SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1025-16T3

IN THE MATTER OF THE ESTATE
OF ALICIA A. HEFFLEY, DECEASED.

Argued May 15, 2018 – Decided May 29, 2018

Before Judges Fisher and Natali.

On appeal from Superior Court of New Jersey, Chancery Division, Probate Part, Gloucester County, Docket No. 16-0151.

David C. Clark, appellant, argued the cause pro se.

Lynda L. Hinkle argued the cause for respondent The Estate of Alicia A. Heffley, Deceased (The Law Offices of Lynda L. Hinkle, LLC, attorneys; Lynda L. Hinkle, on the brief).

Marc A. Krefetz, Deputy Attorney General, argued the cause for respondent Unclaimed Property Administration (Gurbir S. Grewal, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Marc A. Krefetz, on the brief).

PER CURIAM

David C. Clark appeals from an order of the Chancery Division denying the admission to probate of a November 21, 2015 holographic

writing alleged to be the last will and testament of Alicia A. Heffley. We affirm.

We glean the following facts from the trial record. Heffley died on January 17, 2016 and was predeceased by her husband. No children were born of the marriage and Heffley had no known relatives.

Heffley shared a close and congenial relationship with her neighbors, which included David and his wife LaNeta.[1] They spoke frequently, socialized together and David assisted Heffley with household maintenance such as grass cutting and snow shoveling. When Heffley died, they handled her funeral arrangements.

The Clarks filed a complaint and obtained an order to show cause in the Chancery Division seeking to admit the November 21 writing to probate as Heffley's last will and testament.[2] Heffley handed the document, signed "A.J.",[3] to LaNeta, with a check for $100, shortly after a birthday party for the Clarks' adult daughter, Stephanie.

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[1] We refer to appellant and his wife by their first names in the interest of clarity. We intend no disrespect by this informality.

[2] LaNeta, a party in the trial proceedings, has not joined in this appeal.

[3] The trial record establishes that Heffley referred to herself as "A.J."

A one-day trial took place in the Chancery Division before Judge Anne McDonnell. David, LaNeta and two additional witnesses, Terry McCulley and Thomas Kuss, testified.

The testimony established that Heffley was intelligent, competent to execute the November 21 writing and that she prepared it. For example, McCulley described Heffley as "highly educated"; Kuss testified that she "talked smart"; and David stated that Heffley was "very smart and intelligent."

LaNeta confirmed that Heffley always kept a neat and tidy home, took care of her own bills and was not under a doctor's care. Similarly, David testified that Heffley made all of her appointments and was not in need of any care at the time of her death. Finally, LaNeta, David and McCulley confirmed that Heffley was the author of the November 21 writing based upon their recognition of her signature or writing style.

The November 21 writing consists of five handwritten pages and is addressed to "Dave, Niccki and Stephaine [sic] and all who has helped A.J. out."[4] After reviewing the letter, to "get a sense of how it flowed," Judge McDonnell fastidiously detailed its contents. She acknowledged that the writing possessed a certain formality as Heffley "spoke of herself in the third person."

[4] At trial, LaNeta was also referred to as "Nicki."

As to its contents, the trial judge noted that the writing repeatedly offered words of encouragement and thanks to David and his family for being kind and good neighbors. It also detailed Heffley's angst over the cost of living in New Jersey, her love of waterfowl and her desire to move to either an assisted living facility or nursing home in Reno, Nevada. Heffley also discussed selling her home and moving into a condominium:

> Considering my place was just appraised at $60,000 I'll need to go somewhere much cheaper. Not moving immediately, but maybe [i]n the next two years or so. . . . I'd like it very much if I could leave my home, crappy car [and] personal effects to you except for a few I have promised out. And, of course I wish - like if sudenly [sic] I died or something without the will that you folks could have my house even. But, as I said, I need to get $60,000 cash for it, in order to pay for my new place.

Finally, Heffley concluded with a "[c]heers for now" and a "TTYL" (talk to you later).

After thoroughly considering the testimony and documentary evidence presented,[5] Judge McDonnell issued a detailed oral decision. Judge McDonnell acknowledged that, clearly, the

[5] In his brief and appendix, David relies upon a document titled "My Grave" that was purportedly prepared and delivered to the Clarks by Heffley with the November 21 writing. Because the document was neither admitted at trial nor the subject of testimony, we decline to consider it on appeal. See R. 2:5-4(a); Townsend v. Pierre, 221 N.J. 36, 45 n.2 (2015).

document was written by Heffley. However, relying upon In re Probate of Will and Codicil of Macool, 416 N.J. Super. 298, 307 (App. Div. 2010), she concluded that the writing lacked the necessary testamentary intent to be considered Heffley's last will and testament:

> Not once does [Heffley] say anything like, "You know, I've thought about it. I've thought about what I own and what I owe and who I'm close to. . . . This is what I want to do. . . [.]"
>
> And she doesn't put it like that. It's a letter. I do believe that she wanted at some point to make a will for you, but I don't know that she was at that stage yet. I'm just not picking up the [testamentary] intent in writing this letter.
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> . . . .
>
> I am not clearly convinced . . . that when [Heffley] offered this letter she was intending for it to be a will. I think she was just writing you a letter indicating what she would like to do. But the difference between a letter where she's telling you what she'd like to do and a holographic will would be that her intent was the document that she was giving to you would be treated as a formal will. . . .

David raises the following points on appeal:

> POINT I.
> THE DOCUMENT DOES COMPLY WITH ALL REQUIREMENTS REQUIRED TO BE PROBATED AS A VALID WILL. THE TRIAL COURT ABUSED ITS DISCRETION IN SUPPORT OF ITS DECISION TO DENY THE DOCUMENT TO

PROBATE. PART OF THE EVIDENCE OFFERED AT TRIAL WAS NOT CONSIDERED, AND WOULD HAVE ASSISTED THE COURT IN ESTABLISHING THE VALIDIDITY [sic] OF THE DISPUTED DOCUMENT.

POINT II.
THE TRIAL COURTS [sic] FINDINGS ARE CLEARLY ERRONEOUS. THE COURT FAILED TO USE THE FOUR CORNERS OF THE DOCUMENT TO DETERMINE THE DECEDENTS [sic] ACUAL [sic] WISHES. THE RECORD SHOWS THAT THE COURT OVERLOOKED CLEAR AND SPECIFIC PROVISIONS MADE BY THE DECEDENT CONCERNING HER WISHES IN CASE OF SUDDEN DEATH.

POINT III.
THE TRIAL COURT ERRED WHILE EXAMINING THE WILL. THE RECORD SHOWS THE JUDGE REWROTE THE ENTIRE DOCUMENT, AND IN DOING SO CHANGED PERTINENT PARTS. THE ALTERED DOCUMENT WAS THEN READ IN OPEN COURT TO SUPPORT THE RULING.

We find David's arguments to be without sufficient merit to warrant further discussion in a written opinion, R. 2:11-3(e)(1)(E), and add only the following comments.

New Jersey courts recognize three types of wills. The first is a formal will that must be in writing, signed by the testator, and signed by at least two individuals who witnessed the testator's signature or acknowledgement. N.J.S.A. 3B:3-2(a)(1)-(3). Second, a court may deem a holographic writing a will. Such writings are deemed "writings intended as a will" and require "the signature and material portions of the document [to be] in the testator's handwriting." N.J.S.A. 3B:3-2(b). Finally, a will that was not executed in compliance with the formalities of N.J.S.A. 3B:3-2 may

be recognized as a valid will "if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute . . . the decedent's will. . . ." N.J.S.A. 3B:3-3.

Whether the proffered writing is a holographic will, formal will, or writing intended as a will, and as the trial judge correctly noted, the document must reflect an intention to create a will. "[T]estamentary intent has always been a prerequisite to admission of an instrument to probate." In re Will of Smith, 108 N.J. 257, 262 (1987). Testamentary intent exists where a decedent intends for a document to be a will. Simonelli v. Chiarolanza, 355 N.J. Super. 380, 385 (App. Div. 2002). As stated by Justice Pollock in Smith, "nothing suggests that the Legislature intended to eliminate testamentary intent either for a holographic or for a more formally executed will. To the contrary, the Wills Act contemplates that testamentary intent is a requirement of both forms of wills." Smith, 108 N.J. at 262. Further, the proponent of "a holographic will bears the burden of producing evidence of testamentary intent. . . ." Simonelli, 355 N.J. Super. at 385.

Judge McDonnell concluded that despite the proofs establishing Heffley as the competent author of the writing, David failed to establish by clear and convincing evidence that the writing reflected Heffley's intention to create a will. The trial

judge reached this conclusion after studiously reviewing and considering the writing itself and the trial testimony. Because Judge McDonnell's findings are "supported by adequate, substantial and credible evidence[,]" they warrant our deference. Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974).

Affirmed.