FILED BY CLERK
MAY -4 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

In re the ESTATE OF WILLIAM H. ANDRESON.	2 CA-CV 2011-0187 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. PB201100150

Honorable Boyd T. Johnson, Judge

AFFIRMED

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as Co-Personal Representatives

E C K E R S T R O M, Presiding Judge.

¶1 Appellant Joseph Hambright challenges the trial court's denial of his objection to the formal probate of the will of William Andreson. Drawing a distinction between a "will" and a "codicil," Hambright argues that because the original document designated as Andreson's "Will" could not be found, it was presumed to be destroyed and revoked pursuant to Arizona's "[l]ost and missing wills" statute, A.R.S. § 14-3415(A), along with all the codicils to it. Like the trial court, we conclude the final codicil Andreson executed was itself a valid will. We therefore affirm the court's order admitting this instrument to probate.

Factual and Procedural Background

¶2 William Andreson died in June 2011 at the age of ninety-four. A copy of his will, dated April 12, 2004, and copies of three codicils to it were found in his possession, along with the original "Fourth Codicil" to it that had been signed, witnessed, and dated May 11, 2006. The fourth codicil expressly republished the 2004 will and incorporated by reference various provisions of the third codicil. When no other original documents could be discovered in Andreson's residence, Dolores and William Neubrand filed a petition for formal probate of the aforementioned items and sought appointment as personal representatives of the estate.

¶3 Hambright, who is a nephew and heir of Andreson, filed an objection to the petition. In the objection, Hambright argued the missing original will was presumed to have been destroyed and revoked pursuant to A.R.S. § 14-3415(A). Consequently, he maintained all the codicils to the will also were revoked by operation of that statute. In response to the objection, the Neubrands filed a reply memorandum in which they stated

that they only sought admission to probate of the fourth codicil and those portions of the other documents it incorporated by reference.

¶4 After receiving argument and briefing on the applicability and effect of the statute, the trial court implicitly overruled the objection as to the fourth codicil. The court found, *inter alia*, that the fourth codicil was a testamentary document that expressed the decedent's intent, it was executed properly under the law, and it correctly incorporated portions of the other documents to which it referred. Thus, the court admitted the fourth codicil to probate. This timely appeal followed the court's entry of its final order in October 2011.[1]

Discussion

¶5 Preliminarily, we note that Hambright's opening brief does not include a properly denominated "argument" section, as required by Rule 13(a)(6), Ariz. R. Civ. App. P., that specifically sets forth his contentions on appeal. Instead, a general "standard of review" section of his brief blends into an undifferentiated argument section, which makes it difficult for us to discern his precise legal claims. As to "the essence of [Hambright]'s contention," *Bullock v. Geyer*, 9 Ariz. App. 547, 548, 454 P.2d 865, 866

[1]We reject the estate's assertion that the trial court's under-advisement ruling filed in September 2011—a ruling that expressly required the Neubrands "to prepare and submit an appropriate Order on Appointment and Letters Testamentary"—was an appealable order under A.R.S. § 12-2101(A)(9) that began the time for filing a notice of appeal pursuant to Rule 9(a), Ariz. R. Civ. App. P. The Neubrands' petition here initiated a formal probate proceeding that was not finally disposed of, in the absence of the express language required by Rule 54(b), Ariz. R. Civ. P., until the trial court entered its October order. *See In re Estate of McGathy*, 226 Ariz. 277, ¶¶ 13, 17 & n.2, 246 P.3d 628, 630, 631 & n.2 (2010).

(1969), he maintains the trial court "committed reversible error in ignoring and/or failing to apply A.R.S. § 14-3415 and ruling the Fourth Codicil could 'stand alone' and/or revived the missing Will and Third Codicil." "We are bound by the trial court's findings of fact unless they are clearly erroneous, but review questions of law *de novo*." *In re Estate of Fogleman*, 197 Ariz. 252, n.4, 3 P.3d 1172, 1176 n.4 (App. 2000). We find no basis to disturb the court's ruling here.

¶6 Section 14-3415 provides, in part:

> A. If an original will that was last seen in the possession of the testator cannot be found after the testator's death, the testator is presumed to have destroyed the will with the intention of revoking it. This presumption may be rebutted by a preponderance of the evidence. If this presumption arises and is not rebutted the will is revoked.
>
> B. If a will is found to be valid and unrevoked and the original will is not available, its contents can be proved by a copy of the will and the testimony of at least one credible witness that the copy is a true copy of the original. It is not necessary for this person to be an attesting witness to the will.

This statute contrasts an "original" will with a "copy" of a will; it does not contrast an original will with a codicil.

¶7 The distinction Hambright attempts to draw here between "wills" and "codicils" is not well founded in Arizona law. As appellees point out, a "codicil" is included in the definition of a "will" under what is now A.R.S. § 14-1201(61).[2] As the term appears in title 14—including in § 14-3415, set forth above—a "will" means "a codicil and any testamentary instrument that merely appoints an executor, revokes or

[2]The provision was formerly numbered § 14-1201(59) until the statute was amended by 2011 Ariz. Sess. Laws, ch. 354, § 2.

revises another will, nominates a guardian or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession." § 14-1201(61); *accord* A.R.S. § 1-215(43) ("In the statutes and laws of this state, unless the context otherwise requires . . . '[w]ill' includes codicils.").

¶8 "A will is a 'legal declaration of [one's] intentions, which he wills to be performed after his death.'" *In re Estate of Waterloo*, 226 Ariz. 492, ¶ 7, 250 P.3d 558, 560 (App. 2011), *quoting In re Miller's Estate*, 54 Ariz. 58, 61, 92 P.2d 335, 337 (1939) (alteration in *Waterloo*). When determining whether a document is a will, we do not require that particular labels or words be used, but rather examine whether the putative testator "'intended to dispose of his property after his death.'" *Id.*, *quoting Miller's Estate*, 54 Ariz. at 62, 92 P.2d at 337. A document that happens to be labeled a codicil is a will if it manifests an intention to dispose of property after death.

¶9 Further, the act of revoking one will does not necessarily revoke another. *See, e.g., In re Estate of Ivancovich*, 151 Ariz. 442, 444, 728 P.2d 661, 663 (App. 1986) (finding codicil revoked by destruction, but not will); *see also* A.R.S. § 14-2507(D) (subsequent will making incomplete disposition of estate presumed to supplement rather than revoke prior will). Thus, even if we assume the 2004 will was destroyed and thereby revoked by Andreson as a testamentary instrument, his fourth codicil remained a valid "will" under A.R.S. §§ 14-1201(61) and 14-2502; and the fourth codicil properly referred to and incorporated the photocopied documents with which it was found, regardless of their continuing independent vitality as legal instruments. *See* A.R.S. § 14-2510 (listing requirements for incorporation of written documents by reference). In sum,

because the original fourth codicil was offered for probate here, an "original will" was not missing in this case, and § 14-3415(A) was not triggered.[3]

¶10 Hambright counters that § 14-1201 simply "provides a definition for statutory construction and does not provide substantive stand alone rights for a codicil." But, as we have indicated above, § 14-1201(61) defines the material term "will" in § 14-3415(A). So § 14-1201 provides the substance of the very statute on which Hambright bases this appeal.

¶11 Hambright further asserts, without citing any pertinent authority, that "a codicil is not a separate and independent testamentary instrument under Arizona Probate law," "[a] will and codicil(s) function as a single testamentary unit under Arizona law," and "under Arizona law a codicil cannot stand alone."[4] In light of our analysis above, we may summarily reject these unfounded contentions.

¶12 We recognize there might be situations in which a codicil is so incomplete and dependent upon an earlier will that the revocation of that will effectively revokes the codicil, leaving it with no testator intent to effectuate. Hambright, however, has not

[3]We may affirm a trial court's legally correct ruling on any basis supported by the record. *Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9, 130 P.3d 538, 540 (App. 2006); *Wertheim v. Pima Cnty.*, 211 Ariz. 422, ¶ 10, 122 P.3d 1, 3 (App. 2005). For this reason, and in the absence of a cross-appeal by the appellees, we do not address the court's ruling as it relates to other documents.

[4]Elsewhere in his opening brief, Hambright cites the case of *In re Estate of Travers*, 121 Ariz. 282, 589 P.2d 1314 (App. 1978), without offering any discussion or explanation of its applicability. *Travers* does not support the propositions Hambright advances here, however, nor does it otherwise establish his right to relief. Furthermore, given our disposition of this case under controlling Arizona law, we need not and do not address the secondary sources Hambright has cited in his brief, including a legal encyclopedia, practice guide, and case law from other states.

argued that such was the character of the fourth codicil here. Nor could the codicil be so characterized. At minimum, the fourth codicil directed that sums of money be paid to three named individuals and, further, that the remainder of the estate be given to the William H. Andreson Charitable Trust. In short, the codicil expressed an intent to dispose of property after the testator's death. *See Waterloo*, 226 Ariz. 492, ¶ 7, 250 P.3d at 560. The fourth codicil, therefore, was a will subject to probate under Arizona law.

Disposition

¶13 For the foregoing reasons, we affirm the court's judgment. Hambright's request for costs under Rule 21, Ariz. R. Civ. App. P., is denied.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge