

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

Appeal

Court of Appeals of the State of Mississippi

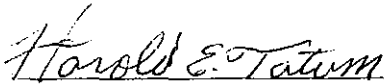
Brief for Appellants

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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, Pro Se

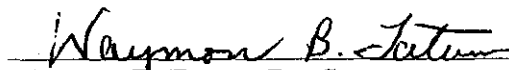

Waymon B. Tatum, Pro Se

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Statement of Issues

1. Eldridge V. Tatum did not make, publish, declare, and sign the document referenced as his last will and testament.
2. Eldridge V. Tatum had six children, not five, as recorded in the Final Judgment.
3. When Eldridge V. Tatum moved to Chicago, Illinois in 1959, he lived in the same house Helen Wells, appointed Executrix by Final Order dated August 31, 2007, lived in.
4. The Order Admitting Will to Probate and Record contains statements which Robert A. Tatum knew were false.
5. First knowledge that Helen Wells intended to limit heirs to children of Robert A. Tatum was received in October 2004.
6. Testimony of Attorney Robert Cornelius as recorded in the Final Judgment differs from information he gave his clients and does not include information given to him to prove the case.
7. All parties, except for attorneys, were excluded from the court room and unable to hear any of the proceedings.
8. A title search for properties owned by Eldridge V. Tatum at the time of his death shows a beneficiary designated with a trustee appointed.

Statement of the Case

In August 2004 Basil Rhymes, son of Barbara Rhymes, wrote to Helen Wells, Executrix, to inquire about his mother's interest in property the family owned in Mississippi. The response was a letter from Attorney Andrew Dulaney saying it appears the property belongs to Robert A. Tatum's children. Their response to attempts to clarify the matter was to take it to court. The matter was heard in the Chancery Court of Tunica County and a Final Order was made in favor of Helen Wells and other heirs at law of Robert A. Tatum. A Judgment Approving Final Report of Administration and Petition for Discharge was recorded on October 17, 2007 with a quit claim deed conveying the property to heirs at law of Robert A. Tatum.

The Order Admitting Will to Probate and Record on October 2, 1967 contains several incorrect statements. It states Eldridge V. Tatum died on December 12, 1966; left a will dated, declared, and published on November 3, 1960; and owned a farm which he had always made his home. The death certificate shows Eldridge died December 14, 1966 in Chicago, Illinois. He lived there more than six years prior to his death and did not return to Mississippi after 1959. All of Eldridge's children knew he was a resident of Illinois when he died.

Summary of the Argument

Eldridge V. Tatum did not make a will in Tunica County, Mississippi when he remained in Chicago, Illinois from 1959 until his death on December 14, 1966. Robert A. Tatum was the only one of Eldridge's children who lived in Mississippi after Eldridge moved. The false statements made to the court in the Order Permitting Will to Probate and Record regarding making of the will and resident status were known by Robert to be untrue.

Argument

Eldridge V. Tatum did not make, publish, declare, and sign the document referenced as his last will and testament. The document is dated November 3, 1960. Eldridge moved from Tunica County, Mississippi in 1958 and lived with his son, John Eldridge Tatum, in Cordova, Tennessee. In 1959 he moved to Chicago, Illinois to live with his daughter, Thelma Montgomery. Eldridge's daughter, Colleen Maxwell, moved from Cleveland, Ohio to Chicago to help her sister care for her father. Eldridge did not travel alone. His grandson, Waymon Tatum, traveled by train with him when he moved from Cordova to Chicago. The travel expenses were paid by John's wife, Pearl Tatum. In Chicago, Eldridge was dependent on his daughters for financial support. He did not drive a car. He did not use a telephone. His physical limitations included the need for assistance to walk and his hearing was near deaf. Someone always went with him when he left home. Grandchildren who lived in Chicago and helped care for Eldridge know he never returned to Mississippi to make a will. Eldridge was not secretive about the affairs of the land. When John asked Eldridge to give Robert land to build a house, Eldridge held a meeting with his children and grandchildren to discuss the matter in the home of his daughter, Dorothy Anderson, in 1963. John's wife, Pearl, suggested one acre. Eldridge did not make a decision until July 1964. Dorothy's husband, Major Anderson, took Eldridge to a notary in Chicago to prepare the deed for one acre.

Eldridge had six children, not five, as recorded in the Final Judgment. They were:

Fred Tatum, date of death unknown; Robert A. Tatum, deceased April 18, 1969; John E. Tatum, deceased May 11, 1982; Colleen Maxwell, deceased June 28, 1985; Dorothy Anderson, deceased March 24, 1992; and Thelma Montgomery, deceased November 3, 1994.

When Eldridge V. Tatum moved to Chicago, Illinois in 1959, he lived in the same house Helen Wells lived in. Both lived in the home of Eldridge's daughter, Thelma Montgomery. It appears Helen Wells knows some of the information given to the court by Robert Tatum is not true. She has claimed no knowledge of a will until her brothers told her in 2004 because she left Mississippi in 1957.

The Order Permitting Will to Probate and Record contains statements which Robert A. Tatum knew were false. He knew his father moved from Tunica County, Mississippi to live with his brother, John, in Cordova, Tennessee and moved from Cordova in to Chicago, Illinois. When Eldridge moved to Cordova he moved from the house he lived in with Robert. Robert knew Eldridge was not a resident of Tunica County for more than six years when he died in Chicago. Although Robert filed documents to open probate proceedings in 1967, he continued to treat his siblings as equal parties. He discussed affairs of the land with them, requested and accepted their monetary contributions to pay operating expenses. This practice continued when Helen Wells began managing the property after Robert died. Her uncle and her aunts agreed to lease the land in 1970. Helen would use the funds to pay expenses and deposit any remaining funds in a trust account. This agreement has not changed.

First knowledge that Helen Wells intended to limit heirs to children of Robert Tatum was received in October 2004. A very different message given as part of the family reunion activities on the land in July 1977 said Helen was chosen to manage the property because she would be fair to everybody. Helen was present and participated in the presentation with her aunt Dorothy Anderson and her uncle John Tatum. Helen agreed that the land belonged to all of

Eldridge's heirs and added, "That's right. It's as much yalls as it is ours." At this time, Helen knew she had filed an Affidavit of Heir ship April 28, 1969, just ten days after the death of her father, claiming heirs of Robert A. Tatum as the only heirs. This document was discovered when Waymon Tatum did a search of property records in 2004. Review of the affidavit shows it is a self-serving document with the signatures for Helen Wells and Margaret Tatum written by the same hand. It appears Helen Wells has continued to make misstatements to the court.

Although the court docket shows an appeal received in the office on September 28, 2007, paragraph 10 of the Judgment Approving Final Report of Administration and Petition for Discharge, prepared by Andrew Dulaney and signed by Judge Jon M. Barnwell on October 17, 2007 states "The appeal time has run, and no appeal has been properly and timely perfected."

Testimony of Attorney Robert Cornelius as recorded in the Final Judgment differs from information he gave his clients and does not include information given to him to prove the case. Attorney Cornelius emerged from the court room on August 14, 2007 and announced "we lost." He said he told about the incorrect information Robert A. Tatum gave to the court regarding Eldridge V. Tatum's resident status and the questionable validity of the will. The record shows Attorney Cornelius said the Affidavit of Heir ship was the only evidence of concealed fraud. Filing probate in Tunica County, Mississippi and publishing only a notice to creditors in the Tunica Times when the deceased lived more than six years in Chicago, Illinois implies that notice was intentionally limited. Withholding information that the deceased was no longer a resident of Tunica County did not provide the court with relevant information to determine if additional notices or publications were necessary. Knowing his siblings and no creditors in Chicago would read the Tunica Times shows an intent to conceal the probate proceedings. A

All parties, except for attorneys, were excluded from the court room and unable to hear any of the proceedings. Although the appellants objected to a summary judgment, provided names of witnesses, and traveled to court, only attorneys were allowed in the court room when the case was called.

A title search for properties owned by Eldridge V. Tatum at the time of death shows a beneficiary designated with a trustee appointed. Property identified as South Half of South Half of Northeast Quarter and Southeast Quarter of Southwest Quarter of Section 16, township 3, Range 10 West in Tunica County was secured with a Deed of Trust to the Federal Land Bank of New Orleans. Attorney Martin Garner was designated trustee for the bank. He was also the attorney who represented Robert A. Tatum in filing probate, a witness on the will, and one of the two people who gave testamentary. The Deed of Trust was recorded May 19, 1948. The covenants and agreements of the deed required the property to be cultivated in a farm like manner. The grantor also agreed not to sell, mortgage or otherwise alienate the property without written consent of the beneficiary. The covenants and agreement of the Deed of Trust prevent the properties from meeting the conditions of fee simple ownership prior to reconveyance on December 4, 1969. No written consent from the beneficiary to deed one acre to Robert A. Tatum in 1964 has been found.

Conclusion

The relief sought by the appellants is to modify the decision of the Chancery Court of Tunica County, Mississippi and title the property to all heirs at law of Eldridge V. Tatum.

Certificate of Service

I, Harold E. Tatum, hereby certify that on 3-13-08, I served the original and three (3) copies of Brief for Appellants on the Court of Appeals of the State of Mississippi and one (1) copy on Attorney Andrew Dulaney by mail with first class postage paid and deposited with the United States Postal Service addressed as follows:

Betty W. Sephton
Court of Appeals of the State of Mississippi
Post Office Box 249
Jackson, Mississippi 39205-0249

Attorney Andrew Dulaney
Dulaney Law Firm
986 Harris Street
Tunica, Mississippi 38676

I, Harold E. Tatum, hereby certify that on 3-21-08, I served a copy of the Brief for Appellants on the Honorable Jon M. Barnwell by mail with first class postage paid and deposited with the United States Postal Service addressed as follows:

Honorable Jon M. Barnwell
Post Office Box 1579
Greenwood, Mississippi 38930-1579

Harold E. Tatum
Harold E. Tatum

3-21-08
Date

C ERTIFICATE OF SERVICE BY MAIL

I, Harold E. Tatum, hereby certify that I am over 18 years of age. On 03/13/08, I served a true and correct copy of the Appellant's Brief by mail with postage and fees fully paid, addressed to the individuals below, and deposited with the United States Postal Service for delivery to:

Andrew T. Dulaney, Esq.
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Tunica, MS 38676

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