CASE LAW UPDATE

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I. INTRODUCTION

This article discusses judicial developments relating to the Texas law of intestacy, wills, estate administration, trusts, and other estate planning matters. The article covers approximately thirty-five cases which were decided after the cut-off date for *Case Law Update*, in STATE BAR OF TEXAS, 47TH ANNUAL ADVANCED ESTATE PLANNING AND PROBATE COURSE ch. 1 (2023). The reader is warned that not all recent cases are presented and not all aspects of each cited case are analyzed. You must read and study the full text of each case before relying on it or using it as precedent. Writ histories were current as of April 6, 2024 (KeyCite service as provided on WESTLAW). The discussion of each case concludes with a moral, i.e., the important lesson to be learned from the case. By recognizing situations that have led to time consuming and costly litigation in the past, estate planners may reduce the likelihood of the same situations arising with their clients and judges may increase the likelihood of their decisions being upheld on appeal.

II. INTESTATE SUCCESSION

Estate of Martin, No. 06-22-00061-CV, 2023 WL 3185811 (Tex. App.—Texarkana May 2, 2023, no pet.).

After the intestate died, an alleged common law spouse presented facts, including the intestate's death certificate stating they were married, to prove the marriage. After reviewing the evidence, the jury determined no common law marriage existed and that the intestate's son was the sole heir.

The Texarkana Court of Appeals affirmed. The court reviewed the conflicting evidence on the three elements of a common law marriage: (1) agreeing to be married, (2) living together in Texas as husband and wife, and (3) representing to others that they are married. The court determined that the jury's decision that they were not married, was not so against the great weight and preponderance of the evidence that it was clearly wrong and unjust.

Moral: A person alleging a common law marriage needs to present strong evidence at the trial level because it will be difficult to set aside a jury finding that a common law marriage did not exist.

III. WILLS

A. Testamentary Capacity

Estate of Martin, No. 06-23-00033-CV, 2024 WL 105593 (Tex. App.—Texarkana Jan. 10, 2024, no pet. h.).

Both the trial and appellate courts agreed that the testator lacked testamentary capacity to execute his will. Although there was no direct evidence of his capacity on the date he signed the will, evidence of the testator's state of mind at other nearby times was sufficient to support the finding of lack of capacity.

Moral: A jury finding that a testator lacked testamentary capacity is difficult to overturn on appeal.

B. Execution Formalities

1. Satisfied, Although Haphazard

Altice v. Hernandez, 668 S.W.3d 399 (Tex. App.—Houston [1st Dist.] 2022, no pet.).

The trial court admitted Testatrix's will to probate which named her granddaughter as executor and sole beneficiary. Thereafter, one of Testatrix's children claimed the will was invalid as not meeting Texas requirements, containing a forged signature of the Testatrix, or procured by undue influence. These claims were unsuccessful and the contesting child appealed.

The appellate court affirmed after examining the circumstances surrounding the will. The

witnesses to the will were one of Testatrix's children (father of the sole beneficiary) and the sole beneficiary's future (after Testatrix's death) husband. The notary testified that he notarized the self-proving affidavit's signatures of Testatrix and one of the witnesses (Testatrix's son), but not the second witness (future son-in-law). The witnesses testified that they signed the will in the Testatrix's presence, but not at the same time. A handwriting expert concluded that Testatrix's signature was genuine. The opinion contains extensive additional details about the execution of the will and the self-proving affidavit with somewhat conflicting testimony, which shows that a normal (proper) will execution ceremony did not take place.

The court rejected three claims that the will was invalid based on formalities. First, the contestant claimed that a valid will requires the testator to initial each page, especially if the will itself, as this one did, indicates an intent that the testator was to initial each page. Second, the court rejected the contestant's claim that Texas law requires the testator to sign in the witnesses' presence. The court explained that Texas law requires the opposite, that is, that the witnesses attest in the testator's presence and that there is no requirement that both witnesses attest at the same time. Again, it did not matter that the will itself stated that the testator signed it in the presence of both witnesses. Third, although the court did agree that the requirements for a valid self-proving affidavit were not satisfied, the court explained that the self-proving affidavit only deals with the manner of proving the will, not its validity.

Moral: A formal will execution ceremony should be conducted to avoid the issues raised in this case.

2. Holographic Will

Wilson v. Franks, No. 03-22-00718-CV, 2023 WL 6627522 (Tex. App.—Austin Oct. 12, 2023, no pet. h.).

A holographic document read, "If I Robert franks is found dead Alll I have Goes too to Valarie Wilsooon." The trial court held that the document did not meet the requirements of a holographic will.

The appellate court affirmed. Even though the instrument appears to have the testator's signature and indicate at-death property disposition desires, the court refused to overturn the trial court's decision because there was no reporter's record of the evidentiary hearing on the validity of the signature. Instead, the record showed that the signature did not match how the alleged testator signed another document. The appellate court explained that without a record, the court must presume that the evidence favored the judgment.

Moral: A reporter's record of a probate proceeding is important to preserve the evidence needed to support an appeal of an unfavorable judgment.

3. Codicil

Mynard v. Degenhardt, No. 14-22-00773-CV, 2023 WL 8943364 (Tex. App.—Houston [14th Dist.] Dec. 28, 2023, no pet. h.).

The proponent attempted to show that a handwritten and signed notation was a valid codicil. Both the trial and appellate courts held that the notation was not a codicil. Although specific property was referenced, the words "be given" were marked out with the words "have been sold" added. Thus, the notation lacked testamentary intent and merely stated information about the sale of the property. In dicta, the court opined that even if the words "be given" were granted effect, the notation still would not be a codicil because there was no indication that the transfer was to occur upon death.

Moral: Codicils must clearly provide for the transfer of property upon death.

C. Interpretation and Construction

1. Definition of "Children"

In re Estate of Mzyk, No. 04-21-00533-CV, 2023 WL 3214572 (Tex. App.—San Antonio May 3, 2023, no pet. h.).

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