

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

In re ESTATE OF JOHNNY HUANG, a/k/a) Appeal from the Circuit Court
Chung I Huang, Deceased) of Du Page County.
)
) No. 21-P-94
)
) Honorable
) Brian J. Diamond,
(I-Chih Amy Huang, Petitioner-Appellant).) Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court, with opinion.
Presiding Justice Bridges and Justice Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Petitioner, I-Chih Amy Huang (Huang), executor of the estate of Johnny Huang, a/k/a Chung I Huang, Deceased (decedent), appeals an order of the circuit court of Du Page County dismissing her petition to admit the decedent's will to probate. We reverse and remand for further proceedings.

¶ 2 I. BACKGROUND

¶ 3 The decedent, who was a resident of California, died in Thailand on May 23, 2019. On September 12, 2013, the decedent executed a will in California leaving the residue of his estate to the Huang Family Trust (trust). The decedent owned a parcel of real estate in Du Page County, Illinois, that was not part of the trust. On January 22, 2021, Huang filed a petition in the circuit

court of Du Page County to admit the will to probate. Huang’s counsel then received an e-mail from the court advising as follows: “Per [J]udge Diamond, Will must be first admitted in place of defendant’s [sic] residence—California. Here in Du Page it can only be an ancillary proceeding. We need proof of admission in California.” Counsel submitted case law to the court in support of probating the will in Illinois without first initiating proceedings in California. The court responded, as follows:

“The court has read the information and cases (which are citations primarily under the old Probate Act) and respectfully disagrees with the premises of the argument. Even if the Court was permitted to exercise its discretion to open a non-ancillary estate in this county, the Court would not do so. All property, in whatever state it is located, belongs to the estate of the decedent. California has primary jurisdiction over Illinois assets because that state was the residence of the decedent, and the decedent’s creditors can claim against same in California. There are many reasons for probating the estate assets in the state of his residence. The Will is to be admitted there before requesting to admit ancillary jurisdiction here.”

Huang moved to reconsider, arguing that the decedent had no assets subject to probate in California and that Illinois has jurisdiction to probate the will because the decedent left real property in Illinois.

¶ 4 Huang next appeared before the court on April 20, 2021. At that status hearing, the court denied the motion to reconsider and once again directed Huang to open an estate in California and then to open an ancillary estate in Illinois, “if necessary.” Huang filed a timely notice of appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Mar. 8, 2016). See *In re Estate of Vogt*,

249 Ill. App. 3d 282, 285 (1993) (Rule 304(b)(1) applies to orders admitting or refusing wills to probate).

¶ 5

II. ANALYSIS

¶ 6 Huang contends that the court erred in dismissing her petition to admit the will to probate. The law favors admission of a will to probate. *Estate of Tassaras v. Michas*, 404 Ill. App. 3d 825, 828 (2010). The court is required to admit a will to probate upon proof that the statutory requirements have been met. *Robertson v. Yager*, 327 Ill. 346, 354 (1927); *In re Estate of Ketter*, 63 Ill. App. 3d 796, 800 (1978) (on a petition to admit an instrument to probate, the court can refuse probate of a will only on the failure to make proper proof of the statutory requirements or because of proof of fraud, forgery, compulsion, or other improper conduct deemed sufficient to invalidate the will). When a will meets the statutory requirements for admission to probate, a court cannot prescribe other conditions for its admission. *In re Estate of Parker*, 42 Ill. App. 3d 860, 863 (1976).

¶ 7 The issue is whether the will can be admitted to probate in Illinois in the first instance or whether Huang must first open an estate in California, where the decedent presumably was domiciled when he died. The admission of a will to probate is governed by statute. *In re Estate of Smith*, 282 Ill. App. 3d 389, 392 (1996). Section 5-1 of the Probate Act of 1975 (Act) (755 ILCS 5/5-1 (West 2018)) provides, *inter alia*, that probate or administration shall be in the court of the county where (a) the decedent had a known place of residence or (b) *if he or she had no known place of residence in Illinois, in the county where the greater part of his or her real estate is located at the time of his or her death*. Pursuant to section 7-1 of the Act, a foreign will may be admitted to probate in Illinois where (1) the will has been admitted to probate outside of this state or (2) *the will was executed outside of this state in accordance with the law of this state*, of the place where

executed, or of the testator's domicile at the time of execution. 755 ILCS 5/7-1 (West 2018). Section 7-4 of the Act provides, *inter alia*, that a will executed outside of Illinois in accordance with the Act is sufficiently proved to admit it to probate in Illinois when the will is proved "in the manner provided by this Act for proving wills executed in this State." 755 ILCS 5/7-4(a) (West 2018). Section 6-4 of the Act provides that a will is proved for purposes of admitting it to probate when (1) each of two attesting witnesses to the will states that he or she was present when the testator signed the will or acknowledged it as his or her act, (2) the will was attested by the witness in the testator's presence, and (3) the witness believed the testator to be of sound mind and memory when he or she signed or acknowledged the will. 755 ILCS 5/6-4 (West 2018). Where these conditions are met, a will is sufficiently proved to admit it to probate, unless there is proof of fraud, forgery, compulsion, or other improper conduct that, in the court's opinion, would be deemed sufficient to invalidate or destroy the will. 755 ILCS 5/6-4 (West 2018).

¶ 8 It is necessary for us to construe the Act to determine whether the court correctly ordered Huang to open an estate in California before seeking administration of an estate in Du Page County. The primary rule of statutory construction is to ascertain and give effect to the true intent of the legislature. *In re Estate of Rivera*, 2018 IL App (1st) 171214, ¶ 51. We give the statutory language its plain and ordinary meaning. *Rivera*, 2018 IL App (1st) 171214, ¶ 51. Courts will not depart from the plain statutory language by reading into it exceptions, limitations, or conditions that conflict with the legislature's expressed intent. *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶ 56. Construction of a statute, including the Act, is a question of law, which we review *de novo*. *Rivera*, 2018 IL App (1st) 171214, ¶ 51. The Act is to be construed liberally, and the common law rule that statutes altering the common law will be strictly construed is not applicable. *Tassaras*, 404 Ill. App. 3d at 828.

¶ 9 Here, the plain language of section 5-1(b) of the Act fixes venue in Du Page County. Section 5-1(b) provides that, if a testator has no known place of residence in this state, probate of his or her will shall be “in the county in which the greater part of his [or her] real estate is located at the time of his [or her] death.” 755 ILCS 5/5-1(b) (West 2018). Section 5-1 uses the word “residence” synonymously with “domicile.” *In re Estate of Elson*, 120 Ill. App. 3d 649, 653-54 (1983). So, too, the question of Illinois’s jurisdiction over the decedent’s real estate located here is well settled. “An Illinois circuit court in probate may exercise jurisdiction over the estate of a decedent either when the deceased was domiciled in Illinois or at the time of [his or] her death owned property in this State.” *Elson*, 120 Ill. App. 3d at 654. Here, the decedent left real estate worth apparently over \$1 million in Du Page County. Nothing in section 5-1(b) requires Huang to open an estate in California before probating the will in Du Page County, and we will not read such a requirement into the Act. See *In re Estate of Nida*, 2022 IL App (5th) 200432-U, ¶ 20 (court would not read into the statute a requirement that a will must be filed only by legal counsel). It has long been settled that “[a will] may be probated in any county in any State where the testator had and left assets, particularly real estate.” *Chicago Terminal Transfer R.R. Co. v. Winslow*, 216 Ill. 166, 173 (1905). It is the rule that “[a]ny asset located in Illinois is sufficient to confer jurisdiction upon our courts to admit a will to probate and to issue letters testamentary.” *In re Estate of Zorn*, 118 Ill. App. 3d 988, 990 (1983).

¶ 10 Venue and jurisdiction being clear, we move to article VII of the Act, which provides for the probate of foreign wills. Section 7-1 of the Act provides, *inter alia*, that a foreign will may be admitted to probate in Illinois when the will was executed outside Illinois in accordance with Illinois law. 755 ILCS 5/7-1 (West 2018). Section 7-4 of the Act provides for the *original* proof of a foreign will in Illinois. 755 ILCS 5/7-4 (West 2018). These provisions would be unnecessary

if the law required an estate to be opened in the first instance where the testator was domiciled at death. A decedent may have an estate in each jurisdiction in which he or she left property. *Wisemantle v. Hull Enterprises, Inc.*, 103 Ill. App. 3d 878, 881 (1981). The estate established where the decedent was last domiciled is the “domiciliary estate,” and any estate created elsewhere is “ancillary.” (Internal quotation marks omitted.) *Wisemantle*, 103 Ill. App. 3d at 881-82. The administration in each state, whether domiciliary or ancillary, is “separate and complete in itself.” (Internal quotation marks omitted.) *Wisemantle*, 103 Ill. App. 3d at 882. Property located in Illinois when a testator dies is subject to Illinois administration regardless of the testator’s domicile at death. *In re Estate of Maslowe*, 119 Ill. App. 3d 776, 780 (1983). For example, in *Maslowe*, the court held that stock certificates located in Illinois when the decedent died were subject to administration in Illinois rather than in the decedent’s domicile of Michigan. *Maslowe*, 119 Ill. App. 3d at 780. Thus, the designation of an estate as “domiciliary” or “ancillary” does not suggest that one is subservient to, or dependent upon, the other. Similarly, in *In re Estate of Nielsen*, 320 Ill. App. 655 (1943), the court quoted a Harvard Law Review article, as follows: “ ‘A non-domiciliary state in which assets of the decedent are found has jurisdiction to grant *original* probate of a will.’ ” (Emphasis added). *Nielson*, 320 Ill. App. at 658 (quoting *Developments in the Law*, 50 Harv. L. Rev. 1119, 1183 (1937)). Although *Nielsen* was decided before the enactment of our current Act, section 7-4 of the Act, which provides for original probate of a foreign will, is in perfect harmony with *Nielsen*.

¶ 11 Here, the decedent signed the will, which also contains an “attestation” under oath of two witnesses. The witnesses attested that (1) the decedent signed the will in their presence, (2) the testator declared to the witnesses when he signed it that it was his last will and testament, (3) they signed as witnesses in the testator’s presence and in the presence of each other, (4) the testator was

of sound mind and memory when he signed the will, and (5) the testator was not acting under fraud, menace, duress, misrepresentation, or undue influence when he signed the will. Consequently, the will meets the requirements of section 6-4 of the Act and qualifies for admission to probate as a foreign will because it was executed outside of Illinois in accordance with Illinois law. Accordingly, we reverse the dismissal of the petition to admit the will to probate and remand with directions to enter an order admitting the will and to issue letters testamentary to Huang.

¶ 12

III. CONCLUSION

¶ 13 For the foregoing reasons, the judgment of the circuit court of Du Page County is reversed and the cause is remanded with directions.

¶ 14 Reversed and remanded with directions.

No. 2-21-0269

Cite as: *In re Estate of Huang*, 2022 IL App (2d) 210269

Decision Under Review: Appeal from the Circuit Court of Du Page County, No. 21-P-94; the Hon. Brian J. Diamond, Judge, presiding.

**Attorneys
for
Appellant:** Joseph P. Selbka, of Pluymert, MacDonald, Hargrove & Lee, Ltd.,
of Hoffman Estates, for appellant.

**Attorneys
for
Appellee:** No brief filed for appellee.
