

SUPREME COURT OF MISSISSIPPI

In the Matter of the Estate of Howard Griffith, Deceased: Garland Griffith v. Jimmy Griffith and Jerry Griffith

30 So. 3d 1190 (Miss. 2010) · No. 2008-IA-01557-SCT · Decided March 25, 2010

SUMMARY

The Supreme Court of Mississippi affirmed the rejection of a purported will because the two subscribing witnesses lacked knowledge that the document they signed was the decedent's will. The court held that Mississippi Code Section 91-5-1 requires attesting witnesses to know the purpose of their attestation, which may be established through express or constructive publication.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Lamar, Justice, for the Court; Waller, Chief Justice; Carlson, Presiding Justice; Graves, Presiding Justice; Dickinson, Justice; Randolph, Justice; Pierce, Justice; Chandler, Justice; Kitchens, Justice
JURISDICTION	Mississippi
DECIDED	March 25, 2010
DOCKET	2008-IA-01557-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a chancery-court order rejecting probate of the decedent's purported nonholographic will after a hearing on due execution.
STANDARD OF REVIEW	Findings of fact by a chancellor are reviewed for manifest error; legal findings in a will contest are reviewed de novo.
PRECEDENTIAL VALUE	Published and precedential Mississippi Supreme Court opinion
PARTIES	Garland Griffith v. Jimmy Griffith, Jerry Griffith

TOPICS

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QUESTIONS PRESENTED

1. Whether the chancellor manifestly erred by finding that the attesting witnesses lacked knowledge that they were witnessing Howard Griffith's will.
2. Whether Mississippi Code section 91-5-1 requires attesting witnesses to know that the document they sign is the testator's will or otherwise know the purpose of their attestation.
3. Whether the purported will was validly executed when the witnesses lacked knowledge of the nature and purpose of the document.

HOLDINGS

1. The chancellor did not manifestly err in crediting Scott's and Bell's hearing testimony and finding that they were unaware they had witnessed Howard Griffith's will.
2. Mississippi Code section 91-5-1 requires attesting witnesses to have some knowledge that the document being signed is the testator's last will and testament, even when the testator signs the will in their presence.
3. The purported will was not duly executed because Scott and Bell lacked knowledge that the document they signed was Howard Griffith's last will and testament.

KEY QUOTATIONS

"We affirm the trial court and find that attesting witnesses to a will must have knowledge of the purpose of their attestation." (30 So. 3d at 1191)

"We find that Mississippi Code Section 91-5-1 requires that attesting witnesses to a will know the purpose of their attestation, even when the testator signs the will in their presence." (30 So. 3d at 1196)

"We hold that the purported will was not duly executed, as the witnesses had no knowledge that the document they signed was the decedent's last will and testament." (30 So. 3d at 1196)

FACTUAL BACKGROUND

Howard Griffith's purported nonholographic will was signed by Howard and by Eric M. Scott and Patrick O. Bell as witnesses at a bank. The document included a certificate and an affidavit stating that the document was Howard's last will and testament, but Scott and Bell testified that they were not told they were signing a will, did not read the documents, and believed they were witnessing other documents. The chancellor credited their testimony and rejected probate based on lack of due execution.

PROCEDURAL HISTORY

Garland Griffith petitioned to probate his brother Howard Griffith's purported will. Jimmy and Jerry Griffith filed a caveat alleging, among other things, that the document was invalid and resulted from undue influence. The chancellor limited the hearing to due execution, found that the two subscribing witnesses did not know they were signing a will, and rejected probate. Garland appealed, and the Mississippi Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Warren v. Sidney's Estate, 183 Miss. 669, 184 So. 806, 809-10 (1938)
- Yarbrough v. Camphor, 645 So. 2d 867, 869 (Miss. 1994)
- Goode v. Village of Woodgreen Homeowners Ass'n, 662 So. 2d 1064, 1070-71 (Miss. 1995)
- In re Last Will & Testament of Carney, 758 So. 2d 1017, 1020 (Miss. 2000)
- Batchelor v. Powers' Estate, 348 So. 2d 776, 776-77 (Miss. 1977)
- Maxwell v. Lake, 127 Miss. 107, 88 So. 326, 328 (1921)
- In re Will & Estate of Jefferson v. Moore, 349 So. 2d 1032, 1036 (Miss. 1977)
- Webster v. Kennebrew, 443 So. 2d 850, 859 (Miss. 1983)
- Watson v. Pipes, 32 Miss. 451, *10-11 (1856)
- Green v. Pearson, 145 Miss. 23, 110 So. 862, 864 (1927)
- Wilson v. Polite, 218 So. 2d 843, 850 (Miss. 1969)
- Smith v. Smith, 185 Miss. 702, 188 So. 305 (1939)
- Tyson v. Utterback, 154 Miss. 381, 122 So. 496, 498-99 (1929)
- Bearden v. Gibson, 215 Miss. 218, 60 So. 2d 655 (1952)