PAMELA HOLLIDAY WALLIN, MARK BENNETT HOLLIDAY, KINGSLEY K. HOLLIDAY, SARA JANE HOLLIDAY, and JOHN C. HOLLIDAY Petitioners, vs. ROSS SAMUEL HOLLIDAY, PERSONAL REPRESENTATIVE OF THE ESTATE OF WARREN PHILLIP HOLLIDAY, ROSS SAMUEL HOLLIDAY, individually, WARREN LEA HOLLIDAY, individually, 2233 HIGHWAY 17 NORTH, LLC, 2237 HIGHWAY 17 NORTH, LLC, 2805 HIGHWAY 17 NORTH, LLC, 1606 MEETING STREET, LLC, BACONS BRIDGE ROAD, LLC, 4687 FRANCHISE STREET, LLC, ZEEZROM PROPERTIES, LLC, JOHN DOE LEASED VEHICLE, 1905 NORTH MAIN STREET, SUMMERVILLE, LLC, 815 FOLLY ROAD, LLC, 832 COLEMAN BLVD., LLC, 2189 DISCHER AVENUE, LLC, NEW SPACE SCIENCE, LLC, PIRATES PLUNDER, LLC, , SAWGRASS TECHNOLOGIES, INC., HOLLIDAY AMUSEMENT COMPANY, INC. and THE REVOCABLE TRUST AGREEMENT BETWEEN WARREN P. HOLLIDAY AS SETTLOR AND AS TRUSTEE Respondents.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2019-CP-10-2430 **ORDER GRANTING RESPONDENTS' MOTIONS FOR SUMMARY JUDGMENT**

This matter first came before the Court on December 20, 2020, and subsequently the Court allowed further discovery to proceed before determining the outcome of the pending motion. The

motion came back before the Court for a hearing on November 17, 2021.[1] After considering the oral and written arguments of all parties, as well as the deposition testimony and documents submitted, the Court has determined that there is no issue of material fact and summary judgment should be granted as a matter of law.

STANDARD FOR SUMMARY JUDGMENT

The standard for summary judgment is set forth in Rule 56(c), SCRCP, which states that "summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." In cases with a higher burden of proof, such as will contests, "the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v. Mis-South Mgmt. Co., Inc., 381 S.C. 326, 330-31, 673 S.E.2d 801, 803 (2009). "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 218, 578 S.E.2d 329, 334 (2003).

"Contestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity. Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." S.C. Code Ann. § 62-3-407. As our Supreme Court has said:

> When the formal execution of a will is admitted or proved, a prima facie case in favor of the will is made out, and the burden is then on the contestants to prove undue influence, incapacity or other basis of invalidation. The contestants continue to bear the burden of proof throughout the will contest. In determining whether the

[1] Respondents filed an Amended Motion for Summary Judgment on September 1, 2020, arguing that Petitioners' claims of lack of capacity, undue influence, and their other tortious claims must fail based on the evidence in the record. On May 7, 2021, Respondents then filed a Motion for Summary Judgment arguing that Petitioners failed to timely file pursuant to § 62-7-604. The Court heard oral arguments on both these motions on November 17, 2021.

> contestants sustained such burden, the evidence has to be viewed in the light most favorable to the contestants.

Calhoun v. Calhoun, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982).

FINDING OF FACTS

After a careful review of the briefs, exhibits and extensive oral argument, the Court finds that the following facts are in evidence, are undisputed and are relevant to Respondents' motion.

Warren and Patricia Holliday were married for approximately 50 years. They had four children: Mark Bennett Holliday, Pamela Holliday Wallin, Ross Holliday and Lea Holliday. Mark and Pamela are the primary Petitioners, and Ross and Lea are the primary Respondents.

On October 29, 2008, the decedent Warren Holliday ("Warren") executed a Revocable Trust in which he provided that, on his death, his assets would go to his then wife, Patricia, during her life, and, upon her death, to their four children in equal shares. Article 3 of the Revocable Trust expressly reserved to Warren the right to revoke the trust and provided in pertinent part: "The Settlor [Warren Holliday] shall have and possess, and hereby reserves the right to revoke this Trust … without the consent of the Trustee, or any beneficiary…" At some point in 2012, Ross Holliday became the Trustee.

On December 9, 2013, the Family Court of Charleston County entered an Order of Divorce for Patricia and Warren, incorporating into it a Marital Settlement Agreement which provided for Patricia's support to be paid out of Zeezrom Properties, LLC, an asset of Warren's Revocable Trust. The agreement made no mention of Warren's trust and was signed by Warren in his individual capacity and not as trustee.

On March 21, 2014, Warren executed a new will which allocated 40% of his assets to each of Ross and Lea, 15% to Mark, and 5% to Pamela. On January 7, 2016, Warren executed a codicil

to the 2014 will and provided specific bequests to Mark and Pamela of $300,000 and $100,000 respectively, with the remainder of his assets going to Ross and Lea in equal amounts. These estate planning documents were prepared by and executed in the presence of Truett Nettles, Warren's longtime attorney. Mr. Nettles testified that, at the time these documents were signed, Warren was capable of knowing what he owned, who his children were, and to whom he wanted to give his assets. Neither the March Will nor the January Codicil mention the 2008 Revocable Trust.

On September 15, 2016, Warren executed a Revocation to his Revocable Trust in the presence of Truett Nettles, his attorney; Aliecia Bores, an associate in Mr. Nettles' office at the time and currently a lawyer with BB&T Bank; and Greg Bosch, Warren's personal trainer who worked with Warren twice a week for approximately two years. While Mr. Bosch was providing therapy to Warren on September 15, Warren requested that he stay and be a witness to the document that he was going to sign. Warren explained to Mr. Bosch that he wanted his assets to be distributed as set forth in his will and that he wanted Mr. Bosch to be around to testify that "Mr. Holliday knew exactly what he was doing." Warren told Mr. Bosch that he knew Pamela and Mark would not be happy. All of the witnesses present at the time of execution testified that Warren was capable of knowing what he owned, who his children were, and to whom he wanted to give his assets. The medical records of MUSC subsequent to September 15, 2016, further show that Warren was capable of making, and did make, his own decisions.

Nathan Hale and David Goltra, friends of Warren, testified that Warren was upset and disappointed with Pamela and Mark because they took the side of Patricia in the divorce and afterwards. Warren told them that he did not want Pamela and Mark to inherit the business that he had spent his life building.

Warren died on September 28, 2016, while Mark and Pamela were with him. The Medical University of South Carolina records submitted by Respondents show that Pamela repeatedly told the medical staff that her father makes his own decisions.

Under the 2014 will and 2016 codicil, Warren had named Ross to be his Personal Representative. In accordance with those documents, Ross disbursed the specific devises of money to Mark and Pamela and then disbursed the remainder of Warren's assets to Lea and himself. All disbursements were made by January of 2018.

Almost two years after Warren's death, on September 19, 2018, Mark, Pamela, and Mark's children brought this action seeking to set aside and invalidate only the 2016 trust revocation signed by Warren.

GROUNDS FOR RESPONDENTS' MOTION

Respondents moved for summary judgment as to the validity of the revocation of the revocable trust on numerous legal bases: (1) S.C. Code § 62-7-604(a) requires that an action contesting the validity of a trust that was revocable at the settlor's death be commenced within one year after the settlor's death, and Petitioners' action was filed after that date; (2) the doctrine of laches bars this action; (3) Warren revoked his trust by showing a clear and definite purpose to do so; and (4) Warren had capacity to, and was not subjected to undue influence, when he executed the Trust Revocation on September 15, 2016. The Court concludes that Respondents are entitled to summary judgment as to the validity of the revocation of the trust on each of these independent grounds.

In addition, Respondents moved for summary judgment as to the constructive trust, breach of fiduciary duties and declaratory judgment causes of action, because, if the revocation of the

trust was valid, each of these causes of action fail. The Court concludes that Respondents are entitled to summary judgment as to each of these claims.

Last, Respondents moved for summary judgment as to the Intentional Interference with Inheritance cause of action for the following reasons: (1) no South Carolina appellate court has adopted this cause of action; (2) the only evidence is that Warren changed his will in 2014 and 2016, and there is no evidence that anyone influenced Warren to reduce Petitioners' inheritance in those instruments; and (3) the Probate Court did not have subject matter over this tort claim that Petitioners initiated in that court. The Court concludes that Respondents are entitled to summary judgment as to this claim for each of these independent grounds.

CONCLUSIONS OF LAW

I. WARREN'S REVOCATION OF HIS REVOCABLE TRUST IS VALID.

A. THE ACTION TO DECLARE WARREN'S REVOCATION INVALID IS BARRED BY S.C. CODE § 62-7-604(a).

Section 62-7-604(a) of the South Carolina Trust Code, which is modeled after the Uniform Trust Code § 604, provides in pertinent part: "a person must commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of (1) one year after the settlor's death." This time limit is viewed by some courts as a statute of repose. See, e.g., Bates v. Howell, No. 2016-CV-282518, 2018 WL 10670568, at *2 (Ga. Super. Feb. 26, 2018). This Court concludes that any claim of Petitioners regarding the validity of the 2008 Revocable Trust and the invalidity of the 2016 Revocation, whether legal or equitable[2], had to be filed no

[2] Petitioners argue that their equitable claims cannot be barred by this statute. The Court has determined otherwise. See Bates, 2018 WL 10670568 at *2 (barring undue influence claim under version of UTC § 604); Zeglinski v. Paziuk, No. 7:18-CV-114-FL, 2019 WL 2252145, at *11 (E.D.N.C. May 24, 2019), order vacated in other part on reconsideration, 2019 WL 3851629 (E.D.N.C. Aug. 15, 2019) (barring claim for equitable reformation under version of UTC § 604).

later than September 28, 2017, one year after Warren's death. Petitioners filed their Petition on September 19, 2018, well after the required time period had expired.

The Reporter's Comment to Section 604 explains that this "section provides finality to the question of when a contest of a revocable trust may be brought. The section is designed to allow an adequate time in which to bring a contest while at the same time permitting the expeditious distribution of the trust property following the settlor's death." See Reporter's Comment, S.C. Code Ann. § 62-7-604(a). The Comment goes on to explain that a trust may be "contested" on a "variety of grounds," including but not limited to allegations that no trust was in fact created; that undue influence, duress, or fraud was involved in the trust's creation; or that the trust had been revoked or modified. The Comment cites to § 62-7-602, which is titled "Revocation or amendment of revocable trust," showing that Section 604 applies to allegations contesting a trust revocation.

Petitioners argued that they were not contesting the validity of the trust but only the validity of the Revocation of the Trust. However, this argument fails to take into consideration the definitions provided in the South Carolina Trust Code, which applies to § 62-7-604. The Trust Code defines "terms of trust" as including "the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding."[3] § 62-7-103(17). In other words, if the 2016 Revocation is a "term of [Warren's] trust," then the statute applies. It is clear that the Revocation document was a "manifestation of the settlor's intent regarding" the trust's provisions, so therefore

[3] The 2016 Revocation is admissible in a judicial proceeding as a document with independent legal significance. See Deep Keel, LLC v. Atl. Private Equity Grp., LLC, 413 S.C. 58, 70, 773 S.E.2d 607, 613 (Ct. App. 2015) ("Signed instruments such as wills, contracts, and promissory notes are writings that have independent legal significance, and are non[-]hearsay.").

any determination regarding its validity is subject to the limitations period set forth in § 62-7-604(a).[4]

Petitioners' narrow interpretation ignores the definitions set forth in the statute and the plain language of the statute. Furthermore, I find that Petitioners' interpretation is illogical, and Petitioners fail to explain why the South Carolina Trust Code supposedly would establish a time limit for contests to the validity of an initial trust document as well as amendments, modifications, or restatements to that document, but would inexplicably set no time limit for contests to an instrument revoking those very same documents. Petitioners could not point the Court to a single state that has adopted Uniform Trust Code, § 604, and has interpreted the statute in such a way. The very purpose of Section 604 is to provide for prompt probate administration and to avoid delays in closing estates by establishing a bright line rule for the timely filing of claims, and that purpose clearly applies to this action and would be frustrated if the Court were to accept Petitioners' argument that a loophole exists in the statute. The Court rejects Petitioners' claim that Section 604's statutory purpose is not implicated here simply because Respondent Ross Holliday takes the position the trust no longer exists on the basis the settlor validly revoked it and that he is not trustee. Petitioners' argument again ignores the fact that the terms "trustee" and "trust property" are defined by statute. See S.C. Code Ann. § 62-7-103(19) ("trustee includes original, additional, and successor trustees"); § 62-7-103(11) (property is defined broad enough to include

[4] Other states interpret their versions of this Uniform Trust Code section similarly. See Nat'l Bank v. Rickert (In re Isvik), 741 N.W.2d 638 (Neb. 2007) ("[A] document by which a settlor purports to revoke a revocable trust is a term of that trust."); Ast v. Mesker, 480 P.3d 795 (Kan. Ct. App. 2020); Derringer v. Emerson, 435 F. App'x 4 (D.C. Cir. 2011); In re Beatrice C. Skillen 1995 Tr. Agreement, No. 2018-0612, 2019 WL 4165179, at *1 (N.H. Aug. 15, 2019) (holding that petition to set aside amendments and restatements of the settlor's trust agreement was time barred under UTC § 604); Matter of Elizabeth A. Briggs Revocable Living Tr., 898 N.W.2d 465, 469 (S.D. 2017) (UTC § 604 "plainly impose[s] time limits for commencing judicial proceedings to contest whether the designated trusts and amendments were validly created."); Wintersteen Revocable Tr. Agreement, 907 N.W.2d 785, 790 (S.D. 2018) (holding that challenge to the validity of trust amendment "falls directly within the provisions of" UTC § 604); Herman v. Herman, 934 N.W.2d 874, 876 (N.D. 2019) (applying UTC § 604 to action challenging modification of a trust).

anything that *may* be subject of ownership). Thus, even if Ross is claiming that he is no longer trustee of the trust and that the trust no longer has property, Ross is still a "trustee" within the meaning of the statute and the property which Petitioners contend is still in the trust is indeed "trust property" under the statute.

In sum, a trust revocation is a term of the trust, and Petitioners' action challenging the term of the trust is barred by § 62-7-604. Respondents are therefore entitled to summary judgment as to all claims contesting the validity of the Revocation of Trust.

B. THE DOCTRINE OF LACHES BARS THIS ACTION.

To the extent any of Petitioners' equitable claims are outside the purview of § 604, the doctrine of laches bars them. The existence of laches is determined with reference to the analogous Statute of Limitations, which is found in § 62-7-604. Laches is defined as "neglect for an unreasonable and unexplained length of time under circumstances affording opportunity for diligence to do what in law should have been done." Petitioners waited for an unreasonable length of time to bring their claims. They waited until after Ross, as Personal Representative, disbursed their inheritance checks. They have not refunded that money to the estate. Moreover, Petitioners seek to hold Ross liable for the very actions he took as Personal Representative of the Estate by stripping him of the protection that § 604 should afford a trustee.

C. WARREN REVOKED THE TRUST BY DECLARING HIS INTENT AND PURPOSE TO REVOKE IT.

In 2008, when Warren executed the Revocable Trust, S.C. Code § 62-7-602 provided that a revocable trust could be revoked by "any mode sufficiently showing an intention to revoke…" See Reporter's Comment to § 62-7-602(a) and Peoples National Bank of Greenville v. Peden, 229 S.E.2d 163 (S.C. 1956) ("A revocable trust may be revoked in any manner which shows a clear

and definite purpose on the part of the settlor of the trust to revoke the same, unless the instrument itself prescribed the manner in which the trust may be revoked, in which event the trust becomes irrevocable, excepting as it be revoked in the manner prescribed in the trust instrument.")

In Warren's Trust, no specific manner was prescribed for revoking the trust which said: "The Settlor shall have and possess, and hereby reserves the right to revoke this Trust…" Thus, there was no requirement that this trust be revoked through a signed revocation. Instead, revocation occurred if Warren, as Settlor, "showed a clear and definite purpose … to revoke the trust." Warren showed a clear and definite purpose to revoke the trust on a number of occasions.

Nathan Hale and David Goltra, friends of Warren, testified that Warren was very upset during and after the divorce with Pamela and Mark, because they took the side of Patricia in the divorce. Warren told them that he did not want Pamela and Mark to inherit the business that he had spent his life building. The evidence is clear that Warren had a clear and definite purpose to revoke the trust that left everything in equal shares to all four of his children.

As another expression of Warren's purpose to revoke the trust, Warren used trust assets to fund the Marital Settlement Agreement and make monthly payments to Patricia. As the leading treatise on Trusts states: "A revocation can occur when a settlor conveys property to a third person that covers the trust property." Bogert's on Trusts, Sec. 1001 n. Warren did that in the Marital Settlement Agreement when he granted Patricia a special interest in Zeezrom Properties, LLC, an asset of the revocable trust.

As uncontradicted testimony shows, Warren expressed to Ross, Truett Nettles and Aliecia Bores his intention to terminate the trust. In addition, Greg Bosch testified that Warren expressed

his intention to treat his children differently and that what he signed on September 15, 2016, was intended to do that.

By executing the 2014 will and the 2016 codicil, Warren showed a clear and definite purpose to revoke the trust. In both of these documents, Warren treated his children differently than he had treated them in the trust. The will and codicil directly conflict with the provisions of the Revocable Trust by giving unequal shares to Mark and Pamela and favoring his sons, Ross and Lea. The Will provided that Warren's Personal Representative allocate and distribute "all of his real and personal assets" as set forth in the Will.

Warren revoked the trust by showing "a clear and definite purpose … to revoke the trust." Respondents are entitled to summary judgment that the trust has been revoked.

II. EVEN IF § 62-7-604 DOES NOT BAR PETITIONERS' CLAIMS, THE REVOCATION OF TRUST WAS VALID, BECAUSE WARREN HAD TESTAMENTARY CAPACITY AND WAS NOT SUBJECT TO UNDUE INFLUENCE WHEN HE EXECUTED IT ON SEPTEMBER 15, 2016.

A. TESTAMENTARY CAPACITY

"The capacity required to … revoke … a revocable trust … is the same as that required to make a will." S.C. Code § 62-7-601. Testamentary capacity in South Carolina requires proof of three elements, whether the testator knew: (1) his estate, his assets; (2) the objects of his affection, or his loved ones; and (3) the persons to whom he wished to give his property. In re Estate of Weeks, 329 S.C. 251, 263, 495 S.E.2d 454, 461 (Ct. App. 1997). South Carolina cases have held that the capacity to know or understand rather than the actual knowledge of understanding is sufficient. Cathcart v. Stewart, 144 S.C. 252, 142 S.E. 498, 502 (1928) ("The test is not whether the grantor's mental powers were impaired, but whether, at the very time of the execution of the deed, he had sufficient capacity to understand in a reasonable manner the nature and effect of the

act which he was performing. Mere infirmity of mind or body, not amounting to an incapacity to understand the nature and consequence of the act done, will not render a person incapable of executing a valid deed.")

The burden of proof to invalidate a testamentary document always remains with the contestants of the will. Hairston v. McMillan, 387 S.C. 439, 446-47, 692 S.E.2d 549, 553. (Ct. App. 2010). Respondents provided the testimony of numerous witnesses who support the fact that Warren knew what he owned, who his loved ones were, and to whom he wanted to leave his property at the time of execution of his various testamentary documents. Specifically, there is unrefuted testimony from those persons who witnessed the execution of the estate planning documents at issue that Warren knew what he owned, who his children were, and to whom he wanted to give his assets. In comparison, Petitioners have presented no evidence that Warren did not know what he had, did not recognize his loved ones, or that he did not know to whom he wanted to leave his property at any time prior to his passing.

Petitioners presented the Affidavit of a forensic pathologist, who never saw Warren and was not present at the time of the testamentary act. Her opinion mentions nothing about the elements of testamentary capacity. In Langley v. Lynch, the Court of Appeals found that doctors' affidavits about general incapacity were "insufficient to withstand summary judgment," because "it is contrary to our well-settled law that capacity is presumed when a will is executed." No. 2015-001941, 2017 WL 4621154, at *6 (S.C. Ct. App. May 24, 2017).

Petitioners have failed to present any competent evidence that Warren lacked capacity at the time he executed his 2014 will, his 2016 codicil and/or the Revocation of Trust. Accordingly, there is not a question of material fact as to whether Warren possessed testamentary capacity when

he executed his 2014 will, his 2016 codicil and the Revocation of Trust, and the Court concludes that he did have testamentary capacity at those times.

B. UNDUE INFLUENCE

To prove undue influence, a party must present evidence that the alleged undue influence was brought directly to bear upon the testamentary act. In this case, the testamentary act at issue is the execution of the Revocation of Trust. Mock v. Dowling, 266 S.C. 274, 277, 222 S.E.2d 773, 774 (1976). "General influence is not enough." Id. Also, an unequal distribution of assets in a will alone is not sufficient to set aside the will for undue influence. Smith *v.* Whetstone, 209 S.C. 78, 90, 39 S.E.2d 127, 132 (1946).

In Swiger v. Smith, 426 S.C. 408, 411, 827 S.E.2d 200, 201 (Ct. App. 2019), the Court of Appeals affirmed the grant of summary judgment in a case in which the appellant argued that "she presented sufficient evidence to the probate court of both undue influence and the existence of a confidential or fiduciary relationship, thus establishing the presumption of invalidity." There was a confidential or fiduciary relationship between Warren and Ross, who was the trustee of Warren's Revocable Trust. However, the Court of Appeals in Swiger determined that the applicable standard of proof in an undue influence case with a fiduciary relationship: "In cases requiring a heightened burden of proof … the non-moving party must submit more than a mere scintilla of evidence to withstand a motion for summary judgment." Id. at 415, 827 S.E.2d at 203. "Since the standard of proof in an undue influence case is unmistakable and convincing evidence, there must be more than a scintilla of evidence in order to defeat a motion for summary judgment." Id. The Court finds that the record does not support a finding of undue influence under even the scintilla of evidence standard.

III. PETITIONERS HAVE NOT PRESENTED EVIDENCE SUFFICIENT TO ESTABLISH CLAIMS FOR CONSTRUCTIVE TRUST, BREACH OF FIDUCIARY DUTIES, DEMAND FOR ACCOUNTING AND RECEIVERSHIP, OR DECLARATORY JUDGMENT.

A. CONSTRUCTIVE TRUST

Petitioners' claim that a constructive trust was created over Warren's assets fails, because they have failed to show that Respondents did anything inequitable to obtain legal title to the property. Lollis v. Lollis, 291 S.C. 525, 529, 354 S.E.2d 559, 561 (1987). As set forth above, Warren wanted Respondents to have the assets that he left to them. Bald accusations that Warren was incapacitated, which go against all the testimony and medical records, do not prove that Respondents did anything inequitable. The mere fact that Respondents ended up with more than Petitioners does not constitute "clear, definite, and unequivocal" evidence sufficient to support imposing a constructive trust. Id. at 530. Moreover, Petitioners are time-barred from contesting the validity of the 2016 Revocation, so they do not have standing as beneficiaries to assert legal title to any assets that may have been held by the 2008 Revocable Trust. Therefore, Respondents are entitled to summary judgment as to Petitioners' claim for constructive trust.

B. BREACH OF FIDUCIARY DUTIES, ACCOUNTING, RECEIVERSHIP

The breach of fiduciary duties accounting and receiver causes of action are barred if the Revocable Trust was validly revoked. Petitioners' accusations of breach of fiduciary duties against Ross as the trustee of Warren's Revocable Trust are also barred S.C. Code Ann § 62-7-603, which provides that the trustee of a revocable trust only owes duties to the Settlor during the life of the Settlor. Thus, even if Petitioners' allegation that the Revocable Trust was valid during the final years of Warren's life is true, they still have no claim against Ross as trustee for his conduct during Warren's life. To the extent that Petitioners claim breach of fiduciary duty for actions after

Warren's death, those claims fail because Ross did not owe any duty as trustee to Petitioners after the valid 2016 Revocation. Similarly, Petitioners have no standing to demand an accounting or to appoint a receiver for the purported 2008 Revocable Trust, because it was validly revoked in or before 2016. Respondents are entitled to summary judgment as to these causes of action.

C. DECLARATORY JUDGMENT

The declaratory judgment action only seeks to declare the Revocable Trust valid, so Respondents are entitled to summary judgment as to that claim in accordance with the Court's ruling. Further, because the 2016 Revocation is valid, Petitioners are not beneficiaries of the 2008 Revocable Trust. Therefore, they do not have an underlying right to assert a claim under the South Carolina Declaratory Judgment Act.

IV. PETITIONERS' CLAIM FOR INTENTIONAL INTERFERENCE OF INHERITANCE FAILS AS A MATTER OF LAW.

Petitioners have also brought a claim for Intentional Interference with Inheritance against Respondents. South Carolina has not adopted this cause of action, so summary judgment is required on that basis.

As a second ground for summary judgment to Respondents, the evidence is clear that Warren changed the distributions to be made at his death in his will in 2014 and his codicil in 2016. Petitioners have presented no evidence that anyone influenced Warren to reduce Petitioners' inheritance in those instruments. As set forth hereinabove, the only evidence is that Warren did what Warren wanted to do, so there is no evidence of interference.

As a third ground, this action was initiated in Probate Court. The Probate Court did not have subject matter jurisdiction over this tort claim. The fact that the case was removed to the Circuit Court by Respondents does not remedy that defect, because the Circuit Court's jurisdiction

is derivative of the Probate Court's jurisdiction. See, e.g., Waddell v. Kahdy, 309 S.C. 1, 4, 419 S.E.2d 783, 785 (1992); see also, Judy v. Judy, 393 S.C. 160, 169, 712 S.E.2d 408, 412 (2011).

Respondents are entitled to summary judgment as to the Intentional Interference with Inheritance cause of action.

CONCLUSION

For the reasons set forth in this Order, I conclude that Respondents are entitled to summary judgment as to all of Petitioners' claims and causes of action.

IT IS, THEREFORE, ORDERED that Respondents' Motion for Summary Judgment be granted as to all causes of action.

AND IT IS SO ORDERED.

_____
Honorable Bentley Price,
Judge for the Ninth Judicial Circuit

This _____ day of _____, 2022.
Charleston, South Carolina

Charleston Common Pleas

Case Caption: Pamela Holliday Wallin , plaintiff, et al VS Ross Samuel Holliday , defendant, et al

Case Number: 2019CP1002430

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766