

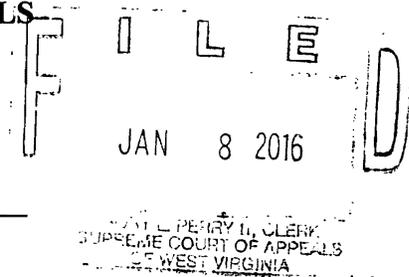
NO. 15-0726

IN THE SUPREME COURT OF APPEALS

OF

WEST VIRGINIA

CHARLESTON, WEST VIRGINIA



**RUSSELL W. MASON, Executor of the Estate of Christine Ebert,
Plaintiff Below, Petitioner**

v.

**CHRISTINE TORRELLAS, as Ancillary Administratrix
Of the Estate of Christine Ebert,
Defendant Below, Respondent.**

REPLY BRIEF

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Petitioner Russell Mason

COMES NOW the Petitioner, Russell W. Mason, by Counsel Daniel R. James and Nicholas T. James, pursuant to Rule 10(g) and accordingly replies to Respondent's Brief.

Respondent argues that since a New York surrogate court completed the probate process, that West Virginia is bound to give the New York probate full faith and credit as it relates to the ancillary administration of property situated in West Virginia. Petitioner respectfully disagrees.

Respondent cites *Woofter v. Matz* and argues that West Virginia courts have "no general or statutory jurisdiction to set aside a will and probate thereof for fraud of one domiciled in another state, duly probated there, and subsequently duly admitted to probate in this state." 71 W.Va. 63, 76 S.E. 131 (1912) The dispositive language from the *Woofter* case is "domicile." The lower court erred by failing to hold an evidentiary hearing regarding the decedent's domicile. Petitioner submits that the decedent was clearly domiciled in West Virginia at the time of her death despite the fact that Respondent submits that the decedent was domiciled in New York based upon her physical presence in New York at the time of her death. Physical presence is just one factor as it relates to the issue of domicile. Other factors that are relevant to the issue of domicile are more specifically set forth in Petitioner's Brief. *See* Petitioner's Brief, p. 2 At the very minimum, there is certainly a genuine issue of material fact as to this dispositive issue and the case should be remanded for an evidentiary hearing.

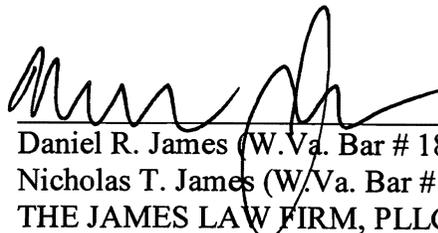
The simple fact that New York probated the decedents will is not controlling. The Respondent cites to a New York Surrogate Court rule that essentially states that the New York court will not admit to probate a will if the court suspects under influence, fraud, lack of testamentary capacity, *inter alia*. N.Y. Surr. Ct. Pro. § 1409; Respondent's Brief, p. 8 Respondent cites the New York Surrogate Court rule to suggest that New York has already assessed the validity of the New York will. Although the law in New York makes it appear that

this was done, this it is not accurate portrayal of what actually occurred in the case *sub judice*. This Court is reminded of the fact that Respondent gave absolutely no notice to Petitioner or other beneficiaries in West Virginia with knowledge of the West Virginia will. June 16, 2015 Hearing Transcript, p. 9, paragraph 7 Consequently, the New York court simply acted as a rubber stamp. It is clear under the facts of this case that the New York court did not assess the validity of the New York will or capacity issues. Essentially, an *ex parte* / uncontested hearing occurred in New York without notice to Petitioner or any other heir under the West Virginia will.

Significant public policy is at stake in this case! Mischief will be easily invited as detailed in *Gaskins v. Gaskins*, 311 Ky. 59, 223 S.W.2d 374 (1949) if Petitioner's appeal is denied. As detailed in *Gaskins*, shortly before death an elderly and vulnerable testator could be transported to a foreign jurisdiction, a new will drafted, probated and the estate closed before the intended heirs are aware of the death. Time and geographical factors will likely deter many intended heirs from pursuing a lawsuit challenging the will if the domicile of the testator is not the proper jurisdiction to challenge a will. *Id.*

WHEREFORE, for all the reasons set forth above and in the Petitioner's Brief, this Honorable Court should grant the relief previously prayed for.

**RUSSELL W. MASON
BY COUNSEL**



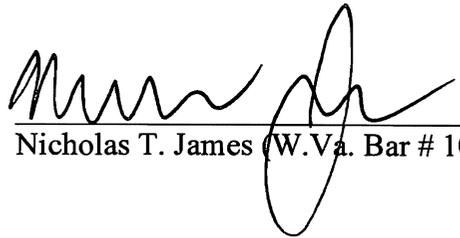
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CERTIFICATE OF SERVICE

I, Nicholas T. James, Counsel for Russell Mason, do hereby certify that I have served a true copy of the **REPLY BRIEF** upon counsel for the Respondent by depositing said copy in the United States mail, with first-class postage prepaid, on this 4th day of January, 2016, addressed as follows:

Charles F. Johns, Esquire
Steptoe & Johnson
400 White Oaks Boulevard
Bridgeport, WV 26330

Rory L. Perry, II (original and 10 copies)
Clerk of the Court
State Capitol Building, Room 317
Charleston, West Virginia 25305



Nicholas T. James (W.Va. Bar # 10545)