

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Estate of JOHN RONALD WERNER,  
Deceased.

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O.H. WATKINS,

Appellant,

v

ESTATE OF JOHN RONALD WERNER,

Appellee.

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UNPUBLISHED

June 15, 2004

No. 246831

Livingston Probate Court

LC No. 01-005252-CZ

Before: Sawyer, P.J., and Gage and Owens, JJ.

PER CURIAM.

Appellant appeals as of right from an order by the probate court denying his complaint against appellee. We affirm.

In this case, appellant brought a claim against appellee based on an alleged loan of \$150,000—in cash—made by appellant to the decedent, John Ronald Werner. The proceedings below focused on whether Werner’s purported signature on an alleged promissory note regarding the loan was genuine or a forgery.

Appellant argues that the probate court clearly erred in finding that promissory note was a forgery. We disagree. We review the findings of a probate court sitting without a jury for clear error. *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003). A finding is clearly erroneous if a reviewing court is left with a firm and definite conviction that a mistake has been made. *Id.*

We do not have a firm and definite conviction that the probate court made a mistake in effectively concluding that Werner’s purported signature on the alleged promissory note was a forgery and, accordingly, holding that appellant did not establish his claim by a preponderance of the evidence. The probate court’s finding was strongly supported by reasonable considerations in the record. The probate court reasonably viewed the testimony of appellant’s handwriting expert as amounting to little more than a conclusion that Werner provided the disputed signature because of the similarity of the style of writing of the disputed signature to samples of Werner’s signature. However, as the probate court indicated, this does little or nothing to exclude the

possibility that the signature was traced. Rather, the testimony of appellee's handwriting expert strongly supports a conclusion that the signature was traced or drawn in an effort to fabricate Werner's signature. The analysis of appellee's expert finding that signatures by Werner on other documents did not show stopping and starting of the pen as in the disputed signature tends to call into question appellant's expert's attribution of this to Werner's age and possible health problems. In addition, the probate court reasonably viewed appellee's handwriting expert as having superior qualifications in light of his testimony describing his training and experience in his work for the state police.

The probate court also properly considered the lack of corroboration in the records of Werner's bank accounts for receipt of a large sum of money such as \$150,000. It reasonably viewed the personal connection between appellant and the three other witnesses who testified to the alleged transaction in which Werner purportedly signed the promissory note and received the money as discounting their credibility. The probate court also reasonably considered the testimony of two witnesses indicating that appellant referred to his only proof as a "handshake" when asked about proof of the purported loan as undermining the credibility of appellant's version of events given that it seems it would have been natural for him to refer to the promissory note as his proof if it actually existed at that point. Finally, the general oddity of a party providing a loan for an amount as large as \$150,000 in cash rather than in the form of a check or other written instrument that would provide documentary proof of the transfer of money provides a further basis to support a conclusion that the probate court did not clearly err in effectively concluding that the disputed signature was a forgery. Thus, we conclude that the challenged finding by the probate court was not clearly erroneous.

Affirmed.

/s/ David H. Sawyer

/s/ Hilda R. Gage

/s/ Donald S. Owens