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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2751-15T3

IN THE MATTER OF THE
ESTATE OF ALICE M.
MALSBERGER, DECEASED.

Submitted March 9, 2017 – Decided July 14, 2017

Before Judges Hoffman and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Probate Part, Burlington
County, Docket No. 2015-1696.

Gary Stewart Sefflin, attorney for appellant
Lilia E. Lawler, Executrix of the Estate of
Robert Rich (Trevor C. Serine, on the briefs).

Bernetich, Hatzell & Pascu, L.L.C., attorneys
for respondent Patricia White (Donald F.
Browne, Jr., on the brief).

J. Llewellyn Mathews, attorney for respondent
Emanuel Pratsinakis.

George N. Styliades, attorney for respondents
Dionysis Nicholaou and Anna Nicholaou, join
in the brief of respondent Emanuel
Pratsinakis.

PER CURIAM

The Estate of Robert Rich (appellant) appeals from a February
18, 2016 Chancery Division order admitting to probate the proffered
will (Proposed Will) of Alice M. Malsberger (Alice). We affirm.

I.

The material facts are not in dispute. Alice died on May 26, 2015. Following Alice's death, plaintiff Patricia White, a niece by marriage, found a handwritten document among Alice's personal papers in Alice's kitchen. The handwritten documents stated:

I'm Alice Malsberger — I wish to be cremated upon my death — along with my husband Joe — our ashes placed in a similar (illegible) and placed in mausoleum. I wish my estate be sold & divide in three and 1/3 granted to Fr. Emmanuel, one third to Patricia White, and one third to Dionysis & Anna Nicholaou. I want Pat White to be executrix. I intend to see a lawyer & to validate everything.

On October 8, 2015, an investigation identified Robert Rich of Philadelphia as Alice's next of kin and sole intestate heir. The following week, plaintiff filed a verified complaint in the Probate Part seeking to admit the Proposed Will to probate. On December 20, 2015, Rich died. On February 2, 2016, Rich's executor filed an answer to plaintiff's complaint, disputing plaintiff's allegations.

All parties agreed the matter did not require discovery, and the handwriting on the Proposed Will belonged to Alice. After hearing argument, Judge Paula Dow proceeded to "try the action on the pleadings and affidavits, and render final judgment thereon." R. 4:67-5. On February 18, 2016, the judge issued an order

admitting the Proposed Will to probate, accompanied by an eight-page written opinion. In pertinent part, the judge stated:

In the present case, the [c]ourt finds that [Alice] intended for the handwritten document to constitute a will and simply intended to see a lawyer for any procedural formalities which were lacking.

. . . .

In sum, under analysis of both N.J.S.A. 3B:3-2(b) and N.J.S.A. 3B:3-3, the [c]ourt finds that [p]laintiff has met the burden by clear and convincing evidence of demonstrating that the purported will was written by [Alice] and was intended to constitute a valid last will and testament.

This appeal followed. Appellant challenges the findings and conclusions of the trial court, asserting the court abused its discretion by ignoring and misinterpreting the plain text of the Proposed Will. We disagree.

At issue is whether the Proposed Will sufficiently represents Alice's final testamentary intent to be admitted into probate under N.J.S.A. 3B:3-3. Since, as the parties agree, there is no genuine issue of material fact, the matter was ripe for summary judgment as involving only a question of law, Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995), to which we owe the motion court no special deference. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

A.

N.J.S.A. 3B:3-2 sets forth the technical requirements for writings intended as wills:

a. Except as provided in subsection b. and in [N.J.S.A.] 3B:3-3, a will shall be:

(1) in writing;

(2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and at the testator's direction; and

(3) signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will as described in paragraph (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

b. A will that does not comply with subsection a. is valid as a writing intended as a will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

c. Intent that the document constitutes the testator's will can be established by extrinsic evidence, including for writings intended as wills, portions of the document that are not in the testator's handwriting.

Appellant asserts that since the Proposed Will contains Alice's signature at the beginning of the writing, it is invalid. However, if Alice wrote her name at the beginning of the document

and intended it to be her signature, it will suffice. In re Estate of Siegel, 214 N.J.Super. 586, 592 (App. Div. 1987).

As Judge Dow explained, Siegel is

directly on point in the present case. As the parties stipulate that there is no issue as to material fact regarding [Alice's] handwriting, the [c]ourt finds that [Alice] intended the opening line, "I am Alice Malsberger[,]" to serve as a signature to the document, despite its placement at the top of the page. Accordingly, under N.J.S.A. 3B:3-2(b), the [c]ourt finds that the Proposed Will constitutes a valid will as both the writing and signature are in [Alice's] handwriting.

B.

A document that does not comply with the requirements of N.J.S.A. 3B:3-2(a) or (b) is nevertheless valid as a document intended as a will and may be admitted to probate upon satisfaction of N.J.S.A. 3B:3-3, which provides:

Although a document or writing added upon a document was not executed in compliance with [N.J.S.A.] 3B:3-2, the document or writing is treated as if it had been executed in compliance with [N.J.S.A.] 3B:3-2 if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute: (1) the decedent's will
. . . .

In a case involving New Jersey's codification of the "harmless error" doctrine, we noted a writing need not be signed by the testator in order to be admitted to probate. In re Probate of Will and Codicil of Macool, 416 N.J. Super. 298, 311 (App. Div.

2010). To admit a writing into probate as a will under N.J.S.A.

3B:3-3, we held:

[T]he proponent of the writing intended to constitute such a will must prove, by clear and convincing evidence, that: (1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it. Absent either one of these two elements, a trier of fact can only speculate as to whether the proposed writing accurately reflects the decedent's final testamentary wishes.

[Id. at 310.]

We are unpersuaded by appellant's challenge to the probate of the Proposed Will on the ground that "the [d]ecedent did not intend the document to be her Final Will[,]" but only "the basis for a subsequent will that would be 'validated' by a lawyer." This contention overlooks the plain meaning of Alice's written words. Alice clearly stated her testamentary intent by providing precise instructions of a testamentary nature, including burial instructions, the appointment of an executor, and the liquidation and division of her estate to her designated beneficiaries.


We also reject appellant's argument that Alice's stated intention "to see a lawyer and to validate everything" precludes a finding of testamentary intent. We agree with Judge Dow that Alice's "comments, taken at face value, simply indicate an intention to visit a lawyer to finalize a document with any

required formalities and does not invalidate Alice's present intention that the Proposed Will constitute a valid will."

For the reasons expressed by Judge Dow in her cogent opinion, we are satisfied Alice's Proposed Will embodied her testamentary intention and was properly admitted to probate.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION