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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

760841

M. GREGG ELLIOTT, ET AL.

v.

MATALIE HOLT ELLIOTT GRIFFIN, ET AL.

APPENDIX

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Date filed:
12-10-74

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

NATIONAL BANK AND TRUST COMPANY,
CHARLOTTESVILLE, VIRGINIA
EXECUTOR AND TRUSTEE U/W
J. FRANK ELLIOTT, IV, DECEASED

Complainant

Case No. 2784

IN CHANCERY

BILL TO CONSTRUE

A WILL AND FOR AID

AND DIRECTION

v.

MATALIE E. GRIFFIN
1946 Thomson Road
Charlottesville, Virginia 22903

ELLIOTT H. GRIFFIN
P.O. Box 1265
1608 Rose Hill Drive
Charlottesville, Virginia 22901

MATALIE GRIFFIN, JR.
1946 Thomson Road
Charlottesville, Virginia 22903

DANIEL GRIFFIN, JR.
4734 Kenmont Drive
Charlotte, North Carolina 28213

MARY ELIZABETH GRIFFIN, Age 7
4734 Kenmont Drive
Charlotte, North Carolina 28213

DANIEL K. GRIFFIN, Age 3
4734 Kenmont Drive
Charlotte, North Carolina 28213

MILLARD GREGG ELLIOTT
4416 Hermitage Road
Virginia Beach, Virginia 23455

RICHARD HOLT ELLIOTT
4060 Shore Drive
Virginia Beach, Virginia 23455

EARLINE HOLT ELLIOTT
Executor and Trustee
under the Will of
John Frank Elliott
1946 Thomson Road
Charlottesville, Virginia 22903

VIRGINIA NATIONAL BANK
Charlottesville, Virginia
Executor and Trustee
under the Will of
John Frank Elliott
Charlottesville, Virginia 22901

PERSONS UNKNOWN, being the unborn children of Matalie E. Griffin, Elliott H. Griffin, Matalie Griffin, Jr., Daniel Griffin, Jr., Mary Elizabeth Griffin, Daniel K. Griffin, Millard Gregg Elliott, and Richard Holt Elliott, and all unknown descendants of John Frank Elliott and all other unknown persons having an interest in the Estate of John Frank Elliott, deceased.,

Respondents

TO THE HONORABLE GEORGE M. COLES, JUDGE OF SAID COURT:

Your Complainant, National Bank and Trust Company, Executor and Trustee under the Will of J. Frank Elliott, IV, respectfully represents unto the Court as follows:

1. J. Frank Elliott, IV, who was a resident of the City of Charlottesville, Virginia, died on May 24, 1974.

2. The Will of J. Frank Elliott, IV, dated January 24, 1974 was admitted to probate by the Clerk of this Court on May 29, 1974, recorded in Will Book 18, page 242 and your Complainant qualified as Executor and Trustee on the same day, Chancery Order Book 41, page 230.

3. John Frank Elliott, grandfather of J. Frank Elliott, IV, died on September 14, 1934.

4. The Will of John Frank Elliott, dated November 19, 1924, together with first codicil thereto, dated February 13, 1930, was admitted to probate by the Clerk of the Circuit Court of Albemarle County, Virginia on September 24, 1934, recorded in Will Book 35, page 350. A

copy of the Will together with first codicil thereto, is attached hereto as "Exhibit A." Earline Holt Elliott and Peoples National Bank of Charlottesville, Virginia qualified as Executors and Trustees on September 24, 1934, Clerk's Minute Book 3, page 252. Virginia National Bank, Charlottesville, Virginia is the successor in interest to Peoples National Bank. Earline Holt Elliott and Virginia National Bank, Executors and Trustees under the Will of John Frank Elliott are named as Respondents herein.

5. ITEM FIRST of the Will of John Frank Elliott directs that all his property, real, personal and mixed, be held in trust for the benefit of his wife, Earline Holt Elliott, for her life. The Trustees are directed to pay the net income to Earline Holt Elliott and should the net income be insufficient for the support and maintenance of his wife and children, and for the education of his children, the Trustees may then apply the principal as necessary for these purposes. ITEM FIRST then states:

"After the death of my said wife, so long as any of my children shall be under twenty-one years of age, said trustees shall continue to hold and invest said property and shall apply the net income therefrom and, if necessary, the principal also, to the support, maintenance, and education of my children; and when none of my children shall be under twenty-one years of age, my wife having previously died, the fund then in the lands [sic] of said trustees shall be divided equally between my children then living, and the descendants of any who may have died, per stirpes and not per capita."

First codicil to the will of John Frank Elliott directs:

"The trust created at the first item of said will shall continue during the life of my wife and so long thereafter as any of my children shall remain under thirty years of age, and distribution provided at said item shall be made, my wife having previously died, when none of my children remain under thirty (30) years of age."

6. The heirs-at-law of John Frank Elliott and their relationships to the decedent were as follows: Earline Holt Elliott, wife; Matalie Holt Elliott, daughter; and John Frank Elliott, III, son.

7. John Frank Elliott, III (who, during the life of his father, was also known as John Frank Elliott, Jr.) died December 19, 1971.

8. The heirs-at-law of John Frank Elliott, III and their relationships to the decedent were as follows: J. Frank Elliott, IV, son; Millard Gregg Elliott, son; and Richard Holt Elliott, son. Millard Gregg Elliott and Richard Holt Elliott are both over 18 years of age and are both sui juris and are herein made Respondents to this proceeding.

9. Your Complainant represents that upon the death of John Frank Elliott, III, any interest which he may have had in the Estate of John Frank Elliott did pass to his children, the above named J. Frank Elliott, IV, Millard Gregg Elliott, and Richard Holt Elliott.

10. Matalie E. Griffin (formerly Matalie Holt Elliott) is married and has three children, to-wit; Elliott H. Griffin, son; Matalie Griffin, Jr., daughter; and Daniel Griffin, Jr., son. Each of the aforesaid parties is over 18 years of age and is sui juris and is made a party Respondent to this proceeding.

11. The undersigned Executor and Trustee of the Estate of J. Frank Elliott, IV is advised by counsel that the portions of the Will and first codicil thereto of John Frank Elliott which are quoted herein are

not clear, that doubt exists as to whether the interest of J. Frank Elliott, IV in the remainder of the trust created by the Will of John Frank Elliott is vested in him and will pass under his will, and that determination of any interest which J. Frank Elliott, IV may have died vested of is necessary before proper determination of Federal estate tax and Virginia inheritance taxes for the Estate of J. Frank Elliott, IV may be made.

12. Your Complainant is advised by counsel that it should seek the guidance of the Court in the construction of the Will of John Frank Elliott. Your Complainant is further advised by counsel that there are at least four possible constructions of the language involving the remainder of the trust, namely:

(A) It can be argued that in order for the remainder to be payable, the wife of John Frank Elliott must have died previous to the time the youngest living child reaches the age of 30, and since that was not the case here, the remainder will pass to the intestate takers of John Frank Elliott. Under this construction the takers of the remainder are: John Frank Elliott, III, one-half, and Matalie E. Griffin, one-half (subject to the dower interest of the wife of John Frank Elliott).

(B) A second possible construction is that the takers of the remainder are to be determined as of the date of death of the wife of John Frank Elliott. Inasmuch as the wife of John Frank Elliott, Earline Holt Elliott, is still living, the takers of the remainder are not yet determined under this construction.

(C) A third construction is that the children of John Frank Elliott entitled to take the remainder are determined as of the date of

death of the wife of John Frank Elliott, but that the descendants of a deceased child are determined as of the date of death of such deceased child. Under this construction the takers of the one-half which would have gone to John Frank Elliott, III if he were living as of the death of the wife of John Frank Elliott, is vested in his descendants determined as of his date of death, namely: J. Frank Elliott, IV, one-sixth; Millard Gregg Elliott, one-sixth; and Richard Holt Elliott, one-sixth. However, Matalie E. Griffin will have to survive the wife of John Frank Elliott, for her one-half interest in the remainder to become vested.

(D) A fourth construction is that the takers of the remainder are to be determined when the youngest living child has reached the age of 30 years. Since the youngest living child of John Frank Elliott is his daughter Matalie E. Griffin, the remainder became vested when she reached the age of 30 years. Under this construction, the takers of the remainder are: John Frank Elliott, III, one-half, and Matalie E. Griffin, one-half.

13. All persons, born and unborn, who may have an interest in the estate of John Frank Elliott have been joined herein as Respondents, namely, Matalie E. Griffin, Elliott H. Griffin, Matalie Griffin, Jr., Daniel Griffin, Jr., Mary Elizabeth Griffin, Daniel K. Griffin, Millard Gregg Elliott, Richard Holt Elliott, Virginia National Bank of Charlottesville, Virginia, Executor and Trustee under the will of John Frank Elliott, and Earline Holt Elliott, Executor and Trustee under the will of John Frank Elliott.

14. Since Matalie E. Griffin, Elliott H. Griffin, Matalie Griffin, Jr., Daniel Griffin, Jr., Mary Elizabeth Griffin, Daniel K. Griffin, Millard Gregg Elliott and Richard Holt Elliott are still living, their

unborn children cannot be determined.

On Consideration Whereof, your Complainant prays that the parties set forth as Respondents in the caption of this Bill be made parties to this suit and that an order of publication against the nonresident and unknown parties be entered; and that the Court construe the Will of John Frank Elliott, advise Complainant and determine whether any interest in the trust remainder set out in the Will of John Frank Elliott was vested in J. Frank Elliott, IV at his death, and hence included in the Estate of said J. Frank Elliott, IV.

Respectfully,

National Bank and Trust Company
Charlottesville, Virginia
Executor and Trustee under the
Will of J. Frank Elliott, IV

By Counsel

Charles C. Webb, Esquire
Dennis W. Good, Jr., Esquire
McGuire, Woods & Battle
Court Square Building
Charlottesville, Virginia

By /s/ Dennis W. Good, Jr.
Counsel for Complainant

Date filed:
12-10-74

Probated will and codicil of John Frank Elliott
(Exhibit A of Bill of Complaint)

I, John Frank Elliott, of Charlottesville, Virginia, do hereby make this my last will and testament, hereby revoking all former wills or codicils by me at any time heretofore made.

ITEM FIRST: To my executors, hereinafter named, and the survivors, I give, bequeath and devise all my property, real, personal and mixed, wherever situated, in trust to manage and invest and keep invested, and to pay the net income to my wife, Earline H. Elliott, during her life; and if, in the opinion of my said trustees, said net income shall be insufficient for the support and maintenance of my wife and children, and for the proper education of my children, then to apply the principal also, as necessary, for these purposes. After the death of my said wife, so long as any of my children shall be under twenty-one years of age, said trustees shall continue to hold and invest said property and shall apply the net income therefrom and, if necessary, the principal also, to the support, maintenance, and education of my children; and when none of my children shall be under twenty-one years of age, my wife having previously died, the fund then in the hands of said trustees shall be divided equally between my children then living, and the descendants of any who may have died, per stirpes and not per capita.

Said trustees may retain any securities in which my estate may be invested at the time of my death, and shall retain my stock in Elliott Ice Company, Incorporated, and shall sell my Elliott Ice Company, Incorporated stock, when, and only when, my brother, Millard C. Elliott, shall direct, and at such price as he may direct. After the death of Millard C. Elliott, said stock shall be held and

sold as other securities belonging to my estate. My said stock in Elliott Ice Company, Incorporated, shall be voted, so long as said Millard C. Elliott shall continue to hold stock in Elliott Ice Company, Incorporated, as he may direct. A purchaser from my said trustees shall not be required to look to the application of the purchase money, nor shall he be required to ascertain whether my brother, Millard C. Elliott, has directed a sale of Elliott Ice Company, Incorporated, stock. Income shall not include stock dividends. Said trustees may invest in any stocks, bonds, or other securities which may seem to them safe, although not legal investments for fiduciaries. And my said trustees may invest said funds, or a portion thereof, in real estate for a residence for my wife, and my trustees shall have power and authority to sell, at such price and on such terms as to them may seem wise, any real estate I may own at the time of my death, as well as any real estate in which my property may be invested.

ITEM SECOND: I appoint my wife, Earline H. Elliott and Peoples National Bank of Charlottesville, Virginia, Executors of this my last will and as trustees as provided in Item first hereof, and request that they be permitted to qualify as such without security, and that no inventory or appraisement be made of my estate. They shall be entitled to but one commission in both capacities.

Witness my hand to this my will which is written above on the first two pages and this part of the third page of one double sheet of legal cap paper, this the nineteenth day of November, 1934.

JOHN FRANK ELLIOTT

Witnesses

Homan W. Walsh, Charlottesville, Va.

T. J. Michie, Jr., Charlottesville, Va.

I, John Frank Elliott, do make this first codicil to my will, which is dated November nineteenth, nineteen hundred and twenty-four and is written on the preceding pages of this sheet of legal cap paper.

The trust created at the first item of said will shall continue during the life of my wife and so long thereafter as any of my children shall remain under thirty years of age, and distribution provided at said item shall be made, my wife having previously died, when none of my children remain under thirty (30) years of age. In all other respects I confirm and republish my said will.

Witness my hand to this first codicil written above on this page, this thirteenth day of February, nineteen hundred and thirty.

JOHN FRANK ELLIOTT

Witnesses

Homan W. Walsh, Charlottesville, Va.

Edwin H. Copenhaver, Charlottesville, Va.

VIRGINIA:

In the Clerk's Office of the Circuit Court, Sept. 24th 1934.

A paper writing bearing date the 19th. day of November 1924, with codicil dated the 13th. day of February 1930, purporting to be the last will and testament of John Frank Elliott, deceased, late of Albemarle County, Virginia, was produced before me W. L. Maupin,

Clerk, in the Clerk's Office aforesaid and offered for proof and probate.

The will dated the 19th. day of November 1924, was proven by the oaths of Homan W. Walsh, one of the two subscribing witnesses thereto, T. J. Michie, Jr. the other subscribing witnesses not being a resident of this Commonwealth.

Homan W. Walsh testified that he and T. J. Michie, Jr. were both personally present when the said John Frank Elliott, the testator, signed and declared said paper writing to be his will and at his request and in their presence and in the presence of each other they subscribed their names as attesting witnesses.

The Codicil bearing date the 13th day of February, 1930, was proven by the oaths of Homan W. Walsh and Edwin H. Copenhaver the two subscirbing witnesses thereto, who testified that they were both personally present when the said John Frank Elliott the testator, signed and declared said paper writing to be a codicil to his will of Nov. 19th 1924, and at his request and in his presence, and in the presence of each other, they subscribed their names as attesting witnesses.

The said Homan W. Walsh and Edwin H. Copenhaver further testified that on the dates above mentioned the said John Frank Elliott was of sound mind and disposing memory and perfectly capable of making and executing a will and codicil thereto.

The said paper writings are therefore considered fully proven and are admitted to probate as and for the true last will and testament of John Frank Elliott, deceased.

Teste:
/s/ W. L. Maupin Clerk.

Date filed:
3-1-76

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

NATIONAL BANK AND TRUST COMPANY OF
CHARLOTTESVILLE, VIRGINIA, EXECUTOR
AND TRUSTEE, U/W J. FRANK ELLIOTT, IV,
Deceased,
Complainant,

v. DECREE

MATALIE E. GRIFFIN, et al,
Respondents.

This cause, having been regularly matured, came on this day to be heard upon the Bill of Complaint and exhibits therewith; upon the answer of Matalie Holt Elliot Griffin, Elliott H. Griffin, and Matalie Elliott Griffin; upon the answer of Mary Elizabeth Griffin and Daniel K. Griffin, Infant Respondents, by their guardian ad litem, David G. Sutton; and upon the answer of Virginia National Bank, Executor of the Will of John Frank Elliott, they being all of the respondents; upon memoranda of law submitted on behalf of the respondents; and was argued by counsel.

And it appearing to the Court that John Frank Elliott died on the 14th day of September, 1934, and that the Will of the said John Frank Elliott was duly admitted to probate before the Clerk of the Circuit Court of Albemarle County on the 24th day of September, 1934; that at the time of the death of the said John Frank Elliott, he left surviving him his wife, Earline Holt Elliott, and two children, J. F. Elliott, III, and Matalie Holt Elliott Griffin.

And it further appearing to the Court that the said J. F. Elliott, III, died, testate, on the 19th day of December, 1971, survived by his 3 sons, J. F. Elliott, IV, Millard Gregg Elliott, and Richard Holt Elliott; that J. F. Elliott, IV, died on the 24th day of May, 1974; that the Will of the said J. F. Elliott, IV, was duly admitted to probate before the Clerk of this Court on the 29th day of May, 1974; and that the said Will devised and bequeathed all the estate of the said J. F. Elliott, IV, in trust, for the benefit of the said Matalie Holt Elliott Griffin, and her daughter, Matalie Elliott Griffin.

And it further appearing to the Court that the parties hereto desire a proper legal construction of a certain clause of the Will of the said John Frank Elliott, and of a certain clause of a codicil thereto, the said clause of the said Will being in the following words, to-wit:

> After the death of my said wife, so long as any of my children shall be under twenty-one years of age, said trustees shall continue to hold and invest said property and shall apply the net income therefrom, and, if necessary, the principal also, to the support, maintenance, and education of my children; and when none of my children shall be under twenty-one years of age, my wife having previously died, the fund then in the hands of said trustees shall be divided equally between my children then living, and the descendants of any who may have died, per stirpes and not per capita;

and the said clause of the said codicil being in the following words, to-wit:

> The trust created at the first item of said Will shall continue during the life of my wife and so long thereafter as any of my children shall remain

> under thirty (30) years of age, and distribution provided at said item shall be made, my wife having previously died, when none of my children remain under thirty years of age.

And the Court proceeding to construe the clauses set out above, after a careful consideration of the memoranda filed by counsel, is of the opinion that the cases cited by the respondents, Matalie Holt Elliott Griffin and others; namely, Jameson v. Jameson, 86 Va. 51 (1889); Martin v. Holgate, L. J. Ch. 791, 148 R. R. 442 (H.L., 1866) and Reynolds v. Branch, 182 Va. 678 (1944) correctly state the law applicable to this case. See also, White v. National Bank, 212 Va. 568, 571 (1972).

The Court, therefore, is of the opinion that the language in Item First of the Will of John Frank Elliott...

> and when none of my children shall be under twenty-one years of age, my wife having previously died, the funds then in the hands of said trustees shall be divided equally between my children then living, and the descendants of any who may have died, per stirpes and not per capita

means that the grandson of the testator, J. F. Elliott, IV, did not have to survive the life tenant, but only had to survive his father.

The Court is of the further opinion that the case of Jarrett v. McReynolds, 212 Va. 241 (1971), relied upon by the Respondents, M. Gregg Elliott and Richard H. Elliott, is not controlling in this case. The facts of this case are different. In the Jarrett case, the son, James Jarrett, Jr., did not reach twenty-five, the wife of the testator having died and James Jarrett, Jr., had no children.

While the Court in the Jarrett case used as an argument to bolster its decision the fact that the trustee had the power to invade principal for the benefit of the testator's wife, the Court is inclined to agree with the contention that Respondents, Matalie Holt Elliott Griffin, Elliott Holt Griffin and Matalie Elliott Griffin, that in the case of the Will of John Frank Elliott the power of the trustee to invade the principal affects the interest of the remainder only to the extent of such invasion.

Accordingly, the Court doth so decide and doth ADJUDGE, ORDER and DECREE that the interest of the said J. F. Elliott, IV, being a 1/6 undivided remainder of the estate of John Frank Elliott, vested at the death of J. F. Elliott, III, and so passed under the Will of J. F. Elliott, IV, at his death.

And it further appearing to the Court that the said David G. Sutton has well and truly discharged his obligation as guardian ad litem for Mary Elizabeth Griffin and Daniel K. Griffin, infant respondents herein, it is accordingly, ADJUDGED, ORDERED and DECREED that he be, and he hereby is, awarded a fee of $150.00 plus $.60 for expenses.

And there nothing further to be done, this cause is ended.

ENTER: /s/ GEORGE M. COLES
Judge

DATE: March 1, 1976

I ASK FOR THIS

/s/ FREDERICK W. PAYNE
FREDERICK W. PAYNE
416 Park Street
Charlottesville, Virginia 22901
Counsel for Respondents

SEEN:

/s/ DENNIS W. GOOD, JR.
DENNIS W. GOOD, JR.
McGuire, Woods & Battle
Court Square
Charlottesville, Virginia 22901
Counsel for Complainant

/s/ DAVID G. SUTTON
DAVID G. SUTTON
105 East High Street
Charlottesville, Virginia 22901
Guardian ad litem for Respondents
Mary Elizabeth Griffin and Daniel
K. Griffin

/s/ JUNIUS R. FISHBURNE
JUNIUS R. FISHBURNE
240 Court Square
Charlottesville, Virginia 22901
Counsel for Respondent Virginia
National Bank

SEEN AND EXCEPTED TO AS CONTRARY TO LAW:

/s/ PAUL M. PEATROSS, JR.
PAUL M. PEATROSS, JR.
414 East Jefferson Street
Charlottesville, Virginia 22901
Counsel for Respondents Millard
Gregg Elliott and Richard Holt
Elliott

A COPY, TESTE:
CARL E. HENNRICH, CLERK

/s/ JUDITH ANN DURHAM DEP.CLERK

Date filed:
3-29-76

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

NATIONAL BANK AND TRUST COMPANY
OF CHARLOTTESVILLE, VIRGINIA,
Executor and Trustee, u/w
J. Frank Elliott, IV, deceased,

Complainant

v.

NOTICE OF APPEAL AND
ASSIGNMENTS OF ERROR

MATALIE E. GRIFFIN, et al.,

Respondents

The Respondents, M. Gregg Elliott and Richard Holt Elliott, by counsel, give notice of appeal from a Decree of this Court entered on March 1, 1976, and assign the following errors as required by Rule of Court 5:6.

1. The Court erred in construing the will of J. Frank Elliott by deciding that J. Frank Elliott, IV at his death had a vested one-sixth (1/6) undivided remainder interest in the estate of J. Frank Elliott, which vested at the death of J. Frank Elliott, III.

2. The Court erred in failing to decide that the beneficiaries of the remainder interest in the Estate of J. Frank Elliott, IV are contingent beneficiaries and vesting is not to occur until the date of the death of the widow of J. Frank Elliott, namely, Earline Holt Elliott.

A statement of facts will be filed herein as permitted under Rule of Court 5:9(c).

M. GREGG ELLIOTT
RICHARD HOLT ELLIOTT

By Counsel

/S/ PAUL M. PEATROSS, JR.
Paul M. Peatross, Jr.
414 East Jefferson Street
Charlottesville, Virginia 22901

Counsel for M. Gregg Elliott
and Richard Holt Elliott

CERTIFICATE

I hereby certify that I have this 29th day of March, 1976, mailed a true copy of the foregoing Notice of Appeal and Assignments of Error to Frederick W. Payne, Esq., 416 Park Street, Charlottesville, Virginia 22901, Counsel for Matalie Holt Elliott Griffin, Elliott H. Griffin and Matalie Elliott Griffin; to Dennis W. Good, Jr., Esq., McGuire, Woods & Battle, Court Square Building, Charlottesville, Virginia 22901, Counsel for National Bank and Trust Company, Charlottesville, Virginia, Executor and Trustee u/w J. Frank Elliott, IV, deceased; to Junius R. Fishburne, Esq., 240 Court Square, Charlottesville, Virginia 22901, Counsel for Virginia National Bank; and to David G. Sutton, Esq., 105 East High Street, Charlottesville, Virginia 22901, Guardian ad Litem for Respondents, Mary Elizabeth Griffin and Daniel K. Griffin.

/S/ PAUL M. PEATROSS, JR.

Date filed:
4-26-76

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILE

NATIONAL BANK AND TRUST COMPANY OF
CHARLOTTESVILLE, VIRGINIA, EXECUTOR
AND TRUSTEE U/W J. FRANK ELLIOTT, IV,
Deceased,

Complainant

v. ORDER NUNC PRO TUNC

MATALIE E. GRIFFIN, et al,

Respondents

Came on this day the parties, by counsel, and represented unto the Court that the decree entered by this Court on March 1, 1976, omitted in the first paragraph thereof, through oversight and clerical error, recitation that Respondents, M. Gregg Elliott and Richard Holt Elliott, filed an answer herein, which had been timely filed and which was considered by the Court in reaching its decision.

And, it appearing to the Court from the record that such answer has been timely filed in this cause and was considered by the Court in reaching its decision, but was omitted from the final decree herein by oversight and clerical error, it is accordingly, ADJUDGED, ORDERED and DECREED that the first paragraph of the final decree in this cause be, and it hereby is, amended to read as follows:

> This cause, having been regularly matured, came on this day to be heard upon the Bill of Complaint and exhibits therewith; upon the Answer of Millard Gregg Elliott and Richard Holt Elliott; upon the Answer of Matalie Holt Elliott Griffin, Elliott H. Griffin, and Matalie Elliott Griffin; upon the Answer of Mary Elizabeth Griffin and Daniel K. Griffin, infant respondents, by their Guardian ad Litem, David G.

Sutton; and upon the Answer of Virginia National Bank, Executor of the Will of John Frank Elliott, they being all the Respondents; upon memoranda of law submitted on behalf of the Respondents; and was argued by counsel.

And it is further ADJUDGED, ORDERED and DECREED that this order is entered NUNC PRO TUNC.

ENTER:

/S/ George M. Coles
Judge

DATE: 4-26-76

We ask for this;

/s/ FREDERICK W. PAYNE
Frederick W. Payne
416 Park Street
Charlottesville, Virginia
Counsel for Respondents

/s/ DENNIS W. GOOD, JR.
Dennis W. Good, Jr.
McGuire, Woods & Battle
Court Square
Charlottesville, Virginia
Counsel for Complainant

/s/ DAVID G. SUTTON
David G. Sutton
105 E. High Street
Charlottesville, Virginia
Guardian ad Litem for Respondents
Mary Elizabeth Griffin and Daniel
K. Griffin

/s/ JUNIUS R. FISHBURNE
Junius R. Fishburne
240 Court Square
Charlottesville, Virginia
Counsel for Respondent Virginia
National Bank

/s/ PAUL M. PEATROSS, JR.
Paul M. Peatross, Jr.
414 E. Jefferson Street
Charlottesville, Virginia
Counsel for Respondents Millard
Gregg Elliott and Richard Holt
Elliott

Date Filed:
4-30-76

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF CHARLOTTESVILLE

NATIONAL BANK AND TRUST COMPANY
Charlottesville, Virginia,
Executor and Trustee u/w
J. Frank Elliott, IV, deceased,

Complainant

v. NOTICE

MATALIE E. GRIFFIN, et al.,

Respondent

TO: Frederick W. Payne, Esq.
416 Park Street
Charlottesville, Virginia
Counsel for Matalie Holt Elliott
Griffin, Elliott H. Griffin, and
Matalie Elliott Griffin

Junius R. Fishburne, Esq.
240 Court Square
Charlottesville, Virginia
Counsel for Virginia National Bank

David G. Sutton, Esq.
105 East High Street
Charlottesville, Virginia
Guardian ad Litem for Mary
Elizabeth Griffin and Daniel K. Griffin

Dennis W. Good, Jr., Esq.
McGuire, Woods & Battle
Court Square Building
Charlottesville, Virginia
Counsel for National Bank and
Trust Company, Executor and
Trustee u/w J. Frank Elliott, IV

Take notice that the original of the Statement of Facts, copies of which have been mailed to each of you, has been filed with the Clerk of the Circuit Court of the City of Charlottesville this 30th day of April, 1976.

You are further notified that this Statement of Facts will be presented to the Judge of said Court no earlier than ten days nor later than twenty days after the date of this Notice.

RICHARD H. ELLIOTT
M. GREGG ELLIOTT

By Counsel

/S/ Paul M. Peatross, Jr.
Paul M. Peatross, Jr.
414 East Jefferson Street
Charlottesville, Virginia
Counsel for Richard H. Elliott
and M. Gregg Elliott

I hereby certify that I mailed a copy hereof to Frederick W. Payne, Esq.; Junius R. Fishburne, Esq.; David G. Sutton, Esq.; and Dennis W. Good, Jr., Esq, this 30th day of April, 1976.

/S/ Paul M. Peatross, Jr.

Date Filed:
5-11-76

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

NATIONAL BANK AND TRUST COMPANY
CHARLOTTESVILLE, VIRGINIA,
Executor and Trustee u/w
J. Frank Elliott, IV, deceased,

Complainant

v. STATEMENT OF FACTS

MATALIE E. GRIFFIN, et al.,

Respondent

To The Honorable George M. Coles, Judge of Said Court:

J. Frank Elliott, testator, died on September 14, 1934, leaving a will and codicil disposing of his estate.

He left surviving him his wife Earline Holt Elliott, who qualified under the will as Co-Executor and Co-Trustee with Peoples National Bank, and two children, J. Frank Elliott, III, son, and Matalie E. Griffin, daughter.

The will set up a trust, the corpus of which was his entire estate, to be held in trust for the benefit of his wife, Earline Holt Elliott, for her life. The Trustees were directed to pay the net income to his wife and children for their support and maintenance and for the education of the children with the power to invade the principal if the net income was insufficient for the purposes state above.

ITEM FIRST of said will provided:

"After the death of my said wife, so long as any of my children shall be under twenty-one years of age, said

trustees shall continue to hold and invest said property and shall apply the net income therefrom and, if necessary, the principal also, to the support, maintenance, and education of my children; and when none of my children shall be under twenty-one years of age, my wife having previously died, the fund then in the lands [sic] of said trustees shall be divided equally between my children then living, and the descendants of any who may have died, per stirpes and not per capital."

The first codicil to the will provided:

"The trust created at the first item of said will shall continue during the life of my wife and so long thereafter as any of my children shall remain under thirty years of age, and distribution provided at said item shall be made, my wife having previously died, when none of my children remain under thirty (30) years of age."

One of the children of the testator, J. Frank Elliott, III, died on December 19, 1971 leaving surviving him three sons, J. Frank Elliott, IV, M. Gregg Elliott and Richard Holt Elliott.

On May 24, 1974, J. Frank Elliott, IV died at the age of 34, unmarried and leaving no issue.

Earline Holt Elliott, wife of the testator, and Matalie E. Griffin, daughter of the testator, still survive him.

A picture of the family tree appears as follows:

JOHN FRANK ELLIOTT
Testator
Died 9/14/34

EARLINE HOLT ELLIOTT
Wife

J. FRANK ELLIOTT, III
Died 12/19/71

MATALIE E. GRIFFIN

J. Frank Elliott, IV

M. Gregg Elliott

Richard H. Elliott

Daniel Griffin, Jr.

Elliott H. Griffin

Matalie Griffin, Jr.

Died 5/24/74

Mary Elizabeth Griffin
Daniel K. Griffin

National Bank and Trust Company, Executor and Trustee of the Estate of J. Frank Elliott, IV, instituted this suit on behalf of the estate, asking the Court's guidance in construing the will of John Frank Elliott with respect to the interest which the estate may have, if any, in the trust of John Frank Elliott.

Seen and Approved:

/S/ George M. Coles
Judge

Date: 5-11-76

I ask for this:

/S/ Paul M. Peatross, Jr.
Paul M. Peatross, Jr.
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Counsel for Richard H. Elliott
and M. Gregg Elliott

Seen and approved:

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Griffin, Elliott H. Griffin, and
Matalie Elliott Griffin

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Counsel for Virginia National Bank

/S/ David G. Sutton
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105 East High Street
Charlottesville, Virginia
Guardian ad Litem for Mary
Elizabeth Griffin and Daniel K.
Griffin

/S/ Dennis W. Good, Jr.

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Counsel for National Bank and
Trust Company, Executor and
Trustee, u/w J. Frank Elliott, IV