South Carolina Law Review

Volume 25
Issue 3 *Survey of South Carolina Law*

Article 18

10-1973

Wills and Trusts

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WILLS AND TRUSTS

I. EXECUTION OF A WILL

In *In re O'Neill*[1] contestants attacked the validity of the decedent's will and requested that it be proved in solemn form. On appeal to the South Carolina Supreme Court the central issue raised was whether evidence had been presented demonstrating that the testator had known the contents of his will. The court stated the rule: "If no further showing is made than that the will was executed by a capable testator, the proponent has succeeded in establishing the essential fact of knowledge of contents."[2]

II. CONTRACT TO WILL

In *Corontzes v. Trapolis*[3] the South Carolina Supreme Court was asked to determine the existence of a contract to make a will. Plaintiff, decedent's niece, contended that decedent had orally agreed to will her all his estate in return for her services in caring for him in his later years. Testimony was offered to prove the existence of this contract, but the weight of the plaintiff's evidence centered on a will made by the decedent. This will gave the majority of decedent's property to plaintiff, but because of improper attestation the will was not valid. The plaintiff argued that this will, although invalid, should be regarded as corroborative of the oral contract under which plaintiff claimed. The Chief Justice of the supreme court agreed with the plaintiff and pointed out in a dissenting opinion joined in by Justice Lewis that many jurisdictions accept the doctrine of "conforming wills."[4] He stated: "When there is evidence tending to show the existence of a contract to make a will, proof of the terms of a will in conformity with such contract is confirmatory proof that the agreement was made."[5] The Chief Justice concluded the plaintiff's evidence supported by the conforming will was sufficient to establish a valid contract.

The majority of the court, however, recognized that the law in South Carolina was not as the dissent contended. Citing the

1. 259 S.C. 55, 190 S.E.2d 754 (1972).
2. *Id.* at 63, 190 S.E.2d at 758. The court quoted from 57 AM. JUR. *Wills* § 862 (1948).
3. 259 S.C. 244, 191 S.E.2d 523 (1972).
4. *Id.* at 255, 191 S.E.2d at 529.
5. *Id.*

leading case of *Young v. Levy*,[6] the court stated: "Apparently overlooked by counsel and the court was the rule prevailing in this State that an attempted will which makes no reference to a contract to devise is not competent evidence of the existence of such a contract."[7] Furthermore, the court noted that the will was executed twenty years after the alleged contract and that an attempt to connect the two would be farfetched. Finally, the court observed that the will did not leave the entire estate to plaintiff and thus did not actually conform to the alleged contract. Thus, the court held that the plaintiff failed to establish that the decedent contracted to will her his entire estate.

III. ADMINISTRATOR'S FEES

In *Minter v. State Department of Mental Health*[8] respondent sought to collect certain fees in connection with his administration of a decedent's estate. Appellants, creditors of the estate, objected to respondent's accounting. The decedent had been a patient for some thirty-seven years in the South Carolina State Hospital. During the last years before her death, decedent became entitled to certain payments from the Veterans Administration which were paid over to the state hospital.[9] Upon her death the state hospital paid her funeral expenses out of the fund from the Veterans Administration and paid the balance to respondent as administrator of decedent's estate. Respondent sought to have his commissions as administrator include a commission on the amount paid by the state hospital for funeral expenses. The South Carolina Supreme Court noted that the South Carolina Code provides that the administrator is entitled to a commission on the sums "which he shall receive" and "which he shall pay away."[10] Pointing out that respondent neither received nor paid away the funeral expense funds, the court denied the respondent the right to recover commissions on the funeral expenses.

Secondly, respondent contended that the attorney's fees he incurred in bringing this action should be paid by the decedent's estate because he was acting in his capacity as administrator.

6. 206 S.C. 1, 32 S.E.2d 889 (1945).

7. 259 S.C. at 247, 191 S.E.2d at 524.

8. 258 S.C. 186, 187 S.E.2d 890 (1972).

9. S.C. CODE ANN. § 32-1042 (Cum. Supp. 1971) allows the State Commissioner of Mental Health to act on the patient's behalf in such circumstances.

10. S.C. CODE ANN. § 19-534 (Cum. Supp. 1971).

The court disagreed, stating: "It is apparent to us that this litigation by the respondent against the appellants was solely for his own benefit. In such a case, the estate should not be called upon to bear the expense of attorney's fees for the bringing of this action."[11]

IV. TRUSTS

In *Citizens & Southern National Bank v. Auman*[12] the South Carolina Supreme Court dealt with the problem of construing a trust instrument. Decedent had entered into a trust agreement with plaintiff (trustee) which, among other things, created life estates in her son and daughter-in-law with a gift over to certain of her nieces and nephews. The relevant terms of the trust provided that, after the deaths of the decedent and the holders of the life estates, "this trust shall terminate and the trust estate shall be paid over in equal shares to *such* of the nieces and nephews of the grantor as *are listed in Schedule B attached hereto.*"[13] In addition, the decedent agreed to execute all instruments necessary to vest the trustee with full title to the property.

A "Schedule B" was never added to the trust agreement and the plaintiff brought this action for a declaratory judgment to determine the rights of the various beneficiaries.

Decedent's son contended that the decedent retained a reversionary interest in the trust following the life estates and that this interest was subject to defeasance only by the designation of certain nieces and nephews, such designation not having been made. The son further contended that since his mother retained a reversionary interest in the property it should descend to him by way of intestate succession. The nieces and nephews took the position that they had a remainder interest and that the trust passed as a resulting trust to them following the termination of the life estates. They also contended that the failure of the decedent to designate certain nieces and nephews constituted a class gift to all nieces and nephews.

The court recognized that when someone creates a power of appointment in a person by which that person is to designate certain members of a class, a failure to make such designations

11. 258 S.C. at 197, 187 S.E.2d at 895.
12. 259 S.C. 263, 191 S.E.2d 511 (1972).
13. *Id.* at 266, 191 S.E.2d at 512.

will cause the estate to pass to all members of the class.[14] However, the court pointed out that in this case the decedent had given a power of appointment to no one but had retained such right in herself. Thus, no class gift had been created.

Secondly, the court noted that because decedent had retained the power of appointment in herself she had retained the fee and had not given it to the trustee. This was true, said the court, even though the trust instrument had purported to vest the trustee with full title. Citing *Thomason v. Hellams*[15] the court noted, "We have recognized that a life estate with the power of disposal may be validly created."[16] Thus, reasoned the court, the decedent did retain a reversionary interest in the estate which passed at the time of her death to her son. The court distinguished *Blount v. Walker*,[17] relied upon by the nieces and nephews for their argument that a resulting trust had been created, by emphasizing that in that case the fee was given to the trustee and no reversion in the donor existed.

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14. The court cited Withers v. Yeaton, 1 Rich. Eq. 324 (S.C. 1845), and RESTATEMENT (SECOND) OF TRUSTS § 27 (1959).

15. 233 S.C. 11, 103 S.E.2d 324 (1958).

16. 259 S.C. at 270, 191 S.E.2d at 514.

17. 31 S.C. 13, 9 S.E. 804 (1889).