No. 52,664-CA

DISSENT IN THE DENIAL OF REHEARING
RENDERED AUGUST 9, 2019

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

SUCCESSION OF
LEE MARK HANNA, JR.

* * * * *

Originally appealed from the
Second Judicial District Court for the
Parish of Jackson, Louisiana
Trial Court No. 7111

Honorable Jenifer Ward Clason, Judge

* * * * *

PAUL HEATH HATTAWAY JOSHUA L. CRITSELOUS	Counsel for Appellants, Rose Delaney (Kari) and Mark Delaney
LAW OFFICES OF CHRIS L. BOWMAN By: Chris L. Bowman Christy Joynor Walker Colby L. Bowman	Counsel for Appellee, Savannah Ann Norman

* * * * *

Before PITMAN, GARRETT, STONE, STEPHENS, and THOMPSON, JJ.

THOMPSON, J., dissents in the denial of rehearing

In the rehearing application, Appellee Savannah Norman, the daughter of the decedent, Lee Mark Hanna, Jr., contends in part that this Court erred in holding that the October 18, 2012 testament of the decedent was valid and that the attestation clause contained therein was "substantially similar" to that required by La. C.C. art. 1577(2). On August 8, 2019, rehearing was denied. After a careful review of the facts and law pertaining to this case, I respectfully dissent from the panel's decision.

Testaments are most often the last evidence of a decedent's wishes. Here, Lee Mark Hanna, Jr., ("Hanna") executed a will on September 19, 2012, substantially in favor of his only child, Savannah Norman. Just under a month later, on October 18, 2012, a new will was prepared, this time by a different attorney, which substantially benefited his stepchildren. It is the October 18, 2012 testament (hereinafter referred to as the "Will") that was challenged for its non-compliance with the limited requirements of La. C.C. art. 1577(2).

For a notarial testament to be valid in Louisiana it must comply with the requirements of La. C.C. art. 1577, which require:

> The notarial testament shall be prepared in writing and dated and **shall** be executed in the following manner. If the testator knows how to sign his name and to read and is physically able to do both, then:
>
> (1) In the presence of a notary and two competent witnesses, the testator shall declare or signify to them that the instrument is his testament and **shall sign his name at the end of the testament and on each other separate page**.
>
> (2) In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, or one substantially similar: "In our presence the testator has declared or signified that this instrument is his testament and **has signed**

> **it at the end and on each other separate page**, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _________, ____.
>
> (Emphasis added).

The main issue in dispute in this matter is the asserted non-compliance of the attestation clause. The Will was comprised of four typed pages, was dated, clearly established it was Hanna's intent for it to be his "last will and testament," and was signed at the end and on every other separate page by Hanna. There was a declaration signed by the notary and witnesses but it varied significantly – not in words but in effect – from the attestation clause outlined in La. C.C. art. 1577(2).

A comparison of La. C.C. art. 1577(2) and the attestation clause found in the Will are as follows:

La. C.C. art. 1577(2):	**Lanugage in Hanna's Will:**
In our presence the testator has declared or signified that this instrument is his testament **and has signed it at the end and on each other separate page**, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _________, ____.	SIGNED AND DECLARED by testator above named in our presence to be his last will and testament and in the presence of the testator and each other we have hereunto subscribed our names on this 18th day of October, 2012 at Jonesboro, Louisiana.

(Emphasis added).

The legislature, in selection of the plain language of La. C.C. art. 1577, placed equal importance on: (1) the testament being signed at the end and on each page; and (2) the attestation clause confirming the testament was signed at the end and on each page in the presence of the notary and witnesses. Without both, the testament fails to meet the requirements as to form.

The language of La. C.C. art 1577(2) provides that the attestation clause is to confirm the testament was actually signed by the testator **at the end and on each separate page**. *See* La. C.C. art. 9 ("When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature."); *see also Succession of Toney*, 16-1534 (La. 05/03/17), 226 So. 3d 397, 406 (citing *Guillory v. Pelican Real Estate, Inc.*, 14-1539, 14-1593, 14-1624 (La. 03/17/15), 165 So. 3d 875, 877) ("It is presumed that every word, sentence, or provision in a law was intended to serve some useful purpose, that some effect is to be given to each such provision, and that no necessary words or provisions were employed.")).

The specific requirements of exactly what the witnesses and notary are attesting to, found in La. C.C. art. 1577(2), tracks the language requiring the testator **sign at the end and on every page**, detailed in La. C.C. art 1577(1), for the testament to be valid. The important missing language in the Will's attestation clause indicates a patent deficiency. Such a deviation from the requirements as to form is neither minor nor immaterial. As such, under these specific circumstances, it precludes this writer from concluding the attestation clause is "substantially similar" to that required.

Recognizing the exacting detail of where a testator must sign a testament, and what language is required in the attestation clause regarding each of those signatures, leads to the ultimate conclusion there is ambiguity in the attestation clause found in Hanna's Will and it is not "substantially

similar" to the assurances required by La. C.C. art. 1577(2) regarding signatures on testaments.

For the foregoing reasons, I would grant rehearing and respectfully dissent in the denial of the rehearing application.