

In the Supreme Court of Georgia

Decided: October 5, 2009

S09A0707. GORDON v. COTTON

BENHAM, Justice.

Appellant Pauline Gordon appeals the denial of her motion for new trial concerning the probate court's decision to deny her petition to probate a will. Appellant, who was a friend of the deceased Jack Fuller, filed a petition to probate Fuller's will; and appellee Clarence Cotton, Jr., Fuller's half-brother and only heir, filed a caveat thereto and the matter was tried. At the trial, one witness to the will did not appear and the other witness testified she signed a blank document and did not see the testator or the other witness sign the will. The probate court denied the petition to probate and sustained the caveat pursuant to OCGA § 53-4-20 (b). Appellant moved for a new trial which the trial court denied after holding a hearing.

Appellant contends on appeal that she sought to submit the affidavit of the witness who did not appear at the trial and made that witness available to present testimony, but alleges the probate court did not consider the affidavit or allow the witness to testify. Appellant alleges the probate court erred when it did not

consider this “new” evidence at the motion for new trial hearing. Inasmuch as the record on appeal does not contain a transcript of any of the probate court proceedings, including the motion for new trial hearing transcript, and the transcript is necessary for proper appellate review, this Court must presume the evidence was as the probate court found and its judgment correct on all issues presented. Stanley v. Stanley, 277 Ga. 798 (596 SE2d 138) (2004).

Judgment affirmed. All the Justices concur.