

Judgment rendered June 26, 2019.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 52,721-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

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IN RE: SUCCESSION OF ADDIE VAUGHN  
BAILEY and JAMES CURTIS BAILEY

\* \* \* \* \*

Appealed from the  
Fourth Judicial District Court for the  
Parish of Ouachita, Louisiana  
Trial Court No. 2001-0722

Honorable B. Scott Leehy, Judge

\* \* \* \* \*

LAW OFFICE OF ANTHONY J.  
BRUSCATO, APLC  
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Ollie Mae Bailey

PLEASANT, WILLIAMS &  
BANKS-MILEY LAW GROUP, LLC  
By: Kristen B. Pleasant

Counsel for Second Appellant,  
James Henry Bailey and  
Julia Bailey Godfrey

E. ROLAND CHARLES

Appellee In Proper Person

\* \* \* \* \*

Before MOORE, COX, and STEPHENS, JJ.

## **COX, J.**

This appeal arises out of the Fourth Judicial District Court, Ouachita Parish, Louisiana. Ollie Mae Bailey (“Ollie”) appeals the district court’s judgment in favor of her siblings, James Henry Bailey (“James”) and Julia Bailey Godfrey (“Julia”), concluding that their mother’s judgment of possession (“JOP”) is null and void based on deficiencies in the probating of the testament. Although the district court’s ruling was in James’s and Julia’s favor, they have also appealed, arguing that this Court remand the case for further proceedings. For the foregoing reasons, we respectfully reverse the district court’s judgment nullifying Mrs. Bailey’s JOP and remand the case for further proceedings.

### **FACTS**

James Curtis Bailey and Addie Vaughn Bailey (“Mr. and Mrs. Bailey,” respectively) owned a house in community in Monroe, Louisiana. They had four children: James, Julia, Jesse Bailey, and Ollie. Their son, Jesse Bailey, predeceased them and had no children. Mr. Bailey died without a will on July 30, 1992. His one-half interest in his community property, including the house, passed equally to his three remaining children, subject to the usufruct of Mrs. Bailey. Mrs. Bailey died on June 8, 1999. In addition to her community property, Mrs. Bailey left behind a money judgment that had been settled, but not yet paid to her.

At the time of their parents’ deaths and at the time of this suit, James lived in Houston, Texas; Julia lived in Oakland, California; and, Ollie lived in Monroe. Mr. and Mrs. Bailey’s successions were filed together and they share a JOP, but Mr. Bailey’s estate is not in dispute; only Mrs. Bailey’s

estate is the subject of this appeal. For simplicity, the remainder of this opinion will only refer to the JOP as Mrs. Bailey's JOP, as that is the only portion in dispute.

Before a check could be issued on Mrs. Bailey's money judgment, her succession needed to be completed. Anthony Bruscato, Mrs. Bailey's settlement attorney, began the succession proceedings. Included in the record is the unfiled will of Mrs. Bailey and an unfiled request to have it probated. Mr. Bruscato testified, and his records confirmed, that he retrieved the will from the judge's office before it was signed because he received a letter stating James and Julia planned to contest the will.

Roland Charles testified that he was hired in person by Julia and James to open their mother's succession. He stated that he was previously contacted by Julia via telephone to check for the existence of a will for her mother. Mr. Charles stated that he sent a letter to Ollie notifying her that he was hired by her siblings. He testified that he was then contacted by Mr. Bruscato to notify him that he had already begun the succession for Mrs. Bailey, and Mr. Bruscato sent him copies of the will and filings. Mr. Charles stated that because Mr. Bruscato had already begun working on the succession, he did not work on it. Mr. Charles stated that once the succession proceedings began, James and Julia came in to his office a second time to sign the verification documents. He testified that he did not check their ID's when notarizing their signatures and could not state whether or not the two people in the courtroom were the same people who came to his office. He noted that this all transpired 17 years ago so he could not be

certain. Mr. Charles also testified that he did not recall having a Houston, Texas, address on file for James.

Mrs. Bailey's JOP, which was filed on February 14, 2001, stated, "Considering the testament of the deceased, **which has been probated...** recognizing Ollie Mae Bailey Walker as the sole heir of the succession of Addie Vaughn Bailey." (Emphasis added.) Sixteen years later, on January 31, 2017, James and Julia filed a petition to annul Mrs. Bailey's JOP based on fraud and/or ill practices. The record reveals that the petition for possession was filed jointly by Ollie, James, and Julia, but now James and Julia dispute their signatures.

James testified that in 2016, some extended family mentioned that his great-niece would inherit the house. James said he questioned how she would inherit because he thought he and his two sisters owned the house together. He stated that he decided to hire a title abstractor, Carolyn Williams, to research the property ownership. Ms. Williams researched the Ouachita Parish property records and sent James a copy of all the relevant title and probate documents. James testified that when he reviewed the records, he noticed the signature of his name on the joint petition that he did not sign. At this point, he contacted an attorney to dispute his mother's JOP.

Julia testified that James called her and asked her if she signed the joint petition. She stated that she did not sign the petition and had not seen the referenced will belonging to her mother. Julia testified that when her mother died, she contacted an attorney to find out if her mother had a will. She stated that she was told that her mother had a will, but the woman who prepared the will moved from Monroe to Shreveport, Louisiana. She

testified that because no will had ever been shown to her, she did not believe her mother had a will. Julia joined James's suit to contest their mother's JOP.

Ollie testified that she had a conversation with Julia about her mother's will after her mother died. She stated that she had conversations with James about the house, but never discussed their exact portions of ownership. She testified that she could not recall whether or not her siblings were in Monroe on the date their names were signed on the verification forms.

Ms. Williams testified and her abstract of the property title was admitted into evidence. A review of the property records revealed that the will was not probated and there was no order filed admitting it to probate. For this reason, the district court found the JOP to be an absolute nullity. The district court did not find fraud in his written reasons for judgment, but pretermitted action on other issues raised. In the transcript on the issue of prescription, the district court stated, "So there is evidence that there may have been fraud that occurred, but that's not the point of this particular portion of the hearing." All parties have appealed the district court's judgment.

## **DISCUSSION**

Ollie argues the following three assignments of error:

- 1) The trial court erred in failing to recognize that the January 2017 lawsuit was barred by prescription.
- 2) The trial judge erred in concluding that the testament had not been probated and/or in declaring that the judgment of possession was "absolutely null" due to failure to probate the testament.

3) The trial court erred in failing to recognize that the January 2017 lawsuit was barred under the doctrines of waiver and estoppel.

James and Julia argue the following three assignments of error:

- 1) The trial court erred when it did not deny the Exception of Prescription filed by Appellee, Ollie Mae Baker.
- 2) The trial court erred when it did not allow the Second Appellants the opportunity to have another trial date to introduce evidence of fraud.
- 3) The trial court erred when it failed to allow Second Appellants the opportunity to introduce evidence of attorneys fees and costs in connection with the nullity action.

First, we will address Ollie's third assignment of error, regarding the doctrine of estoppel. Judicial estoppel is an equitable doctrine designed to protect the integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment. *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968 (2001); *Webb v. Webb*, 2018-0320 (La. 12/5/18), 263 So. 3d 321. There are three elements for establishing judicial estoppel: (1) the party's position must be clearly inconsistent with a previous one, (2) the court must have accepted the previous position, and (3) the prior position must not have been inadvertent. *Webb, supra*.

A judicial confession is a declaration made by a party in a judicial proceeding. That confession constitutes full proof against the party who made it. A judicial confession is indivisible and it may be revoked only on the ground of error of fact. La. C.C. art. 1853. This Article reproduces the substance of C.C. Art. 2291 (1870). It does not change the law. La. C.C. art. 1853 cmt. a. Where one makes a judicial declaration and judgment is rendered in accordance therewith, he cannot ordinarily revoke the declaration and attack the judgment under the pretense of having made an

error of law. *Succession of Williams*, 418 So. 2d 1317, 1319 (La. 1982).

Heirs in a succession proceeding may not revoke their acquiescence to a petition for possession based upon an error of law. *Succession of Williams*, 405 So. 2d 336, 339 (La. App. 2 Cir. 1981), *writ granted*, 410 So. 2d 1129 (La. 1982), *and aff'd*, 418 So. 2d 1317 (La. 1982).

The *Williams* Court focused on confessions under La. C.C. art. 1853, which primarily deals with the evidentiary value of a litigant's prior positions. That opinion predated the current views of the U.S. Supreme Court and Louisiana Supreme Court on judicial estoppel. However, we still find it persuasive in deciding the case before us.

#### *Whether Litigation Positions are Inconsistent*

In this case, James's and Julia's current position is that all three siblings should have equally inherited from their mother. However, in 2001, James and Julia joined in the pleadings on which their mother's JOP was based, agreeing that Ollie was the sole heir of their mother. Both of their signatures appear on a verification form stating they read the petition and all the allegations are true and correct. In the petition for possession, both James and Julia accepted only their portion of the estate of their father and nothing from their mother's estate. Sixteen years later, their position has changed in that they believe they should have inherited from their mother. We find these to be inconsistent positions regarding their mother's estate.

#### *Whether the Court Accepted the Previous Position*

The district court signed the JOP after receiving the petition for possession from the three siblings. An error occurred in that the JOP references Mrs. Bailey's probated will, which is not filed in the probate

records, as required by law. However, the JOP follows the disposition of the property set out in Mrs. Bailey's last will and testament. Although the will is not filed in the probate records of Ouachita Parish, the district court accepted the siblings' petition for possession, designating Ollie as Mrs. Bailey's sole heir, in accordance with her will. We find that because the JOP was signed by the district court, the court accepted the previous position of James and Julia that Ollie is the sole heir of their mother.

*Whether the Prior Position was Inadvertent*

The case before us concerns affirmative representations by James and Julia, rather than omissions. The petition for possession states that they were represented by counsel. Their signatures appear on notarized verification forms. The verification forms state that they read the petition and found it to be accurate. Their signatures also appear on the notarized detailed descriptive list, which was filed in 2001. The signature of each person who signs a notarized document is presumed valid absent convincing proof to the contrary. *Garrison v. State Farm Fire & Cas. Co.*, 51,245 (La. App. 2 Cir. 4/5/17), 217 So. 3d 586. Based on these signatures and the fact that both were represented by counsel, we find that James's and Julia's acceptance of Ollie as the sole heir of their mother was not inadvertent. For these reasons, and under the specific facts of this case, we find that all the elements of judicial estoppel have been met.

In light of the *Williams* case previously decided by this Court, we find that this distribution of property is an error of law in that either the will had to be probated or the siblings should have all equally inherited from their mother in accordance with La. C.C. art. 880, *et seq.* Since James and Julia



judicially declared that they were only entitled to inherit from their father and not their mother, and judgment was rendered accordingly, they cannot now revoke their declarations and complain that the JOP is erroneous as a matter of law.

For these reasons, we set aside the district court's judgment nullifying Mrs. Bailey's JOP. Because the district court's judgment has been reversed, we pretermitt Ollie's other assignments or error.

Additionally, we order that Mrs. Bailey's last will and testament be filed in the probate records of Ouachita Parish. The JOP references the probated will, which put everyone on notice that the will was, in fact, probated. We find that this language in the JOP, signed by the district judge, effectively probated the will. The JOP follows Mrs. Bailey's disposition of the property. Mrs. Bailey's last will and testament should be filed in the probate records, as stated in the JOP.

Although we find that James and Julia are judicially estopped from complaining that the JOP is erroneous, we remand the case to the district court for further proceedings regarding their allegations of fraud.

### **CONCLUSION**

For the reasons assigned, the district court's judgment nullifying Mrs. Bailey's JOP is reversed. The matter is remanded to the district court for further proceedings. Each party will bear his or her own costs associated with this appeal.

**REVERSED AND REMANDED.**