

SUPREME COURT OF LOUISIANA

NO. 2017-CC-1700

**IN THE MATTER OF THE SUCCESSION
OF WILLIAM EWELL COOPER, JR.**

**ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE**

GENOVESE, J., would grant and assigns reasons.

I disagree with the majority's denial of this writ. The appellate court reversed the trial court and ruled that "because more than five years have elapsed since the decedent's will was filed for probate, Evan Cooper's claims against defendants-in-intervention, Sarah Cooper and Burton Cooper, are prescribed." *In the Matter of the Succession of Cooper, Jr.*, 17-310, p. 1 (La.App. 1 Cir. 7/7/17), 2017 WL 2889247 (emphasis added). In my view, the five-year liberative prescriptive period for annulment of a testament pursuant to La.Civ.Code art. 3497 is five years from the date of the probate (not filing) of the will. *See Succession of Dancie*, 191 La. 518, 186 So. 14 (1939), and *Kilpatrick v. Kilpatrick*, 625 So.2d 222 (La.App. 2 Cir. 1993), *writ denied*, 93-2655 (La. 1/7/94), 631 So.2d 445. The filing of the will is of no moment. It is the probate of the will which gives it effect; hence, the five-year prescriptive period for annulment should commence upon probate, not filing of the will.