SUCCESSION : NUMBER: 547,634-B

OF : FIRST JUDICIAL DISTRICT COURT

MARJORIE DAVIS TURNER : CADDO PARISH, LOUISIANA

 **REASONS FOR JUDGMENT**

 **ON MOTION FOR SUMMARY JUDGMENT**

 **(Filed 12/11/2012 by Vanessa Davis Hennigan)**

The Court has thoroughly considered the Motion for Summary Judgment, filed December 11, 2012 by Vanessa Davis Hennigan, its exhibits, including the affidavits of Bryan Vekovius, M.D., Murlene Parker, Frances Hendershot, Maggie Rosborough, and David Aaron Hennigan, the purported 2008 testament as well as Mrs. Hennigan’s memorandum. No competent summary judgment evidence was submitted by defendants Michael Floyd Davis and Keitha Davis Ewing; however, the Court has reviewed the memorandum filed January 30, 2013 by the defendants.[[1]](#footnote-1) On March 25, 2013, the Court heard legal arguments on the motion from Mrs. Hennigan’s counsel and from Mr. Davis and Ms. Ewing. For reasons which follow, the Motion for Summary Judgment is granted.

Based on the summary judgment evidence, particularly the affidavit of Dr. Bryan Vekovius, a specialist in Neuro-Ophthalmology and Oculoplastic Surgery, there is no genuine issue of material fact with regard to Marjorie Davis Turner’s physical inability to read the purported September 18, 2008 testament. Specifically, in his sworn and uncontroverted affidavit, Dr. Vekovius stated:

I have reviewed my records regarding examinations and treatment of Marjorie Turner. Ms. Turner was a patient in my practice from July 2005 until April 2008 for multiple ophthalmic conditions including monocular diplopia/convergence insufficiency. Because of Ms. Turner’s convergence insufficiency and given the progressive and degenerative nature of her underlying illness identified as progressive supranuclear palsy (PSP) with the associated visual problems for which she was under my care, it is my opinion that Marjorie Turner would not have physically been able to read the attached document on September 18, 2008, and that it would have been necessary for someone to read the document out loud to her.

The purported testament at issue is not in the form required for a testator who is sight impaired to the extent she cannot read; specifically, the testament does not comply with La. Civil Code art. 1579. See also *Succession of Boisseau*, 33,861, (La. App. 2d Cir. 9/27/00) 768 So. 2d 743.[[2]](#footnote-2)

For purposes of addressing this motion, the Court notes that the only competent summary judgment evidence in the record is the set of affidavits filed by Vanessa Davis Hennigan. The memorandum filed by Mr. Perkins is legal argument on behalf of Mr. Davis and Mrs. Ewing but it is not competent summary judgment evidence. Moreover, in accordance with Louisiana Civil Procedure articles 967-969 and the Louisiana Rules for District Courts, Rule 9.8(a), in court testimony on a summary judgment motion is not allowed by law. Thus, the arguments of Mr. Davis, Mrs. Ewing and counsel for Mrs. Hennigan do not constitute evidence upon which this Court can base its decision.

Accordingly, the Motion for Summary Judgment is granted. The purported September 18, 2008 testament is null and is denied the effect of probate.

Counsel for Mrs. Hennigan shall submit a proposed Judgment consistent with this ruling and in accordance with La. Dist. Ct. R. 9.5.

Signed this 27th day of March, 2013, in Shreveport, Caddo Parish, Louisiana.

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 SCOTT J. CRICHTON

 DISTRICT JUDGE

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1. It should be noted that counsel for Mr. Davis and Mrs. Ewing withdrew seven days prior to the filing of the memorandum. Counsel for Mrs. Hennigan has requested that the memorandum be stricken on that basis. Notwithstanding that valid objection, the Court has read and considered the filing. [↑](#footnote-ref-1)
2. Even applying the enhanced burden of proof applicable to this case by clear and convincing evidence - there are no genuine issues of material fact in this summary judgment record and Mrs. Hennigan is entitled to judgment as a matter of law. [↑](#footnote-ref-2)