

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IMO THE ESTATE OF )  
MABEL A. HEIGLE, DECEASED ) C.A. NO. 2758-MA  
)

MASTER'S REPORT

Date Submitted: February 28, 2007

Draft Report: April 30, 2007

Final Report: May 7, 2007

Josiah Wolcott, Esquire, of Connolly Bove Lodge & Hutz, LLP; Attorney for the  
Petitioner

AYVAZIAN, Master

This is a report on a verified petition to probate copy of a will. According to the verified petition, on May 15, 2001, Mabel A. Heigle (“Mrs. Heigle”) executed a will (the “2001 Will”) that left the remainder of her estate in trust (the “Residuary Trust”) to be divided in two equal shares for her husband’s two nieces, Laurie Danboise Ricks (“Laurie”) and Jeanne Marie Danboise (“Jeanne”). Laurie and Jeanne’s shares were to be held in further trust, with the greater of the income or a five percent unitrust amount to be paid to them on at least an annual basis. The trustees of the Residuary Trust could also make discretionary distributions of principal to Laurie or Jeanne for their health, maintenance, and/or support. Upon the death of either Laurie or Jeanne (or upon the death of the survivor of Mrs. Heigle and her husband,<sup>1</sup> if such niece was not then living), such niece’s share was to be distributed in equal shares between Tri-State Bird Rescue and Research, Inc. and Durrell Wild Life Conservation Trust.

On May 12, 2005, Mrs. Heigle executed another will (the “2005 Will”). The 2005 Will differed from the 2001 Will only in respect to the beneficiaries of the Residuary Trust. Mrs. Heigle decided to omit Jeanne from the 2005 Will so as to make Laurie the sole beneficiary of the balance of Mrs. Heigle’s Residuary Trust during Laurie’s lifetime. Mrs. Heigle died on November 28, 2006. Petitioners Julie Bartley and Stirling Brinkman, who were friends of Mrs. Heigle and were

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<sup>1</sup> According to the verified petition, Mrs. Heigle’s husband died on July 23, 2001.

named Trustees of the Residuary Trust and Executors in the 2001 and 2005 Wills, were unable to locate the original of the 2005 Will after an exhaustive search. The original of the 2001 Will was lodged with the Register of Wills in New Castle County on January 27, 2007, and is located in Estate Folio #139808. Petitioners now seek an order admitting to probate a conformed copy of Mrs. Heigle's 2005 Will.

“A missing will, last in possession of the testator, is presumed to have been discarded or intentionally destroyed with the intent that it be revoked.” *In re: Marilyn S. Wilson Estate*, 1999 WL 504783 (Del. Ch.) (ORDER) (citing *Putney v. Putney*, 487 A.2d 1125, 1127 (Del. 1984)). It is possible, however, to rebut the presumption upon a proper showing of evidence. See *Putney*, 487 A.2d at 1127. To overcome the presumption of revocation, the party seeking to establish the validity of the missing will must show that: (1) a valid will was executed by the decedent; (2) the terms of the missing will; and (3) the will was lost or unintentionally destroyed and that the decedent's testamentary intent was not altered prior to his death. See *In Re Ainscow's Will*, 27 A.2d 363, 365 (Del. Super. 1942).

I did not request a hearing to be held in this case because Petitioners have provided sufficient documentary evidence to overcome the presumption of revocation. Furthermore, Jeanne, the only person who would be negatively

affected by the admission to probate of the conformed copy of Mrs. Heigle's 2005 Will, has consented to the petition and waived notice of a hearing. The documentary evidence in this case consists of: (1) Mrs. Heigle's death certificate; (2) a conformed copy of the 2005 Will; (3) an affidavit of Erica A. Miller, a witness to the 2005 Will; (4) the affidavit of Margaret Anderson, another witness to the 2005 Will; (5) the affidavit of Gregory J. Weinig, Esquire, the scrivener of the 2005 Will; (6) the affidavit of Julie Bartley, who was present when the 2005 Will was executed; (7) a letter dated August 1, 2001, purportedly written by Jeanne Danboise acknowledging that Mrs. Heigle had written Jeanne out of her will; and (8) an affidavit of Jeanne Danboise acknowledging that she read the verified petition and requesting that the Court admit the conformed copy of Mrs. Heigle's Will dated May 12, 2005 to probate in lieu of the original.

The affidavits show that on May 12, 2005, Mrs. Heigle signed a will, which was witnessed by two people and notarized in a manner that would make it valid and self-proving. *See* 12 Del. C. §§ 202, 1305. At the same time, the scrivener prepared two conformed copies of the will, one of which he retained at his office and the other was given to Mrs. Heigle in an envelope marked "Home." The original of the 2005 Will was also given to Mrs. Heigle in an envelope marked "Safe Deposit Box" with instructions for her to deposit the materials in her safe deposit box or other similar fireproof location. According to the scrivener, Mrs.

Heigle had directed him to prepare the 2005 Will specifically to ensure that the sole lifetime beneficiary of her residuary trust would be Laurie. In his affidavit, the scrivener also averred that the conformed copy sought to be admitted to probate is a true and correct conformed copy of the properly executed Will of Mabel A. Heigle dated May 12, 2005.

According to the verified petition, Petitioner Julie Bartley recalled Mrs. Heigle making statements before and after the execution of the 2005 Will that demonstrated her desire to change her will so that the balance of the Residuary Trust would go entirely to Laurie rather than being shared equally between Laurie and Jeanne. Mrs. Heigle subsequently asked Bartley to arrange a meeting with the scrivener to discuss potential changes to her will,<sup>2</sup> but according to the scrivener's affidavit, Mrs. Heigle declined to make any changes to the 2005 Will during her meeting with the scrivener in July 2005. Both Petitioners now claim that if Mrs. Heigle had intended to change or revoke her 2005 Will, she would have confided this to them.

The documentary evidence strongly suggests that the original 2005 Will was unintentionally lost. The evidence shows that Mrs. Heigle was capable of revising her will to reflect an altered testamentary intent, but there is no indication that after executing her 2005 Will, Mrs. Heigle ever again contemplated a change in the

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<sup>2</sup> According to the verified petition, the potential changes were unrelated to the number and identity of the lifetime beneficiaries or beneficiaries of the Residuary Trust.

beneficiaries of her estate. Nor is there any reason why, if Mrs. Heigle had contemplated such a change, she would have resorted to destroying the original 2005 Will rather than simply requesting another meeting with her attorney to revise it. The fact that Jeanne previously acknowledged her aunt's decision to "write [Jeanne] out of [Mrs. Heigle's] will,"<sup>3</sup> and now has consented to the relief requested in the verified petition buttresses my determination that the original 2005 Will was simply lost, and not destroyed or discarded with the intent to revoke it. Accordingly, I recommend that the conformed copy of the 2005 Will of Mabel A. Heigle, deceased, be admitted to probate as her Last Will and Testament, and that any other will of Mrs. Heigle executed before the 2005 Will shall not be admitted to probate.

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<sup>3</sup> Mrs. Heigle's 2005 Will explicitly disinherits Jeanne in Article 3(D): "I have intentionally made no provision in this my Will for my husband's niece, JEANNE MARIE DANBOISE."