

IN THE MISSISSIPPI SUPREME COURT

**DIANE RUTLAND NATIONS, GREG
RUTLAND, PEGGY RUTLAND JONES AND
CALVIN RUTLAND, EXECUTOR OF THE
ESTATE OF WILLIE RAY RUTLAND, DECEASED**

APPELLANTS

V.

NO. 2008-CA-01671

**RICKIE DALE RUTLAND AND
TODD RUTLAND**

**APPELLEES/
CROSS APPELLANTS**

**APPEAL FROM THE CHANCERY COURT
OF
LAWRENCE COUNTY, MISSISSIPPI**

APPELLANTS' REPLY BRIEF

ORAL ARGUMENT NOT REQUESTED

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ARGUMENT

APPELLEES' BRIEF FAILS TO ADDRESS SPECIFIC ISSUES

Instead, the Brief for Appellees Todd and Rickie Rutland announces the writer's "conspiracy theory," speculating that New Dawn Retirement Center operator Elaine Davis, Diane Nations, testator's attorney Malcolm Rogers, Calvin Rutland (the testator's double first cousin) and Dr. David P. Smith (testator's physician) were all in an elaborate scheme to ~~change~~ the beneficiaries of the Last Will and Testament of Willie Ray Rutland. That contention is absurd and unsupported by any proof.

Appellee's Brief fails to address the direct testimony of testator's attorney Malcolm T. Rogers, (and a subscribing witness to the will) that on January 18, 2002 Willie Ray Rutland had the requisite mental capacity to execute his will. (See pages 12-14 of Appellants' Brief)

Appellees' Brief fails to address the direct testimony of Calvin Rutland (a subscribing witness) that on January 18, 2002 Willie Ray Rutland had the requisite mental capacity to execute

his will. (See pages 14,15 of Appellants' Brief)

Appellees' Brief fails to address the direct testimony of the testator's physician, Dr. David P. Smith, Pinnacle Medical Clinic, that on January 18, 2002 Willie Ray Rutland had the requisite mental capacity to execute his will. (See pages 15, 16 of Appellants' Brief, and Appellants' Record Excerpt No. 4)

Appellees' Brief fails to address the direct testimony of Diane Nations that on January 18, 2002 Willie Ray Rutland had the requisite mental capacity to execute his will. (See page 15 of Appellants' Brief)

Appellees' Brief fails to address the fact that neither Rickie Dale Rutland nor Todd Rutland had seen Willie Ray Rutland for months before January 18, 2002, so they were unable to offer relevant testimony as to his mental capacity on the day the testator executed his will. (See page 17 of Appellants' Brief).

Appellees' Brief fails to address the uncontested proof of waste and abuse of Willie Ray Rutland's assets during the 63 month period of time when Todd Rutland held power of attorney for Willie Ray Rutland. (See pages 18, 19 of Appellants' Brief)

Appellees' Brief fails to address the undisputed testimony concerning Willie Ray Rutland's motivation to change the beneficiary of his will, including the fact that he was shocked to learn in October 2001 that he only had \$17.34 in the bank; that his certificate of deposit (for \$24,778.66) had been converted to Todd Rutland; that his land and house had been deeded away to Todd and Rickie Dale Rutland against his wishes; and that while he wanted to remain at New Dawn Retirement Center, Todd Rutland and his mother insisted he leave, since his money had all been dissipated and wasted. (See pages 18, 19 of Appellants' Brief)

Moreover, Appellees' Brief fails to address the law in Mississippi, which clearly gives the testator the right to change his will for any motive satisfactory to him, whether the motive be love, affection, gratitude, or even whim or caprice. Holmes v. O'Bryant, 741 So2d366 (Miss.App. 1999).

Appellees' Brief fails to address the Mississippi law of "Clean Hands Doctrine:" and "equitable estoppel" by which Appellees' conduct precludes their inheritance of Willie Ray Rutland's property. (See pages 19, 20 of Appellants' Brief)

Appellees' Brief fails to address the uncontested "good faith" of Diane Rutland Nations, that

she had no part in preparation of the January 18, 2002 will; that she knew nothing about it prior to its execution; that she carefully accounted for all receipts and expenditures of Mr. Rutland's funds from October 2001 until Mr. Rutland's death in 2005 on ledger sheets (Exhibit 10) and (Appellants' Record Excerpt No 6), accumulating a bank balance as high as \$42,111.76, and ending balance of \$31,361.47 after payment of final medical and funeral bills. (See pages 22, 23 of Appellants' Brief, and Appellants' Record Excerpt No. 6)

Finally, Appellees' Brief fails to address clear Mississippi law that an express revocation clause in a will, revoking all former wills, is an unequivocal and conclusive expression of the testator's intent Estate of Woodfield, 168So 2d421 (Miss 2007). Attorney Malcolm Rogers testified that Mr. Rutland knew and understood the effect of the revocation clause in the January 18, 2002 will (R.21,22) R 148); that the testator fully intended to revoke any prior will by execution of the January 18, 2002 will. R.148) (See Appellants' Record Excerpt No. 2, first paragraph, stating: **...I do hereby revoke any and all wills and codiciles heretofore made by me.**") How could that intention to revoke the prior will have been made any clearer? Can anyone really doubt Willie Ray Rutland's intention to revoke his prior will in favor of the Appellees, after they and their mother had wasted his precious assets, as conclusively proven by Exhibit 10 (Appellants' Record Excerpts No. 5 and 6) and Exhibit 11, the deposition of Trustmark's cashier, Mrs. Brenda Henderson?

CONCLUSION

Appellants Diane Rutland Nations, Greg Rutland, Peggy Rutland Jones and Calvin Rutland, Executor of the Estate of Willie Ray Rutland pray this Court will reverse the Chancellor's Final Judgment of September 4, 2008, and here render judgment finding that Willie Ray Rutland had the necessary testamentary capacity of January 18, 2002 to execute his Last Will and Testament, and the instrument of January 18, 2002 constitutes his valid Last Will and Testament, revoking any prior will. The Court should further dismiss, with prejudice, the cross appeal of Todd Rutland and Rickie Dale Rutland, and assess all costs against the cross appellants.

Alternatively, if the Court were to reverse and remand the case, the appellants pray the Court will enter an Order or Judgment assigning the remanded case to a different Chancellor.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas M. Murphree, Jr., one of the attorneys for the Appellants, do hereby certify that I have this day mailed a true and correct copy of the foregoing Appellants' Reply Brief to all counsel of record and to Chancellor Larry Buffington.

This, the 15th day of June, 2009.

Thomas M. Murphree
THOMAS M. MURPHREE, JR.