

been referred to as "F. of Fact #____" or "C. of Law #____"; and are found on pages 0035-0044. The Appellants, Calvin E. Heibult, Georgiann Scott and Melba Silverlake (the eldest of Anna's four children) have been referred to collectively as "Appellants". Finally, the trial transcript was simply referred to as "Transcript".

JURISDICTIONAL STATEMENT

Appeal was taken from the Judgment entered on the 21st day of December, 2001; Notice of Entry of said Judgment having been served on the 26th day of December, 2001. (Record pp. 0000-0034; Record pp. 0030-0031).

Notice of Appeal was entered February 19, 2002. (Record pp. 0030-0031). Appeal is properly before this Court pursuant to S.D.C.L. §§ 15-26A-3(1) and 15-26A-4.

STATEMENT OF LEGAL ISSUES

1. WHETHER THE TRIAL COURT ERRED BY ADMITTING THE TESTIMONY OF RONALD HEIBULT, SR.'S ATTORNEY, JOHN E. BURKE.

The trial court denied Appellants' motion to preclude the trial testimony of Attorney Burke, and allowed him to testify at trial despite the fact that he represented Ronald Heibult, Sr., who is an heir and a party to these proceedings.

2. WHETHER INSUFFICIENT EVIDENCE WAS ADMITTED TO FIND THAT THE 1990 WILL WAS REVIVED PURSUANT TO S.D.C.L. § 29A-2-509.

The trial court held that Anna's 1990 Will was revoked upon execution of a subsequent Will in 1991, but that the 1990 Will was later revived pursuant to S.D.C.L. § 29A-2-509(a).

3. WHETHER THE TRIAL COURT ERRED BY FINDING THAT THE 1991 WILL HAD BEEN REVOKED.

The trial court applied a presumption that the 1991 Will was revoked, and did not consider evidence rebutting that presumption.

4. WHETHER THE TRIAL COURT ERRED BY APPLYING S.D.C.L. § 29A-2-509(a), WHERE THE 1991 WILL WAS ONLY PRESUMED TO BE REVOKED, AND THERE WAS NO COMPETENT EVIDENCE OF A REVOCATORY ACT.

That the trial court applied S.D.C.L. § 29A-2-509(a) to circumstances in which the subsequent Will was only presumed to be revoked, even though there was no finding of a revocatory act.

STATEMENT OF THE CASE AND FACTS

A. Case History: This matter came before the trial court pursuant to two separate and opposing petitions. On March 15, 2000, Appellants petitioned the Court for Adjudication of Intestacy, Determination of Heirs, and Appointment of Personal Representative. (Record pp. 0240-0242).

Two weeks later, Ronald C. Heibult, Sr. (hereinafter "Ronald") petitioned the Court for Formal Probate of Will,