mumford Scott, Jr., Probate Court Judge
Thomas A. Russo, Circuit Court Judge

Appellate Case No: 2018-001144
Opinion No.: 5887
Submitted November 1, 2021-Filed January 5, 2022

IN THE MATTER OF:
THOMAS G. MOORE (Decedent)

Michael Dennis Moore.....Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore..... Respondents.

RESPONDENT PHILLIP FREDERICK MOORE'S
PETITION FOR REHEARING

* → Please refer to the documents filed 2-23-22 ← Rehearing

Respondent Phillip Frederick Moore, hereby submits this Petition for Rehearing asking that the Court reconsider its decision, as follows:

I. Joint Tenancy with a Right of Survivorship

Appellant argues the circuit court erred in ruling a joint tenancy with a right of survivorship between Decedent and Appellant was defeated at the time a purchase agreement to sell a parcel of real property was signed. We agree.

4 of the 5 Heirs will make their Pleas to the Appellate Judges to Reverse their Decision on the Joint Tenancy with a Right of Survivorship Back to the Order stated by Judge Scott, Jr., Probate Court Judge and Thomas A. Russo, Circuit Court Judge. 2-23-22 is evidence that Proves T.G. Moore (Alzheimer's)

This Property should have Never been Sold without T.G. Moore's agreement.
Dennis Moore should have Notified T.G. Moore with the
agreement to Buy and Sell with the other children present.

page 32

TO: The Courts and Judges, please Refer to the
documents filed 2-23-22 to be reviewed - Rehearing

I have submitted Proof and Evidence 2-23-22 that
T.G. Moore (Alzheimer's) NEVER knew about an
agreement or a Contract to Sell his Property

334 Cypress Avenue, Murrells Inlet, S.C. 29516.

One of T.G. Moore's children had to be around him
day and night after seeing this (see 10-6-12 (Enclosed)).

Please look at the Death Certificate (Enclosed)

Encephalopathy - A Disease of the Brain and the
documents filed 2-23-22 to be reviewed - Rehearing.

Michael Dennis Moore has forged the initials T.M.
on ALL the documents Agreement to Buy
and Sell Real Estate Residential. Michael Dennis
Moore has forged Thomas Moore's signature.

Michael Dennis Moore illegally sold this
property without the knowledge of T.G. Moore and
kept these documents until T.G. Moore Passed Away
so he could receive ALL of the \$ 324,500.00.

Due to the documents 2-23-22 what else can the
Remaining Heirs submit to Prove Michael Dennis Moore
is a Con-Artist and a Thief keeping this agreement to himself.

In the documents filed 2-23-22 - Agreement to Buy
and Sell it states that Dennis Moore initialed T.M. -
Seller. Have Read this Page - (Totally a Lie) - T.G. Moore
(Alzheimer's) NEVER READ or Seen this agreement
(Forged by Michael Dennis Moore).

Please Refer to the documents filed 2-23-22.

ON Page 6 stated in this Agreement:

This is a Legally Binding Agreement (Totally False). Both Buyer and Seller shall seek further assistance if the contents are Not Understood - Again, T.G. Moore (Alzheimer's) knew Nothing about the contents in this Agreement. Both Buyer and Seller Acknowledge receipt of a Copy of this Agreement (Totally False). T.G. Moore NEVER received a copy of this Agreement and was Not Present when this Agreement was made.

Both Buyer and Seller Acknowledge receiving, Reading, and understanding - The South Carolina Real Estate Commission Agency Disclosure Form - Again, T.G. Moore (Alzheimer's) NEVER seen this Agreement, even if he was present and received a Copy of this Agreement it would be Impossible that he would understand ONE word in this Agreement. Again, please look at the Death Certificate (Enclosed). In our opinion Pennie Moore has committed Fraud and legally should be Prosecuted. When Pennie Moore received this Agreement he should have notified T.G. Moore and the remaining children should have been present to explain the Contract to T.G. Moore to find out if T.G. Moore wanted to sell this Property at the price stated.

The Courts, Judges and attorneys has made False statements that there was a Legal Agreement and Contract to sell T.G. Moore's (Alzheimer's) property 334 Cypress Avenue without his knowledge or consent.

page 34

Dennis Moore should have mentioned this agreement to buy and sell to T.G. Moore with the other children present to explain the agreement to T.G. Moore and get his answer if he wanted to sell the property at that price.

T.G. Moore having Alzheimer's disease was a top Priority Issue through-out these Hearings we had in Court in this Probate. I asked my attorney Kathy Elmore several times to mention his health mentally and physically months Before he Passed Away.

These documents (Enclosed) prove how bad T.G. Moore had Alzheimer's including the Court Transcript (Enclosed), the Death Certificate (Enclosed) and the Check (Enclosed) 10-6-12 T.G. Moore (Himself) wrote.

Mentioning and stating the fact about the Alzheimer's disease T.G. Moore had WAS NOT MENTIONED in Court Enough.

Enclosed - Death Certificate



ENCEPHALOPATHY - A disease of the Brain

Enclosed - All the Heirs realized how bad T.G. Moore had Alzheimer's when they retrieved this Check Enclosed from his Bank Statement.

T.G. Moore wrote this check Himself 10-6-12.

Pay to the
Order of Tammie Jackson

We were devastated that the Bank let this check go through

instead of signing his name
T.G. Moore signed Tammie Jackson
Tammie Jackson

David & Gwen Bryant

8436629722

page 35

T.G. Moore NEVER seen or knew about this agreement - (Alzheimer's)

EXHIBIT



AGREEMENT TO BUY AND SELL REAL ESTATE RESIDENTIAL

22

T.G. Moore should have been aware with this contract.

1. PARTIES: This legally binding Agreement entered into on November 23, 2013 between, Buyer(s), Vincent & Karla Janizza (hereinafter called "BUYER"), and Seller(s), Thomas G. Moore (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: Vincent & Karla Janizza

THE [] BUYER [] SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot: _____ Block: _____ Section: _____ Subdivision: _____ Address: 334 Cypress Avenue Tax Map #: 1951004037 City: Garden City Zip: 29576 County of: Horry State of South Carolina.

Seller represents that the property is connected to [] public sewer system or to [] septic tank or to [] public water or to [] well system or to [] other

No personal property will convey as a part of this sale, except as described: Appliances

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before December 23, 2013, not later than 9:00 p.m. Time is of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be \$ 324,500 Three Hundred Twenty Four Thousand Five Hundred

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: [X] Cash; or [] Subject to Financing. Financing to be obtained by [] Conventional [] Seller [] VA [] FHA [] Other terms:

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 29,500 Buyer and Seller authorize Bryant Auction & Real Estate Escrow Agent to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by [] Cash, [X] Check, or [] Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

[X] BUYER [X] BUYER [] SELLER [] SELLER HAVE READ THIS PAGE FORM 310 PAGE 1 of 6

Forged

page 36

DEATH CERTIFICATION

STATE FILE NUMBER : 139-13-042236

DECEDENT'S NAME: *THOMAS GADDY MOORE*

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: MARCH 15, 1929

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

NAME AND ADDRESS OF PLACE OF DEATH: CAROLINAS HOSPITAL SYSTEM, FLORENCE, SC 29505

PLACE OF DISPOSITION: MOUNT HOPE CEMETERY

DISPOSITION LOCATION: FLORENCE, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 2125 KRISTENS CHANNEL, FLORENCE, FLORENCE COUNTY, SC, 29501

PLACE OF BIRTH: SOUTH CAROLINA

SEX: MALE

SOCIAL SECURITY NUMBER: 250-40-9693

AGE: 84 YEARS

COUNTY OF DEATH: FLORENCE

MARITAL STATUS: WIDOWED (AND NOT REMARRIED)

SURVIVING SPOUSE'S NAME: NA

FATHER'S NAME: WILLIAM STEVEN MOORE

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: SARAH OWENS

INFORMANT'S NAME: DR MARK LAWHON

RELATIONSHIP: GRANDSON

MAILING ADDRESS: 510 RIDGEWOOD DRIVE, FLORENCE, SC, 29501

FUNERAL HOME: SToudenMIRE - DOWLING FUNERAL HOME, INC., 2402 S. IRBY ST., FLORENCE, SC, 29505

FUNERAL DIRECTOR: TERRY J. BURNHAM

LICENSE NUMBER: 2260

EMBALMER'S NAME: TIMOTHY R SPRENGER

LICENSE NUMBER: 2553

ACTUAL OR PRESUMED DATE OF DEATH : DECEMBER 20, 2013

MANNER OF DEATH : NATURAL

ACTUAL OR PRESUMED TIME OF DEATH: 1911

CAUSE OF DEATH - PART I

CONGESTIVE HEART FAILURE

AORTIC VALVE STENOSIS

ACUTE RENAL FAILURE

→ ENCEPHALOPATHY ← *Encephalopathy - A disease of the Brain*

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? NO

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: MD TRAES A. BROWN

LICENSE NUMBER: 32486

CERTIFIER'S ADDRESS: 105 NORTH RAILROAD AVE, LAMAR, SC, 29069

DATE FILED: DECEMBER 30, 2013

DATE OF ISSUANCE: MARCH 17, 2014

SPECIAL INSTRUCTIONS :

NA

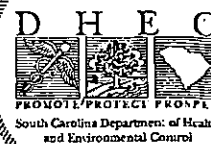
SC03467431

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

*Catherine Templeton*Catherine Templeton
Director and State Registrar

This copy is not valid unless prepared on an engraved border displaying the state seal and issuing agency logo.

Revision Date: 07/16/2013



This check Below is when we realized the signs of Alzheimer's disease that was occurring with T.G. Moore. Someone had to be around T.G. Moore 24 hrs. a day. If the Bank let this check go through there's no telling what will happen next.

Bank of America Pennis Moore forged the initials T.M. and forged Thomas Moore's signature Nov, 23, 2013 through out the Agreement TO Buy and Sell Real Estate

Capture Date: 10/07/2013 Sequence #: 8892638169 Pennis Moore should be Prosecuted.

→ **THOMAS G MOORE** 01-77 7398
 2125 KRISTENS CHANNEL
 FLORENCE, SC 29501 67-48/53 SE

10-6-13 DATE

Pay To The Order Of Tammy Jackson \$ 450.00
~~Four Hundred Dollars Only~~

Bank of America
 ACH R/T 05302465

For Tammy Jackson

⑆053904483⑆ 00074611842107398

T.G. Moore wrote this check - paid to the order of Tammy Jackson and signed Tammy Jackson. (Product of T.G. Moore's Alzheimer's)

Tammy Jackson
3055105079

>>253271945<<
 First Federal
 Charleston, SC 29406
 Phone: 843-529-5800
 Bus Date: 10/07/2013

Branch/Teller 0031/3107
10/07/2013 08:52:50

Electronic Endorsements		Bank #	Endrs Type	TRN	RRC	Bank Name
Date	Sequence					
10/07/2013	126755820	253271945	-1	Y		SOUTH STATE BANK
10/07/2013	008892638169	111012822	Pay Bank	N		BANK OF AMERICA, NA
No Payee Endorsements Found						

Michael Dennis Moore - Testifying Under Oath

1 Kathy Q You need to use a name.

2 Dennis A Thomas -- Thomas.

3 Kathy Q Okay.

4 Dennis A Thomas -- Thomas Moore --

5 Kathy Q Okay.

6 Dennis A -- said that he had dementia. And it's

7 like I told them -- I told my brother, I said, you
8 are asking me to say that my father had dementian
9 (sic). I said, if he had dementian and he was
10 crazy, I said, wouldn't the doctors had -- had
11 give him medication for that? And why they were
12 asking me to say that, I don't know. I mean, I'll
13 be honest with you, I -- I don't know why they
14 would have -- asking me to say that my father --
15 which, you know, that he had dementian. I don't
16 know why they were asking me that.

17 Kathy Q What is your understanding of what

18 dementia means? Dennis Moore testifies under oath
T.G. Moore had dementia. Look at the check enclosed

19 Dennis A It's when people that don't know how to
20 write their bills, checks, and stuff like that.

21 Q Okay. And your testimony is your
22 father never reached a point where he didn't have
23 the ability mentally and physically to do that?

24 A That's right.

25 Q Okay. So let's make sure I understand.

T. G. Moore Never seen or knew about
their agreement to buy and sell documents.
T. G. Moore had a right to agree or dis-agree
with the Sales Price - Selling his Property.

Page 39

STANDARD OF REVIEW

"The standard of review applicable to cases originating in the probate court is controlled by whether the underlying cause of action is at law or in equity." *In re Est. of Hyman*, 362 S.C. 20, 25, 606 S.E.2d 205, 207 (Ct. App. 2004). An action to construe a will is an action at law. *Id.* Thus, our review extends merely to the correction of legal errors. *Id.* "[T]his [c]ourt 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 Est. of Cumbee*, 333 S.C. 664, 670, 511 S.E.2d 390, 393 (Ct. App. 1999).

LAW/ANALYSIS

I. Joint Tenancy with a Right of Survivorship

Appellant argues the circuit court erred in ruling a joint tenancy with a right of survivorship between Decedent and Appellant was defeated at the time a purchase agreement to sell a parcel of real property was signed. We agree.

Section 27-7-40(a) of the South Carolina Code (2007) provides joint tenancy includes the following incidents of ownership:

(i) In the event of the death of a joint tenant, and in the event only one other joint tenant in the joint tenancy survives, the entire interest of the deceased joint tenant in the real estate vests in the surviving joint tenant, who is vested with the entire interest in the real estate owned by the joint tenants.

....

(iii) The fee interest in real estate held in joint tenancy may not be encumbered by a joint tenant acting alone without the joinder of the other joint tenant or tenants in the encumbrance.

(iv) If all the joint tenants who own real estate held in joint tenancy join in an encumbrance, the interest in the real estate is effectively encumbered to a third party or parties.

Section 27-7-40(c) provides in part:

Except as expressly provided herein, any joint tenancy severed pursuant to the terms of this section is and becomes a tenancy in common without rights of survivorship. Nothing contained in this section shall be construed to create the estate of tenancy by the entirety. Nothing contained in this section amends any statute relating to joint tenancy with rights of survivorship in personal property but affects only real estate. The provisions of this section must be liberally construed to carry out the intentions of the parties.

Appellant and Decedent jointly purchased 334 Cypress Avenue in Garden City, South Carolina, with each owning half of the property. They entered into an agreement to sell the property in November 2013, prior to Decedent's death on December 20, 2013. The property was sold on December 27, seven days after Decedent's death. Appellant signed the deed individually and received all the proceeds from the sale, despite the existence of the sales contract before Decedent's death.

The probate court cited to section 27-7-40 of the South Carolina Code for the proposition that if all joint tenants who own real property in joint tenancy join in an encumbrance, the interest in the real property is encumbered for a third party or parties. The probate court wrote that this court expounded on the statute in *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, 307 S.C. 76, 78-79, 413 S.E.2d 852, 854 (Ct. App. 1992), when it held a "purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid for the purchase price," and "[t]his equitable interest arises from payment of the money and does not depend on the purchaser's taking possession of the real estate." Thus, the probate court reasoned that the sales contract entered into prior to Decedent's death encumbered the property, entitling the purchaser to possession of the property upon payment of the agreed price and Decedent to one-half of the proceeds at closing. The court found that neither the fact that Decedent's signature was not listed on the closing documents nor that the deed was not prepared prior to Decedent's death invalidated Decedent's rights to the proceeds of the sale of the property. Therefore, the probate court ruled the joint tenancy with right of survivorship was defeated by the contract to sell the property and Decedent's Estate was entitled to one-half of the proceeds from the sale. The

court ordered Appellant to pay Decedent's Estate \$162,500 for the Estate's portion of the sales proceeds.

In its order, the circuit court found there was evidence to support the probate court's findings; thus, they should not be disturbed. As to the legal question of the effect of a contract to purchase and sell real estate creating rights for Decedent after death, after a de novo review, the circuit court found the probate court correctly interpreted and applied the relevant law. The circuit court noted this court has held a "purchaser under an executory contract for the purchase and sale of real property has an equitable lien on the property in the amount paid on the purchase price." *Id.* at 78, 413 S.E.2d at 854. Thus, the court reasoned that once Decedent and Appellant entered into the binding contract to sell the property, Decedent's death did not prevent him from preserving all the rights under it simply because he was waiting for it to be executed. Accordingly, the court held Decedent and Appellant were entitled to receive an equal share of the proceeds of the sale. However, the circuit court noted the probate court incorrectly found half of the \$324,500 sale price was \$162,500, when it should have been \$162,250.

Appellant argues the probate court erred in ruling Appellant and Decedent's joint tenancy with a right of survivorship was severed at the signing of the purchase agreement for the sale of the property. He argues he was the sole owner of the property at the time it was sold because Decedent passed away before the final closing and recording of the property. He asserts the agreement to sell the property, signed by both joint tenants, did not terminate the joint tenancy with a right of survivorship. He argues § 27-7-40(a)(iv) allows for joint tenancies with a right of survivorship to effectively encumber property to third parties but does not state an encumbrance severs a joint tenancy with a right of survivorship. Appellant also argues the probate court incorrectly claimed jurisdiction over a non-probate asset and ruled the joint tenancy with the right of survivorship was terminated at the moment the contract for sale of the property was signed. He maintains there are no South Carolina cases that address this issue.

We find the case the probate court relied on, *South Carolina Federal Savings Bank v. San-A-Bel Corporation*, does not state a seller's interests in a joint tenancy with a right of survivorship is severed at the signing of a purchase agreement. Also, Section 27-7-40 of the South Carolina Code does not provide that an encumbrance on real estate severs the joint tenancy with a right to survivorship. Thus, we look at other states for guidance. There is a split in authority as to whether a contract for the sale of property severs a joint tenancy with a right to survivorship. "In some jurisdictions, a contract of sale made by both or all of the joint tenants

operates as a severance, while a contrary view is taken by other courts." 20 Am. Jur. 2d *Cotenancy and Joint Ownership* § 27.

Appellant cites to a Supreme Court of Washington case, *Estate of Phillips v. Nyhus*, 874 P.2d 154 (Wash. 1994), where joint tenants brought suit against the estate of a deceased joint tenant to declare their entitlement to proceeds from the sale of property. The *Nyhus* court held that "[a] contract or agreement by only one joint tenant to convey property held in joint tenancy destroys the right of survivorship, terminates the joint tenancy and converts it into a tenancy in common." *Id.* at 157-58. However, in the *Nyhus* case, at the time of the joint tenant's death, the property was held by the parties as joint tenants with right of survivorship with contractual rights and obligations arising from an earnest money agreement. *Id.* at 158-59. Because there had been no severance of the joint tenancy by execution of the earnest money agreement at his death, the right of survivorship vested title in the surviving joint tenants along with the contractual rights and obligations. *Id.* The court held the operative event was the joint tenant's death and not the ultimate right to possession of the proceeds which followed as a consequence of the post-death completion of the earnest money agreement. *Id.*

In *Weise v. Kizer*, 435 So. 2d 381, 381 (Fla. Dist. Ct. App. 1983), the sole issue before the Florida District Court of Appeal was whether a joint tenancy is severed and the incident of survivorship destroyed when joint tenants execute a contract to sell real property. In that case, Judith Weise and Wallace Cawthon held real property as joint tenants with a right of survivorship. *Id.* Weise and Cawthon entered into a contract to sell the property to Howard and Karla Moss; however, Cawthon died approximately one month before the closing. *Id.* The *Weise* court held "severance does not automatically occur upon the execution of a contract to sell that is executed by all joint tenants, unless there is an indication in the contract, or from the circumstances, that the parties intended to sever and terminate the joint tenancy." *Id.* at 382. Thus, severance did not occur, and Weise was entitled to receive all of the proceeds of the sale of the property. *Id.* at 381.

We are inclined to follow the *Weise* court. The sales contract was silent as to whether severance of the joint tenancy was intended by Appellant and Decedent, and no extraneous circumstances indicated severance was intended by the parties. Thus, we find the probate and circuit courts erred in finding the joint tenancy became a tenancy in common without rights of survivorship when Appellant and Decedent entered into a sales contract for the sale of the property and hold the joint tenancy was not severed in this case. Therefore, we reverse the probate and circuit courts on this issue and find the Estate is not entitled to proceeds from the sale.

3-7-22

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

APPELLATE CASE NO. 2018-001144

IN THE MATTER OF:
THOMAS G. MOORE (Decedent)
Michael Dennis Moore

Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore

Respondents.

PROOF OF SERVICE

The undersigned certifies that he has served a copy of the Respondent, Phillip Frederick Moore's Petition for Rehearing in this case on the following parties, via U.S. Mail, postage prepaid, addressed to the following:

Michael Dennis Moore
2129 Kristens Channel
Florence, S.C. 29501

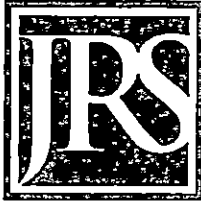
Francine L. Lawhon
2005 Third Loop Road
Florence, S.C. 29501

C. Pierre Campbell
Turner Padgett
P.O. Box 5418
Florence, S.C. 29502

Deceased
Linda K. Moore
1454 Golf Terrace Blvd.
Florence, S.C. 29502

attorney for Respondent Thomas P. Moore

Respondent's Signature
Pro-Se-Phillip F. Moore Jr.
Alternate Personal Representative



3-7-22

LAW OFFICE OF _____
JAMES R. SNELL, JR.

LLC

February 11, 2022

↓ ↓
SC Court of Appeals ← received Feb. 14, 2022
PO Box 11629
Columbia, South Carolina 29211

**Re: In the Matter of the Estate of: Thomas G. Moore (Michael D. Moore) vs.
Thomas P. Moore, Francine L. Lawhon, Linda K. Moore, & Phillip F.
Moore
Case No.: 2018-001144**

Dear Sir or Madam,

Please find enclosed The Motion of Phillip Moore to Relieve Counsel signed by the Respondent, Phillip Moore for filing. Also enclosed is a check in the amount of \$50.00 for the filing fee for the Motion to Relieve Counsel in the above-referenced case. We appreciate your assistance with this matter. Should you have any questions or concerns, please do not hesitate to contact our office.

Sincerely,



James Snell

Enclosure

cc: Phillip Moore
1504 Damon Drive
Florence, SC 29505

COPY
3-7-22

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
CIRCUIT COURT

Thomas A. Russo, Circuit Court Judge

APPELLATE CASE NO. 2018-001144

IN THE MATTER OF:
THOMAS G. MOORE (Decedent)

Michael Dennis Moore Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore Respondents.

MOTION OF PHILLIP FREDERICK MOORE TO RELIEVE COUNSEL

The undersigned hereby requests that this court relieve the attorneys of the Law Office of James R. Snell, Jr., LLC, including James R. Snell, Jr. and Vicki Koutsogiannis as his attorneys.

Phillip F. Moore Jr.
Phillip Frederick Moore

Sign here

3-7-22

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
J. Munford Scott, Jr., Probate Court Judge
Thomas A. Russo, Circuit Court Judge

Appellate Case No: 2018-001144
Opinion No.: 5887
Submitted November 1, 2021-Filed January 5, 2022

IN THE MATTER OF:
THOMAS G. MOORE (Decedent)

Michael Dennis MooreAppellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,
Linda Kaye Moore, Phillip Frederick Moore Respondents.

RULE 240 CERTIFICATION

The undersigned hereby certifies that the Respondent Phillip Frederick Moore's Petition
for Rehearing complies with Rule 240, SCACR.

Phillip F. Moore Sr.
Pro Se - Phillip Frederick Moore
1504 Paman Drive
Florence, S.C. 29505
843-601-3347

Phillip F. Moore Sr. - Pro Se Her
alternate Personal Representative
1504 Damon Drive
Florence, S.C. 29505

RECEIVED
MAR 08 2022
SC Court of Appeals

Honorable Jenny Abbott Hitchens
Deputy Clerk, S.C. Court of Appeals
1720 Senate Street
Columbia, S.C. 29201