

1983 WL 182036 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 24, 1983

*1 The Honorable Robert H. King
Register Mesne Conveyances
2 Courthouse Square
Post Office Box 726
Charleston, South Carolina 29402

Dear Mr. King:

You have asked whether a probate may properly be dated before the date of the instrument, and additionally, whether the name in the probate should be identical to the signature, and the same throughout the instrument.

Discrepancies in Date

First, it is well-settled that a probate or acknowledgment must be executed after the execution of the instrument. See, 1 Am. Jur. 2d Acknowledgments § 24. This is fairly obvious, since the object of a probate is to assure the authenticity of the instrument. Seale Motor Co. v. Stone, 218 S.C. 373, 62 S.E. 2d 824 (1950).

However, the actual date appearing on the probate, even if prior to the date of the instrument, may or may not be evidence of a prior execution. See, 1 Am. Jur. 2d Acknowledgments § 27. Thus, for example, a mere mistake will not invalidate an acknowledgment. E.g., 25 A.L.R. 2d 1141 § 17. The general rule then, as stated in 1 Am. Jur. 2d Acknowledgments § 47 is: The fact that the purported date of the acknowledgment is prior to that of the instrument . . . does not necessarily affect the validity of the instrument.

In such a case, the courts will look to all of the circumstances to determine when the actual execution occurred. Supra. § 47.

Thus, the actual date on the probate in and of itself, is of little probative value with respect to the issue of the validity of the probate and/or the instrument.

Discrepancies between Names and Signatures

As to your second inquiry, there are two separate situations that may occur that would involve related, but separate issues. The first situation would involve the 'sufficiency' of the signature, while the second would involve the issue of a 'variance' in name and signatures.

As to the first situation, it is well-settled in South Carolina that any 'mark' may be made on an instrument for the purpose of signing that instrument. E.g., Matheson v. Caribo, 117 S.C. 291, 109 S.E. 102 (1921). See also, Sharpe v. Sharpe, 105 S.C. 459, 90 S.E. 34 (1916), where a 'cross' was sufficient. The test for determining the sufficiency of a signature is simply whether or not 'the marks can be shown to have been made by the person by whom it purports to have been made.' Matheson v. Caribo, supra. Thus, only the signatures of the person purporting to sign is required.

As to a situation where the signature is at 'variance' with the name on the instrument, or the probate, such variance 'is immaterial where it arises from obvious clerical error, where the names are idem sonans, or where they are merely different forms of the

same name, and hence does not give rise to uncertainty as to the identity of the acknowledger.’ 1 Am. Jur. 2d Acknowledgment § 67.

However, it has been held that where the name and the signature are such that they identify entirely different persons, the acknowledgment is invalid. Supra. Nevertheless, even this rule would be subject to the above mentioned ‘clerical error’ exception. See, 67 C.J.S. Acknowledgment § 92a.(3).

Practical Ramifications

*2 It is clear then, that necessarily involved in both of your inquires are complicated determinations of law and fact.

The duties of a register of mesne conveyances are ministerial in nature, and ‘in the absence of a statute to the contrary, it is not his province to determine whether the parties have made valid instruments . . .’ 76 C.J.S. Registers of Deeds, § 10. Since a reading of the requirements and prerequisites to recording instruments in South Carolina does not disclose a requirement for a register of mesne conveyances to adjudicate either of the issues you present, (with the exception of entirely different names), such discrepancies should not prevent the recording of the instrument, provided the foregoing statutes are complied with. See, § 30-5-10 et. seq. S.C. Code as amended.

Sincerely,

Robert D. Cook
Executive Assistant for Opinions

1983 WL 182036 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.