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Clerk, Supreme Court of Appeals
Richmond, Va.

209 VA 158

Record No. 6733

In the Supreme Court of Appeals of Virginia at Richmond

THE FIRST CHURCH OF CHRIST, SCIENTIST,

v.

ALBERTA A. A. HUTCHINGS, ET AL.

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

This to be You Prin

Record No. 6733

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 13th day of June, 1967.

THE FIRST CHURCH OF CHRIST, SCIENTIST,
Appellant,

against

ALBERTA A. A. HUTCHINGS, LILLIAN ANDERSON DUNN, VIRGINIA ANDERSON WILLIS, BARBARA ANDERSON CANTWELL, T. LEWIS ATKINSON, DAVID H. ATKINSON, MILDRED A. WADE, JANE E. ATKINSON, MARY FRANCES HOENSHEL, V. ESCRIDGE WORNHAM, ELIZABETH A. SUCH, GEORGE ATKINSON, CLYDE D. ATKINSON, GRACE ATKINSON CROUCH, EDITH ATKINSON BLACK, DORIS ATKINSON SMALL, ROLAND H. ATKINSON, MARIAN ATKINSON HAINES, CHARLES W. ATKINSON, JR., DAVID O. ATKINSON, AUBREY ATKINSON WILTSHIRE, ROSALIE RIGGINS, MARGERY A. GARWOOD, VALERA ANDERSON COCHRAN, MARY ANDERSON PATTESON, BEULAH ANDERSON TUNSTALL, EDWARD CHRISTIAN ANDERSON, EVELYN ANDERSON FRANCIS, MARY ANDERSON THOMPSON, FLOYD ERNEST ANDERSON, JR., AND MILDRED D. ANDERSON,
Appellees.

From the Corporation Court of the City of Norfolk
H. Lawrence Bullock, Judge

Upon the petition of The First Church of Christ, Scientist, an appeal is awarded it from a decree entered by the Corporation Court of the City of Norfolk on the 31st day of January, 1967, in a certain chancery cause then therein depending, wherein Alberta A. A. Hutchings and others were plaintiffs and David Atkinson, the petitioner and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said corporation court in the penalty of $300, with condition as the law directs.

RECORD

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BILL OF COMPLAINT

Your complainants respectfully show to the Court the following:

1. The plaintiffs and the defendants, with the exception of the First Church of Christ, Scientist and Rosalie Riggins, are all the heirs at law of Beulah Atkinson Farrar, who died in Norfolk, Virginia, on December 10, 1965. The plaintiffs and the defendants are all over the age of 21 years and are legally competent. The relationship of the various heirs is filed herewith as Exhibit "A". The First Church of Christ, Scientist, is an unincorporated association with its main officer in Boston, Massachusetts, which has authorized William Redfern, Esquire to accept service of process in this action. Rosalie Riggins is a former employee and housekeeper of Beulah Atkinson Farrar, deceased, who is now in physical possession of real property at 527 Massachusetts Avenue, which is one of the parcels of real property of which the deceased died *siesed* and possessed.

page 4 } 2. The reason why the defendants Margery A. Garwood and Valera Anderson Cochran, heirs at law of Beulah Atkinson Farrar, deceased are not made parties plaintiff is because they expressly refused to be so joined. The reason why the defendants David Atkinson, Mary Anderson Patteson, Beulah Anderson Tunstall, Edward Christian Anderson, Evelyn Anderson Francis, Mary Anderson Thompson, Floyd Ernest Anderson, Jr., and Mildred Anderson, heirs of law of Beulah Atkinson Farrar, deceased, are not made parties plaintiff is because they have not given any authorization to be so joined.

3. Beulah Atkinson Farrar died testate in Norfolk, Virginia, on December 10, 1965. Her holographic will was duly probated on January 10, 1966, in the Corporation Court of the City of Norfolk, and J. Hubard Jones qualified as Administrator c.t.a. On October 12, 1966, J. Hubard Jones resigned pursuant to court order, and on October 18, 1966, Stephen C. Cowper was appointed in The Corporation Court of the City of Norfolk as Administrator c.t.a. d.b.n. of the

Estate of Beulah A. Farrar, giving bond in the amount of $20,000.00, with the Employers Liability Assurance Corporation, Limited as surety. A copy of the will with the annexed probate order and a memorandum of qualification are filed herewith as Exhibits "B" and "C", respectively.

4. At the time of her death on December 10, 1965, Beulah A. Farrar was the sole owner in fee simple of two parcels of real property located in The City of Norfolk, to-wit:

Parcel No. 1: All that certain lot, piece or parcel of land in the city of Norfolk, state of Virginia being known, num-
page 5 } bered and designated as Lot seventeen (17), Block nine (9), on the plat or plan of "Coleman Place", duly of record in the Clerk's Office of The Circuit Court of the City of Chesapeake, Virginia, in Map Book No. 6, page 28, situated on the west side of Arkansas (formerly Georgia) Avenue; being a part of the property conveyed to Miss F. Beulah Atkinson by deed of Co-Operative Land Corporation, dated the 2nd day of May, 1913, and duly of record in the Clerk's Office of the Circuit Court of the City of Chesapeake, Virginia, in Deed Book 389, at page 354.

gether with the buildings and improvements thereon lying

Parcel No. 2: All those certain two (2) lots of land, to-
and being in the City of Norfolk, Virginia, now known as 527
gether with the buildings and improvements thereon lying
Massachusetts Avenue, being known, numbered and designated as lots numbers Eleven (11), and twelve (12), in block twelve (12), on the plat of the property of the Sterling Place Company, known as Colonial Place, said plat with agreement between Sterling Place Company, a corporation, and T. F. Rogers, Trustee and Egbert G. March, Executor and Trustee and Henery N. Tifft, substitute Trustee, dated February 2, 1894, being recorded in the Clerk's Office of the Corporation Court of the City of Norfolk in Deed Book 141-A at page 198, said plat and agreement being subsequently modified by a further agreement between Sterling Place Company and Hugh C. Davis, Trustee and C. W. Grandy, dated February 17, 1905, and recorded in said Clerk's Office in Deed Book 145-B, at page 294; being the same property conveyed to John Farrar and Frances Beaulah Farrar, husband and wife, by deed of Joseph A. Goodwin and Deletta R. Goodwin, husband and wife, dated March 15, 1922, and duly of record in the Clerk's Office of the Corporation Court of the City of Norfolk, Virginia, in Deed Book 264 C at page 255.

page 6 } 5. The holographic will of Beulah A. Farrar, as admitted to probate on January 10, 1966, is set out in full as follows:

"I Beulah A. Farrar want to give my money left the Mother Church in Boston Mass. it has been a great help to me.

(s) Beulah A. Farrar
July 17th 1965."

With the exception of the above-described real property and the furnishings and miscellaneous personal property therein, the estate of Beulah A. Farrar consisted entirely of cash, namely, a savings account at Virginia National Bank, $505.00; two checking accounts at Virginia National Bank, containing a total of $1,279.14; and a saving account with Mutual Federal Savings and Loan Association, of Norfolk, Virginia, containing $5,107.05.

6. The complainants, being heirs at law of Beulah A. Farrar and the owners of the above described real property, are informed that the defendant, The First Church of Christ, Scientist, claims to be the sole devisee of the above-described real property under the will of Beulah A. Farrar, which affects the marketability of the complainants' title and thus constitutes a cloud on your complainants' title to the said property, which subjects your complainants to monetery loss, due to an inability to sell the said property.

7. The complainants are further informed that the defendant Rosalie Riggins claims to be the owner of the above-described real property, although your complainants are not informed as to the basis of her claim. The defendant Rosalie Riggins continues to reside on the premises at 527 Massachusetts Avenue, described as "Parcel NO. 2" above, to the mutual exclusion of your complainants and those defendants who are the heirs at law of Beulah A. Farrar.

page 7 } WHEREFORE, your complainants, being without remedy save in a court of equity, wherein alone such matters are cognizable, do pray:

(1) That proper process may issue in this action, and that the parties named as defendants in the caption may be made parties defendant, and may answer the Bill, but not under oath;

(2) That the Court may construe the said will, and find all legal and equitable title in the heirs of Beulah A. Farrer and that a decree may be entered in this matter, giving complainants the relief sought; and

(3) That your complainants may have such other further and general relief as the nature of their case may require or to equity may seem meet.

ALBERTA A. A. HUTCHINGS
LILLIAN ANDERSON DUNN
VIRGINIA ANDERSON WILLIS
BARBARA ANDERSON CANTWELL
T. LEWIS ATKINSON
DAVID H. ATKINSON
MILDRED A. WADE
JANE E. ATKINSON
MARY FRANCES HOENSHEL
V. ESCRIDGE WORNHAM
ELIZABETH A. SUCH
GEORGE ATKINSON
CLYDE D. ATKINSON
GRACE ATKINSON CROUCH
EDITH ATKINSON BLACK
DORIS ATKINSON SMALL
ROLAND H. ATKINSON
MARIAN ATKINSON HAINES
CHARLES W. ATKINSON, JR.
DAVID O. ATKINSON
AUBREY ATKINSON WILTSHIRE
By STEPHEN C. COWPER
Of Counsel

Filed 12-13-66.

W. L. PRIEUR, JR., Clerk
BY G. C. THOMAS, D.C.

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ANSWER OF THE FIRST CHURCH OF CHRIST, SCIENTIST

Now comes The First Church of Christ, Scientist, one of the defendants herein and states for its answer to the Bill of Complaint as follows:

1. This defendant admits the allegations in paragraph one

of the Bill of Complaint, except that it has no knowledge of the relatives of the deceased, Beulah A. Farrar.

2. This defendant has no knowledge of the allegations contained in paragraph two.

3. This defendant admits the allegations contained in paragraph three of the Bill of Complaint.

4. Insofar as it is informed, this defendant admits the allegations of paragraph four of the Bill of Complaint.

5. This defendant admits the allegations in paragraph five of the Bill of Complaint.

6. This defendant admits the allegations in paragraph six insofar as paragraph six alleges that this defendant claims to be the sole devisee of all the estate of the decedent, Beulah A. Farrar.

7. This defendant has no knowledge of the allegations contained in paragraph seven and further states that the defendant, Rosalie Riggins has no interest in the aforesaid real property.

8. And for further answer to the Bill of Complaint brought against it this defendant states that it is a religious
page 16 } and charitable organization usually and regularly referred to as the "Mother Church", with its headquarters in Boston, Massachusetts and that the decedent, Beulah A. Farrar intended to leave all of her worldly possessions to this defendant as evidenced by the holographic Will referred to in paragraph five of the Bill of Complaint; that there is a presumption against intestacy and that by said holographic Will, the decedent intended to leave her entire estate to this defendant.

WHEREFORE, this defendant prays that this court construe the aforesaid holographic Will of Beulah A. Farrar and enter a decree that this defendant is the sole heir of both the real as well as the personal property of the decedent, Beulah A. Farrar and that this defendant for such other further and general relief as the nature of its case may require, etc.

THE FIRST CHURCH OF
CHRIST, SCIENTIST
an unincorporated association

BY WILLIAM A. REDFERN, JR.
Counsel

* * * * *

Filed 12-27-66.

W. L. PRIEUR, JR., Clerk
BY G. C. THOMAS, D.C.

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DEMURRER OF ROSALIE RIGGINS

Defendant Rosalie Riggins demurs to the Bill of Complaint on the ground that it does not set forth a cause of action either at law or at equity for the following reasons:

1. That the alleged holographic will shows on its face that it does not meet the statutory requirements of a will.

2. That the alleged holographic will shows on its face that it is limited to money and there is no need of this Court to construe the alleged holographic will.

WHEREFORE, she prays that the Bill of Complaint be dismissed.

ROSALIE RIGGINS
By HOWARD I. LEGUM
of Counsel

* * * * *

Filed 1-4-67.

W. L. PRIEUR, JR., Clerk
BY G. C. THOMAS, D.C.

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ORDER

This cause came on this day to be heard upon the demurrer of Rosalie Riggins to the bill of complaint and was argued by counsel.

Upon consideration whereof, it is ordered that said demurrer be and is sustained and the bill of complaint is dismissed from the docket, the court holding that the paper writing admitted to probate lacks testamentary intent.

Enter this 31st day of January 1967.

H. LAWRENCE BULLOCK, Judge

Seen:
H. I. LEGUM
Of counsel for Rosalie Riggins

Seen and excepted to:
STEPHEN C. COWPER
Attorney for Complainants

Seen & Excepted to:
WILLIAM A. REDFERN
Atty. for First Church of Christ, Scientist

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NOTICE OF APPEAL AND ASSIGNMENT OF ERRORS

To: The Honorable H. Lawrence Bullock, Judge of the aforesaid Court:

The defendant, The First Church of Christ, Scientist, hereby gives Notice of Appeal to the Judge's Order of January 31, 1967, sustaining the demurrer of Rosalie Riggins and dismissing the Bill of Complaint and makes the following assignments of error:

1. That the Court erred in holding that the paper writing of Beulah A. Farrar admitted to probate lacks testamentary intent.

2. That the Court erred in permitting the defendant, Rosalie Riggins to attack the will of Beulah A. Farrar in a collateral proceeding unauthorized by law.

THE FIRST CHURCH OF
CHRIST, SCIENTIST

By WILLIAM A. REDFERN
Of Counsel

* * * * *

Filed 3-17-67.

W. L. PRIEUR, JR., Clerk
BY G. C. THOMAS, D.C.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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