2007-CP-02081 RT

No.2007-CP-02081-Waymon B. Tatum v. Eldridge Tatum

The undersigned certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or judges of the Court of Appeals may evaluate possible disqualification or recusal.

Harold E. Tatum, heir of Eldridge Tatum
Charles H. Tatum, heir of Eldridge Tatum
Waymon B. Tatum, heir of Eldridge Tatum
JohnElla Allen, heir of Eldridge Tatum
Narlon C. Tatum, heir of Eldridge Tatum
Audrey D. Tatum, heir of Eldridge Tatum
Keith Tatum, heir of Eldridge Tatum
Brian U. Tatum, heir of Eldridge Tatum
Christina T. Jones, heir of Eldridge Tatum
Mollie M. Tatum, heir of Eldridge Tatum
Kenneth Jenkins, heir of Eldridge Tatum
Helen A. Wells, heir of Eldridge Tatum, Executrix
Mary C. Alexander, heir of Eldridge Tatum
Stenson B. Tatum, heir of Eldridge Tatum
Robert E. Tatum, heir of Eldridge Tatum
Lawrence Tatum, heir of Eldridge Tatum
Charles E. Tatum, heir of Eldridge Tatum
Tonia Edmonds, heir of Eldridge Tatum
James Anderson, heir of Eldridge Tatum
Helen L. Daniels, heir of Eldridge Tatum
Barbara Rhymes, heir of Eldridge Tatum

Harold E. Tatum
Harold E. Tatum, Pro Se

Waymon B Tatum
Waymon B. Tatum, Pro Se

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STATEMENT OF THE ISSUES

Heirs at law had no knowledge of a will, or probate proceedings, and the appointed representative , Helen Wells, continued to treat them as equals until November 2004. On October 5, 2004, Ms. Wells had said she could not locate a will. Harold Tatum and Waymon Tatum have witnessed Helen Wells interaction with their father, John Tatum, discussing affairs of the property and treating him as an equal party of interest. Ms. Wells continued the practice of including her cousins in affairs of the property until 2004.

STATEMENT OF THE CASE

The will admitted to probate on October 2, 1967 bears a signature with no similarity to the notarized signature on the one acre deed dated in 1964. The signature on the will looks more like the writing on the Petition for Probate, particularly the "m" in Tatum. On October 11, 2004, Helen Wells told Waymon Tatum there was a will at the courthouse. She said she wanted him to go and get it so it would not look like something she and her siblings photocopied and made up. This is not the message you expect to hear from someone who wants a document to be accepted as authentic. On October 13, 2004 when Helen Wells saw the Petition for Probate she said the writing of Eldridge Tatum's name was her grandfather's signature and she would know it anywhere she sees it. The document was dated after Eldridge died. Harold Tatum lived in Chicago, Illinois during the time his grandfather lived there and knows his grandfather never returned to Mississippi, dead or alive, after he moved to Chicago in 1959. He is buried in Illinois.

The will as written does not clearly devise all property to Robert A. Tatum. Under number one (1) the will states "I hereby devise and bequeath unto my son, Robert A. Tatum in fee simple forever all of the property of which I may own at the time of my death." At the time

of Eldridge V. Tatum's death, the property described as South Half (S½) of the South Half (S½) of the Northeast Quarter (NE¼) of Section Sixteen (16) and the Southeast Quarter (SE¼) of the Southwest Quarter (SW¼) of Section Sixteen (16) in Township Three (3), Range Ten (10) West, Tunica County, Mississippi was not fee simple property. The Federal Land Bank of New Orleans was the designated beneficiary for this property until December 4, 1969. There were terms and conditions of use for the property, including a clause prohibiting any alienation of the property without written consent of the bank. No written consent from the bank has been found for the one acre deeded to Robert and Margaret Tatum in 1964.

On October 13, 2004 Helen Wells, Charles E. Tatum, Waymon Tatum, and Waymon's wife, Johnie Tatum, went to the Tunica County Courthouse to locate the will. No will was found with the probate documents. The documents were in a plain manila folder with no name, number, or other file identification on it. A clerk checked a will book and said she could not find the will with the 1967 (year of probate) records. Johnie Tatum suggested she check files for 1966 and earlier. The clerk said she found a copy of the will misfiled in the files for 1960 (year will was signed) and she did not know where the original was. On March 26, 2007, after a hearing attorney Robert Cornelius reported to Waymon Tatum that no original will had been found. This is more than two years after a search was initiated in October 2004. The first notice To Waymon Tatum and Harold Tatum that an original will was found came on August 14, 2007 after the trial.

SUMMARY OF ARGUMENT

To define parties interested as the five children of Eldridge V. Tatum who were alive at the time probate was opened provides a convincing reason to limit publication of probate

proceedings to filing a notice to creditors in The Tunica Times-Democrat where four parties interested were not likely to see it.

Waymon Tatum and his father, John Tatum, were denied access to records at the Tunica County Courthouse in July 1977 and told the records were destroyed in a fire when the courthouse burned. John Tatum returned to California and consulted an attorney in Los Angeles who gave him the same reason for property records not being available. In January 2003, Waymon Tatum, Johnie Tatum, and Helen Well were denied access to records. The clerk said to permit access to records would cause her to lose her job. These experiences do not show that records were accessible to the public as recently as 2003. Having been told the records were burned, knowing Eldridge V. Tatum did not travel to Mississippi in 1960, and Helen Wells' cooperation and inclusion of cousins when discussing affairs of the property, the Appellant's had no cause to suspect a fraudulent will and a self-serving affidavit of heirship to appear in Mississippi.

All of Eldridge's children knew he was a resident of Illinois when he died. His three daughters knew because they cared for him and provided financial support for him in Chicago. His son, John Tatum, knew because his wife, Pearl Tatum, bought the train ticket to send Eldridge to Chicago and she bought a roundtrip ticket for her son, Waymon Tatum, to go with him. Robert A. Tatum knew his father lived in Chicago because the notarized one acre deed was made there.

Prior to 2004, Helen Wells updated her cousins on affairs of the property and answered their questions. No attorney was consulted and no objections from her siblings were communicated. There was no revelation of plans to claim Robert A. Tatum was sole heir.

Copies of the Petition for Probate, the one acre deed, and the will have been submitted in

record excerpts. These documents show the signature for Eldridge V. Tatum on the will does not match the signature on the notarized one acre deed. The signature on the will appears to be written by the same hand that wrote Eldridge's name on the Petition for Probate, particularly the formation of the "m" in Tatum.

The Appellants question the will as a public record for more than forty years. Helen Wells has said she wanted Waymon Tatum to get a copy of the will so it would not look like something she and her siblings photocopied and made up. On October11, 2004, she said she had seen the will and said it read ' I, Eldridge Tatum being of sound mind and body,' just like all wills. The misfiled copy of the will found on October 13, 2004, in her presence, does not read as she described it. Information to Waymon Tatum more than two years later, on March 26, 2007, was the original will had not been found. During a visit to the courthouse on September 7, 2004, Waymon Tatum searched property records and asked a clerk if there were any other records for the referenced property. She said there were none. During a visit to the Tunica County Courthouse on October 4, 2004, Waymon Tatum and Johnie Tatum observed an employee on a ladder searching for records. She asked a coworker if anyone had ever seen the 7575 file. The coworker said she would call the lawyer's office for assistance. On October 13, 2004, Waymon Tatum discovered the 7575 file contained the probate records for the estate of Eldridge V. Tatum.

Robert A. Tatum's use of a will that Eldridge V. Tatum did not make circumvented laws governing will formalities by providing the court with false information to avoid rules of probate for a person who died intestate. By withholding information that Eldridge died intestate as a resident of Chicago, Illinois, Robert was permitted to file a restricted notice to creditors published in the Tunica Times-Democrat and make no effort to contact any other parties of

interest.

When Eldridge V. Tatum moved form his home in Robinsonville, Mississippi, he and his children agreed that Robert A. Tatum would continue to live on the property, manage the affairs of the land, farm the land, and pay the taxes and expenses. After Robert died, his daughter, Helen Ann Wells agreed to perform the duties her father had. Her aunts and her uncle agreed she would be fair with everybody. Ms. Wells proposed leasing the land in 1970. When the lease was made she notified her aunts and her uncle. The Appellants did not request income from the land because it was known to them that the agreement with Ms. Wells and her father's siblings was for her to use the money received from leasing the land to pay expenses, including taxes, and retain any funds left in a trust account. It was also acceptable for her to use funds from the account to travel from Chicago, Illinois to Robinsonville, Mississippi to manage affairs of the property.

ARGUMENT

Harold Tatum lived in Chicago in 1960 and knows Eldridge V. Tatum did not make a will in Tunica County, Mississippi on November 3, 1960. Harold was a frequent visitor for his grandfather and would have missed him if Eldridge was away for three days, minimum time for travel to Tunica County, Mississippi from Chicago, Illinois and return. The will devises to Robert A. Tatum fee simple property owned by Eldridge V. Tatum at the time of his death. At the time of Eldridge's death, the referenced property did not meet the criteria for fee simple ownership. There were restrictions and covenants for use, including the land must be farmed; a trustee was appointed; and the Federal Land Bank of New Orleans was the designated beneficiary. These conditions remained in effect until December 4, 1969, more than a year after Robert A. Tatum died. In 1967 the court appointed Robert A. Tatum as executor, not sole heir.

The deed conveying one acre to Robert A. Tatum and Margaret Tatum, dated July 17, 1964 was corrected with a deed dated September 14, 1964. The one acre did not meet the criteria for fee simple ownership because it is part of the property under restrictions and covenants, one of which prohibited transfer of ownership without written permission from the bank. No written permission from the bank has been found. Because the Appellants are aware that Eldridge V. Tatum intended to give the one acre to Robert A. Tatum and Margaret Tatum, no claim is made to it. All of Eldridge V. Tatum's grandchildren, with the exception of Robert A. Tatum's children, have made no change to the agreement their parents communicated to them as Helen Wells would manage affairs of the property; one acre and the house belonged to Robert's children; and all heirs shared the remaining acreage. Had Eldridge V. Tatum intended for Robert A. Tatum to have the entire parcels he would have deeded, not one acre, but all acreage to him in 1964. Instead, Eldridge waited more than a year after he met with his son, John Tatum, his daughter, Dorothy Anderson, and others at Dorothy's home in 1963 to discuss the matter of giving some land to Robert to build a house. John's wife, Pearl Tatum, proposed giving Robert an acre to build on. In 1964, Eldridge deeded one acre to Robert and Margaret Tatum.

Prior to 2004, none of the excluded heirs knew of plans for Helen Wells and her siblings to claim sole heirship for their father. The family has so trusted Ms. Wells that she was chosen to manage the affairs of other property. Until 2004, Ms. Wells openly shared information about the affairs of the property with other heirs. Information on payment of the lease, including nonpayment for one year; plans for her brother, Charles, to evict the tenants and move in the house on the property; reduction of property tax when her brother moved on the property; and plans for her brother, Lawrence Tatum, to build a house on the property was shared. Ms. Wells

has said if it was up to her she would put everybody back in as heirs, but her siblings are against it.

The Appellants know that Eldridge V. Tatum was in Chicago, Illinois on November 3, 1960 dependent on his daughters for care and support without money or transportation of his own for travel to Tunica County, Mississippi. Chancery Court records show it was Robert A. Tatum who possessed the fraudulent will and submitted it to probate.

The Appellee's brief states in part "in Mississippi concealed fraud cannot be based upon a matter of public record," page 13. Waymon Tatum, accompanied by Helen Wells, experienced unsuccessful attempts to access records at the Tunica County Courthouse as recently as January 2003 when a clerk said she would lose her job if access was allowed. When access was given in September 2004, the clerk said the only records available were those referred to as deed books. On March 4, 2008, Waymon Tatum was given thirty seconds to review an original will. He waited more than thirty seconds for it to be found. On September 7, 2004, an employee could not locate records she called file 7575. Her coworker said call the lawyer's office. On October 13, 2004, the file was seen in a manila folder without any file identification. A clerk took the folder from a table and handed it to Waymon Tatum's wife, Johnie Tatum. There was no will in the folder. The clerk searched the will book for 1967 records and said she did not find the will and she did not know where it could be. Johnie Tatum suggested a check of recordings for earlier years. The clerk searched 1960 recordings and said she found the will misfiled. Helen Wells, who was present for the search on October 13, 2004, said she did not get a copy of the will in August 2004 when she visited the lawyer's office to get a letter written because the lawyer would have to go and get it and he would charge her for it. These experiences do not support a claim that records which may be filed are available to be accessed as public records.

ORAL ARGUMENT REQUESTED

Oral argument is requested to present relevant and necessary testimony to the Court which was systematically excluded from proceedings in Chancery Court.

CONCLUSION

The photocopied will found misfiled on October 13, 2004 was not made in Tunica County, Mississippi by Eldridge V. Tatum. The Appellants ask the Court to modify the Chancellor's decision to title the referenced property to all heirs of Eldridge V. Tatum.

Harold E. Tatum

Harold E. Tatum, Pro Se

Waymon B. Tatum

Waymon B. Tatum, Pro Se

CERTIFICATE OF SERVICE BY MAIL

I , Harold E. Tatum, hereby certify that on May 27 2008 the Reply Brief for Appellants was mailed with first class postage paid and deposited with the United States Postal Service as follows:

One copy to:
Honorable Jon M. Barnwell, Chancellor
P. O. Box 1579
Greenwood, MS 38930-1539

One copy to:
Attorney Andrew T. Dulaney
986 Harris Street
Tunica, MS 38676

One (1) original and three (3) copies to:
Ms. Betty W. Sephton, Clerk
Court of Appeals of the State of Mississippi
P. O. Box 249
Jackson, MS 39205-0249

Harold E. Tatum
Harold E. Tatum

May 27 - 2008
Date