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INSIDE THIS ISSUE

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ALL "HANDWRITTEN" WILLS ARE NOT VALID

The Supreme Court of Virginia recently considered a case involving a purported holographic (i.e., handwritten) will that changed the decedent's beneficiary from her niece to her sister. In *Berry v. Trible*, et al., (2006 VA. LEXIS 27, 626 S.E.2nd 440, March 3, 2006), the decedent's niece claimed that a 1993 last will and testament left the decedent's estate to her. The decedent's sister claimed that the decedent had executed a holographic will in 1997 that left the decedent's estate to her. The 1997 alleged holographic will consisted of three handwritten notations on the first page of a seven-page typewritten document drafted by the decedent's attorney. The seven-page document also contained many other handwritten notations throughout the document. The sister asserted that this holographic will began with the handwritten phrase, "I give and bequeath all" at the top of the first page of the document, with the phrase then purportedly connected with an arrow to the handwritten notation "Esther Maddox Trible" (the sister), near the middle of the same page, and signed "Louise Trible St. Martin" (the decedent) at the bottom of the same first page. The Court appended the page in question to its opinion; the page contains many other notations and sections in which parts of the typewritten materials were crossed out.

Prior to a jury trial, the circuit court accepted the decedent's 1993 will and held that this will complied with the requisite formalities for a valid will. At trial, the evidence revealed that the decedent once had a close relationship with her niece. In September 1997, however, the decedent, while a patient in a hospital, telephoned her attorney and told her attorney that she wanted to change her will. The attorney testified that the decedent wanted to strike the niece from the will, and that the decedent wanted to leave her estate to her sister. The attorney prepared a revised will and sent a facsimile copy of the draft to the decedent's nurse at the hospital. The nurse sent the attorney a facsimile copy of the draft that had many alterations and additions on each page, except that it was missing a page from the original draft. The handwritten entries included printed and cursive entries, sections crossed out, additions, and arrows apparently connecting some of the handwritten

portions to parts of the typewritten draft. At the bottom of each page was the decedent's signature. The attorney stated that she had difficulty reading the handwritten entries on the document sent to her. The decedent refused to permit the attorney to make any further changes to the document, and the decedent did not respond to a letter from the attorney asking for the decedent's assistance in correcting the document so that it could be redrafted and executed. There was no further contact between the decedent and the attorney. The jury found that the handwritten entries on the first page of the draft constituted the decedent's will, and also that the decedent did not revoke the 1997 writing. The niece appealed, asserting that the 1997 document was not a valid will, but an edited document containing handwriting that could not be understood apart from the typewritten language.

The Supreme Court first discussed the requirements for a valid holographic will. The will must be made wholly in the testator's handwriting, and two disinterested witnesses must identify the handwriting as that of the testator. The testator must sign the will or have someone in the testator's presence and at the testator's direction sign the will, and the signed name must appear on the face of the document in a manner that the name is intended as a signature. The Court discussed two of its previous holdings, and it noted that in each of them, "the handwritten language was self-contained and could be understood without reference to the typewritten text." The Court said that these holdings "did not result from the exclusion of any other handwritten entries made by the testator." The Court described two fundamental principles that characterized its previous holdings. First, the Court considered all the holographic entries made by the testator, not just selected portions. Second, the Court was not required to consider typewritten entries on those documents as part of the will because the handwritten entries were "not interwoven with the typewriting" and did not continue from the typewriting. In this matter, the Court said that the decedent's sister, the proponent of the alleged holographic will, was asking the Court to disregard many of the decedent's handwritten entries that were clearly related to the typewritten text, including other handwritten entries on the page in question. The sister also asked the Court to disregard the five other pages of typewritten and handwritten text that were returned to the attorney. The Court stated that it could not comply with this request because the decedent had signed the bottom of each of the five pages, and made many handwritten substantive changes on each of the pages.

The Supreme Court held that "a holographic will may only be established upon consideration of all handwritten entries made by the testator on a document, not upon consideration of only portions of those handwritten entries selected by the will's proponent." The Court further held that "a purported holographic will is invalid if the handwritten entries are interwoven with or joined to the typewritten material on the document, or continue from the typewritten material in physical form, by reference, or in sequence of thought." The Court concluded that the proffered alleged holographic will failed as a matter of law because the handwritten language was not self-contained and could not be understood without reference to the typewritten text. Further, the entire document that the decedent returned to her attorney was not a valid will because it was not wholly in the testator's handwriting, and it was not duly attested by two competent witnesses.

Although holographic wills are recognized under Virginia law, they still must comply with the requisite formalities for holographic wills. Oast & Hook attorneys regularly visit clients in nursing homes, hospitals, assisted living facilities, and their homes to ensure that each client's estate planning documents are properly drafted, that these documents accurately reflect the client's wishes, and that these documents are properly executed.

Announcement

Oast & Hook is pleased to announce its sponsorship of a series on WHRO-TV entitled "Boomers: Redefining Life After 50." This week's episode is Friends Forever, and it will be aired at 4:30 p.m., Saturday, April 1st.

Oast & Hook

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