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IN THE MATTER OF THE ESTATE OF WILLAIM T. ANTON, JR.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY DOCKET No. BER-P-335-15 CIVIL ACTION OPINION

Decided: October 6, 2015

Honorable Robert P. Contillo, P.J.Ch.

Colleen A. Gaedcke, Esq., appearing on behalf of the plaintiff, Keith Riley (Andora & Romano, LLC).

OPINION

Before the court is an unopposed application to admit to probate an unsigned document said to be the Last Will and Testament of William T. Anton, Jr. For the reasons set forth below, the court herewith enters the requested Judgment.

William T. Anton, Jr. ("Decedent") died on July 15, 2015. At the time of his death, Decedent was survived by his wife, Mary Ann Anton, with whom he was involved in active divorce proceedings, and by his children Lydia A. Riley, William T. Anton, III and Douglas C. Anton.

On June 24, 2015, some twenty-one (21) days before his death, the Decedent, accompanied by his son-in-law Keith Riley ("Keith"), met with attorney Robert J. Romano, Jr., Esq. The Decedent advised the attorney he was unsure where his Will was. The attorney advised the Decedent that if he died without a will his wife – with whom he was in the middle of divorce proceedings — would inherit his estate.

The Decedent asked the attorney to prepare a new Will, leaving his daughter Lydia one-third, his son William T. Anton, III, one-third, and one-third to be held in a trust to be created for any children born to the marriage of Decedent's son, Douglas, and daughter-in-law Anne.

At the same meeting, Decedent asked the attorney to also prepare a Durable Power of Attorney, Proxy Directive and Instruction Directive, naming son-in-law Keith as his primary agent for financial and medical matters with his daughter Lydia as substitute.

The attorney sent Decedent a letter care of Keith on June 25, 2015, confirming his understanding of the documents to be prepared, and setting forth a fee arrangement. By e-mail to the attorney dated June 30, 2015, Keith advised that the Decedent had changed his mind and wanted all three (3) of his children to receive one-third of his estate outright, rather than putting into trust a one-third share for any children that might be born to son Douglas. In addition, Keith advised the attorney the Decedent had decided it would be best if he – the son-in-law - be sole executor (not Lydia and William III), with Lydia as alternate.

By letter dated June 30, 2015, the attorney forwarded to Decedent, again care of Keith, a draft Will, Durable Power of Attorney, Proxy Directive and Instruction Directive. Thereafter, on July 7, 2015, Keith called the attorney's office and advised that Decedent had reviewed the draft documents, including the Will, and that no changes were needed, and that Decedent was ready to come back to the attorney's office and sign the documents. An appointment to do that was scheduled for July 15, 2015, at 3:00 p.m. Keith so advised Decedent on July 9, 2015. On July 14, 2015, Decedent called Keith to confirm that the appointment was for the 15th at 3:00 p.m., and that they would meet at a Diner beforehand, at 2:30 p.m. Decedent failed to show up at the Diner. He had died at home earlier that day.

The attorney certifies that the final, execution copies of the documents, including the Will, are identical to the drafts forwarded to the Decedent under cover of counsel's June 30, 2015 letter.

A Verified Complaint seeking to admit to probate the unsigned Will was filed by Keith on August 31, 2015, together with an Order to Show Cause, including a supporting affidavits from the scrivener, Robert J. Romano, Jr., Esq., and from Keith Riley. The Deputy Surrogate Sharon A. Borys entered the Order to Show Cause on August 31, 2015, returnable October 2, 2015.

Proof of service was received as to all persons entitled to same: Decedent's spouse, Mary Ann Anton, and each of Decedent's three (3) children.

No opposition was received by the court. The court determined to decide the matter on the basis of the papers submitted.

Ordinarily, a will must comply with the following requirements in N.J.S.A. 3B:3-2:

> a. Except as provided in subsection b. and in N.J.S. 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.

While conceding that the document was not signed or handwritten by the Decedent, Petitioner argues that it should be admitted to probate under the provisions of N.J.S.A. 3B:3-3, which provides, in pertinent part:

> Although a document or writing added upon a document was not executed in compliance with N.J.S. 3B:3-2, the document or writing is treated as if it had been executed in compliance with N.J.S. 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 In re Probate of Alleged Will & Codicil of Macool, 416 N.J. Super. 298, 310 (App. Div. 2010), the court held that

> for a writing to be admitted into probate as a will under N.J.S.A. 3B:3-3, the 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.

The court also held that it was not necessary for the document to have been signed by the decedent. Id. At 311.

The Macool holding was reiterated in In re Estate of Erlich, 427 N.J. Super. 64, 71-72 (App. Div.), certif. denied, 213 N.J. 64 (2013). Recognizing that the provisions of N.J.S.A. 3B:3-3 are remedial in nature and entitled to a liberal interpretation, the court nevertheless observed that "the greater the departure from Section 2's formal requirement, the more difficult it will be to satisfy Section 3's mandate that the instrument reflect the testator's final testamentary intent." Erlich, supra, 427 N.J. Super. at 72-73. The court emphasized that

> the burden of proving by clear and convincing evidence that the document was in fact reviewed by the testator, expresses his or her testamentary intent, and was thereafter assented to by the testator. In other words, in dispensing with technical

> conformity, Section 3 imposes evidential standards and safeguards appropriate to satisfy the fundamental mandate that the disputed instrument correctly expresses the testator's intent.

Here, I have the scrivener's affidavit attesting that the final, execution copy of the Will — never seen by Decedent — is identical to the draft sent to the Decedent care of Decedent's son-in-law. And I have the son-in-law's affidavit establishing that the Decedent reviewed that draft, and expressly and without reservation approved of its contents as his final expression of testamentary intent, reportedly saying after reviewing the document "Bob [the scrivener] did exactly what I asked him to do" and that "this Will is perfect as written".

There is no suggestion in the motion record of any lack of capacity, or even infirmity, on the part of Decedent.

No one with an interest in this matter — not Decedent's wife nor any of the three children — has appeared in opposition, and there is thus nothing in the record to cast doubt on any of the factual assertions competently before the court.

Accordingly, the court will grant probate to the unsigned Will sent by the scrivener with the June 30, 2015 letter as the last will and testament of William T. Anton, Jr. An executed Judgment accompanies this Decision.