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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

750239

ANNIE H. HARRIS, et als — Appellants

v.

EDGAR L. HARRIS, et als — Appellees

JOINT APPENDIX

J. Forester Taylor
11 S. New Street
P. O. Box 745
Staunton, Virginia,
Counsel for Appellants

Humes J. Franklin
Richard A. Scholes
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Waynesboro, Virginia,
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TABLE OF CONTENTS

	Page
Bill of Complaint	1
Transcript of Evidence	3
Memorandum of Judge's Decision	16
Judgment Appealed From	17
Assignments of Error	18
Certificate of Counsel	19

BILL OF COMPLAINT

TO THE HONORABLE WILLIAM S. MOFFETT, JUDGE OF THE AFORESAID COURT

Your complainants respectfully represents that the object of this suit is to set up and establish the will of Wade Hampton Harris and alleges as follows:

1. That Wade Hampton Harris died May 2, 1973, a resident of Augusta County, Virginia, seized and possessed of real as well as personal property lying in Augusta County, Virginia.

2. That on March 28, 1957, the said Wade Hampton Harris did duly execute his last will and testament, that he was then of sound mind and disposing memory; that said will was duly witnessed and attested, an unexecuted copy of said will being attached hereto and marked Exhibit "A."

3. That the said will was subsequently delivered by the Testator to another person, to-wit: Mrs. Margaret Harris Schuler, one of your complainants and that said will has been lost or destroyed.

4. That said will was never destroyed by the said Wade Hampton Harris, with intent to revoke the same, and never otherwise revoked by him, but the same was in legal existence at the time of his death and constituted his last will and testament.

5. That your complainants are the devisees under the will of Wade Hampton Harris and Edgar L. Harris has qualified as Administrator of his estate and the defendants are legatees, excepting J. William Whiteside, who is the sole heir of Cora H. Whiteside, a deceased sister of the complainants and defendants.

WHEREFORE, your complainants pray that the attached Exhibit be set up and established as the last will and testament of Wade Hampton Harris; that the Court order that it be admitted to probate as such and for such other and further relief as to equity may seem meet.

EDGAR L. HARRIS

MARGARET HARRIS SHULER

CLARENCE HARRIS

BY COUNSEL

/s/ Humes J. Franklin
FRANKLIN, POINDEXTER & FRANKLIN
P. O. Drawer 1140, Waynesboro, Virginia

TRANSCRIPT OF TESTIMONY

MARGARET HARRIS SHULER

[P.5]
By Mr. Franklin:

Q. State your name.

A. Margaret Shuler.

Q. What is your address, Mrs. Shuler?

A. Route 3, Staunton.

Q. What was your maiden name?

A. Margaret Harris.

Q. What was your father's name?

A. Wade Hampton Harris.

Q. What are the other members of your -- sisters and brothers -- would you state their names please?

A. Well, there's Annie Harris; Emma; and Grace Robinson; Mary Dekeizer; Mattie Reid; Isabelle Gibson; Edgar Harris; Clarence Harris.

Q. Do you have a sister that is deceased?

A. Yeah, her name was Cora Whiteside.

Q. What?

A. Cora Whiteside.

Q. And what - does she have children?

[P.6] A. She has one boy, Billy.

Q. One boy, Billy. When did your father die?

A. In May.

Q. Of what year?

A. 1973.

Q. May of '73. Was he a resident of Augusta County?

A. Yeah.

Q. And where did he reside?

A. Down there on Sangers Lane, Route 3.

Q. Route 3?

A. Uh-huh.

Q. What community is that?

A. It's Augusta County.

Q. Augusta County. How old was he when he died?

A. He was about 95.

Q. About 95. How long was he -- did he have a life's illness -- I mean by that, was he -- a deteriorating thing - illness?

A. Yes, he was in a nursing home his last, you know, years.

Q. Last what?

A. Last years he was in a nursing home. He was getting feeble, he was old.

[P.7] Q. I hand you here a Xerox copy of a proposed will. Did your father make a will?

A. Yes, he did.

Q. When did he make a will?

A. Well, I don't know exactly when he made a will because he didn't tell us, but anyway it was in '57.

Q. In '57. Were you present when the will was signed?

A. Yes.

* * * * *

Q. Now after the will was signed, who did your father leave it with for keeping?

A. He kept it himself. He put it away.

Q. Where did he put it?

A. He put it in his closet. Now I can't say he put it on his shelf or in his coat pocket, I can't remember.

[P.8] Q. Well now, when did you get the will then and put it in your room?

A. Oh, not till long after that. I put it away for safe keeping.

Q. When did you put it away for safe keeping?

A. Well, I can't remember exactly when and all - but it was, I imagine it was five years or more before he died.

Q. About five years?

A. Uh-huh.

Q. Where abouts did you have it?

A. I took it upstairs and put it in my chest of drawers between some clothes.

Q. Between some clothes?

A. Yeah.

Q. Now --

A. I never dreamed that anybody would touch anything.

Q. Now, that was in your room?

A. Yeah, it was in my room.

Q. Now, did -- where did your father -- during you say about five years before he died, where did he reside -- I mean, what room in the house did he --

A. He was downstairs.

Q. He was downstairs?

[P.9] A. His bedroom was downstairs and he stayed downstairs.

* * * * *

[P.12] Q. Would you describe to the Court the nature of your house -- you say you roomed upstairs?

A. Yes.

Q. How many rooms are upstairs?

A. Four.

Q. Four. And where was your father's bedroom?

A. It was downstairs on the left hand side of the hall.

Q. Left hand side of the hall?

A. Way downstairs.

Q. How long, Mrs. Shuler, had you lived with your father before his death?

[P.13] A. Well, I have been there off and on - well, I wasn't with him no more than five years, I mean, I can't really say for sure, but in all my life --

Q. You are a widow, is that right?

A. Yes.

Q. And did you live there with your husband?

A. No, I didn't.

Q. When did your husband die -- about -- you don't have to --

A. Well, it's about 30 years ago.

Q. And you have lived with your father since that time?

A. Well, I didn't for a couple -- maybe about a year or a little over, I don't know exactly.

Q. Then you moved in? Now, who else lived with your father?

A. Clarence, that's my brother. He has lived there all of his life.

Q. Now Clarence has been at your father's house all of the time. He never was married?

A. No.

* * * * *

[P.15]
By Mr. Taylor:

Q. Mrs. Shuler, as I understand, this is your father's house?

A. Yeah.

Q. And you and your brother Clarence were making your home with your father in his house?

A. Yeah.

Q. And your father was a farmer you say?

A. Yeah.

Q. And did he actively farm until your mother died?

A. Well, I really don't know how -- he didn't do the work hardly, I mean, my brothers did most of the work. He worked, yeah.

Q. Well, what I meant. He was in good health until your mother's death wasn't he?

[P.16] A. Yeah, and even after that.

Q. How long after your mother's death did he remain in good health?

A. Well, oh, he failed, you know, because he was getting old and all. But farming, he was losing interest all the time.

Q. When your mother died, that was 1963?

A. Yeah.

Q. And your father died in '73?

A. (Witness indicated "yes" by nodding head). Well okay. Well, as far as I know the dates are right; they was about ten years apart.

Q. So your mother died about 1963 and your father died about 1973. And he was -- how long was he in a nursing home before his death?

A. Was it a year or two years and some months?

[P.17] Q. Well, just answer it to the best of your recollection, you don't have to exactly --

A. Well, I hate to say for sure. I believe -- was it two years and two or three months or something like that -- I --

Q. You think it was around two years?

A. I think so.

Q. How long before he went to the nursing home was he in poor health -- feeble health?

A. Well, he wasn't down and sick till oh, not -- he was in the hospital there for quite a while. But he was -- he couldn't get around like he did. He could walk good and all but his mind was failing him.

Q. Did it start failing him just shortly before he went to the nursing home or about the same time he went to the nursing home or after he went to the nursing home?

A. No, it was about a couple of years or more that you could -- he would forget, you know, things and all. Maybe a little more, I couldn't say exactly.

Q. You mean a couple of years before he went to the nursing home?

A. Well, his mind, you know, his was an old mind -- it was failing him, he would forget what we would tell him, and you know, things. He'd talk about going home and all, he couldn't remember things as good.

[P.18] Q. Now, you have what, just the one bedroom in your father's house?

A. No, we have five bedrooms.

Q. No, I mean you, yourself.

A. Yeah, I only had my one bedroom.

* * * * *

[P.23] Q. Well, let me ask you this. Were there two papers, one to be signed by your mother and one by your father?

A. Yes. They had two wills, one was to leave to my mother and one was to leave to my daddy in case of their deaths.

Q. Did you read both of them?

A. Both of them were exactly alike, except they was, you know, to leave to each other.

Q. Now I understood you to say that afterwards your father kept his will himself for a long time?

A. I imagine it was there in his drawer or his closet one.

Q. What happened to the one your mother signed?

A. It was with it.

Q. They were both kept together?

A. Yeah.

Q. And how long after that did your mother die?

A. Let's see, it was made in '57 -- she died in --

[P.24] Q. '63 I believe you said.

A. -- '63. It would be about seven years, wouldn't it? I might not have all these dates exactly right because I just can't remember all of them.

Q. All right. Did I understand you to say in

response to Mr. Franklin's examination that it was five years or more before you got hold of the will, is that -- do you know how long it was before you put the will in your chest of drawers?

A. No, I don't know exactly.

Q. Was it as long as five years?

A. It probably was.

Q. And then after that it was -- so that would have been about '62 -- so it was about another nine or ten years before your father went to a nursing home, is that right?

A. Yeah.

Q. And up until he went to the nursing home, he was there at home all of the time?

A. Yeah, he was home all of the time.

Q. When was it, Mrs. Shuler, that you first discovered that the will was not in your chest of drawers?

A. Well, it would have to be a couple or more years later because I just put it away and never even bothered, you know, with it because it wasn't mine --

[P.25] Q. It was a couple of years after you had put it in the drawers?

A. Well, I just can't say exactly -- I'd hate to say exactly. All I know is that it disappeared.

Q. Well, is it safe to say that it was a considerable time before your father went to the nursing home?

A. Oh, it was quite a few years before that.

* * * * *

[P.43] Q. Mrs. Shuler, you may have covered this in your testimony, I don't recall. But just to make sure I wanted to ask you. After your father's death, did you make a diligent search in the house for the will?

A. Yes.

Q. And, of course, you never were able to find it?

A. No, indeed.

Q. And when your mother died, didn't you think at that time that she had died without a will?

A. No one ever said anything about a will.

Q. Didn't you qualify as administrator to her estate?

A. Yeah, because no one else would.

Q. I see. But when you qualified, you stated to the Clerk that she had died without a will, was it not?

[P.44] A. Yes, without a will. She didn't have any will of her own.

* * * * *

ISABELLE HARRIS GIBSON

[P.47]
By Mr. Taylor:

Q. Now, was your father in a nursing home at the time of his death?

A. He went in the nursing home in October of '70 and he died the second of May, 1973. He was there the whole time.

Q. About two and a half years?

A. Yes he was.

Q. Now prior to the time that he went to the nursing home, was he at home?

A. Yes.

Q. Will you tell us whether or not your father was in poor health or failing health during the time at home before he went to the nursing home?

A. Well, he was able to get around but he was very senile and his memory was bad and my sister and I would spend time, about every other day I would be there to watch him just like a baby.

Q. Now, which sister are you talking about?

A. Mrs. Reid.

Q. And you went to the home and helped take care of him?

A. Yes we had to watch him because he would run off. We were there to watch after him.

Q. Now prior to the time that he went to the nursing home, will you tell us whether or not your father ever made any statements to you about leaving the property after his death?

[P.48] A. Well, he always mentioned that he had good girls and he wanted to treat them all alike.

* * * * *

[P.51] Q. The question, Mrs. Gibson, was when you were

going down to your father's home there to visit and take care of him before he went to the nursing home, did he make any statement to you as to what he expected to do with his property?

A. No, he never mentioned what he expected to do to it but he always said he wanted to treat all of his children alike. That is all I know that was pertaining to the will.

* * * * *

[P.52] By Mr. Franklin:

Q. You knew he had made a will, did you not?

A. I didn't know, I had never heard it mentioned. I had -- my sisters had mentioned there was a will but I had never heard it or seen it or anything.

Q. You weren't present the day it was signed?

A. I was there but I heard nothing read or -- all I saw anybody sign was my mother -- now, what she signed [P.53] I couldn't verify because I don't know.

Q. You mean you were there --

A. I was there in the hall, but I do not know what was signed.

Q. You did not know what was signed?

A. No sir.

Q. Now, your sister did have a room by herself upstairs, did she not?

A. As far as I know she did.

Q. Did you ever go into her room?

A. Very seldom, I never had anything that was up there for me, I was there to watch my father and not go plunder through the house.

Q. Well, Mrs. Gibson, in the later years, Mr. Clarence Harris and Mrs. Shuler supported your father did they not?

A. Supporting him?

Q. Yes.

A. No, the farm was his. They was there. He had his own cattle and everything.

Q. They did the work on it?

A. Well, I guess they did the work on the farm but the farm was my father's, the home was his.

Q. Did you ever discuss the question of this will with Grace Robinson, your sister?

A. No. I didn't even know what was in it. No I couldn't discuss something that I didn't know anything about.

Q. You didn't know what was in it?

A. No sir.

Q. But you did know there was a will?

A. Well, I had heard talk there was, but I had never seen it. So I couldn't say there was or there wasn't a will.

MEMORANDUM OF DECISION OF JUDGE
September 10, 1974

Humes J. Franklin, Sr., Esquire
Attorney at Law
Waynesboro, Virginia 22980

J. Forester Taylor, Esquire
Attorney at Law
Staunton, Virginia

Re: Edgar L. Harris, et als
Vs. Annie H. Harris, et als

Gentlemen:

After carefully considering the evidence, the views of counsel and the authorities cited, it is concluded that the unexecuted copy of a Will of Wade Hampton Harris submitted and identified in the evidence as Plaintiff's Exhibit 1, should be admitted to probate as the Last Will and Testament of Wade Hampton Harris.

It is requested that Mr. Franklin prepare an appropriate order to be initialed by Mr. Taylor and in turn presented for entry.

Yours very truly,

/s/ Wm. S. Moffett, Jr.

WSM,Jr/k

ORDER

THIS DAY, in the above styled cause, before the taking of any evidence at the beginning of the trial, the question was raised in regard to technical procedures, and after discussion with Counsel and the Court, it was agreed by Counsel for the complainants and respondents and was consented to by the Court that all technical procedures would be waived and that the case would be submitted to the Court for the Court's decision. The Court heard the evidence of the parties and the Court, after carefully considering the evidence and the views of counsel, concluded that the unexecuted copy of the will of Wade Hamilton (sic) Harris as identified in the evidence as Exhibit #1, is the true last will and testament of Wade Hamilton (sic) Harris.

THEREFORE, it is ORDERED, ADJUDGED and DECREED that the said writing be, and the same is hereby established, probated and admitted to record as the last will and testament of Wade Hamilton (sic) Harris, to which action of the Court the respondents, by counsel, except.

ENTER:

/s/ Wm. S. Moffett, Jr., JUDGE
November 1, 1974 DATE

I Ask for This:

/s/ Humes J. Franklin
FRANKLIN AND FRANKLIN
P. O. Drawer 1140
Waynesboro, Virginia 22980

SEEN AND OBJECTED TO:

/s/ William E. Bobbitt, Jr., Esquire
Taylor and Bobbitt
Staunton, Virginia 24401

ASSIGNMENTS OF ERROR

The Court erred in holding that the copy of a will offered by complainants should be established as the last will and testament of the decedent, and in ordering the same admitted to probate.

Specially, the Court erred in holding either (a) that the presumption of revocation did not apply, or (b) that the presumption of revocation had been rebutted by the evidence. The transcript of this trial is to be made a part of the record.

/s/ Annie H. Harris, et als
By Counsel

/s/ William E. Bobbitt, Jr.
William E. Bobbitt, Jr.
Staunton, Virginia

CERTIFICATE

I certify that a copy of this Notice was sent by regular mail with postage prepaid to Humes J. Franklin, Jr., Esquire, 129 N. Wayne Avenue, Waynesboro, Virginia 22980, this 18th day of November, 1974.

/s/ William E. Bobbitt, Jr.

CERTIFICATE

I hereby certify that three (3) copies of this Joint Appendix were mailed by regular mail with postage prepaid to Humes J. Franklin, Esquire, and Richard A. Scholes, Esquire, P. O. Box 1140, Waynesboro, Virginia 22980, counsel for Appellees, this 6th day of June, 1975.

J. Forester Taylor
Counsel for Appellants