IN THE COURT OF APPEALS OF IOWA

No. 2-776 / 12-0262
Filed November 15, 2012

IN THE MATTER OF THE ESTATE OF JEFFREY ALAN KRIER, Deceased.

SAMUEL G. KRIER,
Petitioner-Appellant.

Appeal from the Iowa District Court for Keokuk County, Myron Gookin, Judge.

Samuel Krier appeals from the district court order overruling and denying his petition for probate of will and appointment of executor. **AFFIRMED.**

Thomas J. Houser and Jana M. Luttenegger of Davis, Brown, Koehn, Shors & Roberts, P.C., West Des Moines, for appellant.

Garold F. Heslinga and Dustin D. Hite of Heslinga, Dixon, Moore & Hite, Oskaloosa, for appellees.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

BOWER, J.

Samuel Krier appeals from the district court order overruling and denying his petition for probate of will and appointment of executor. He contends the district court erred in finding Jeffrey Alan Krier's will was not properly witnessed because, although it contained the stamp of the notary public, it lacked her signature. Because we find a notarial stamp does not qualify as a signature as required by Iowa law, we affirm the district court.

I. Background Facts and Proceedings.

The facts of this case are not in dispute. On February 20, 2007, Jeffrey executed a handwritten will. Jeffrey signed his name to the will in the presence of Samuel and Amy Krier. Samuel then signed the will. Amy affixed her notarial stamp and wrote in the expiration date of her commission. Amy did not sign the will.

Jeffrey died on April 4, 2011. On June 29, 2011, an intestate estate was opened for Jeffrey Krier and Eric Palmer was appointed the administrator of the estate. On October 17, 2011, Samuel filed a petition for probate of will and appointment of executor for Jeffrey's estate. A hearing was held on November 30, 2011, to address the conflict in the administration of the estate. It was argued that the February 20, 2007 will was not valid because Amy did not sign the document.

Following a hearing, the district court entered its order, finding the will was not properly witnessed because it lacked Amy's signature. The court denied

Samuel's petition and allowed the earlier action to continue. Samuel filed a timely notice of appeal.

II. Scope and Standard of Review.

Review of an action to set aside a will is triable at law. *In re Estate of Todd*, 585 N.W.2d 273, 275 (Iowa 1998). Our review on appeal from a will contest is on assigned error, not de novo. *Id.*

III. Analysis.

Samuel argues the district court erred in finding the will is invalid because it was not properly witnessed. There is no dispute the will was signed by Jeffrey and witnessed by Samuel and Amy on February 20, 2007. The issue on appeal is whether Amy's notarial stamp on the will, in lieu of her signature, is sufficient to satisfy the legal requirements for witnessing a will.

Iowa Code section 633.279 (2007) requires that all wills must be "witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other." Chapter 633 does not provide a definition for the term "signed" or "signature." However, the district court looked to the definition of signature provided in section 4.1(39) in determining the notarial stamp is insufficient to satisfy the requirements of section 633.279. That section states in pertinent part:

> In the construction of the statutes, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the general assembly, or repugnant to the context of the statute:
>
> . . . .
>
> **39. Written—in writing—signature.** . . . A signature, when required by law, must be made by the writing or markings of the person whose signature is required. . . . If a person is unable due

> to a physical disability to make a written signature or mark, that person may substitute either of the following in lieu of a signature required by law:
>
> a. The name of the person with a disability written by another upon the request and in the presence of the person with a disability.
>
> b. A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only when affixed by that person or another upon request and in the presence of the person with a disability.

Iowa Code § 4.1. Because Amy did not provide a signature or mark and is not physically disabled, the court found the will was not properly witnessed by her.

On appeal, Samuel cites to the definition of "sign" provided in Black's Law Dictionary and cites to cases outside this jurisdiction to support his argument that Amy's notarial stamp suffices. Because the legislature has provided a definition of the term in the code, we need not reference these persuasive sources to resolve the issue. *See The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 425 (Iowa 2010) (noting that where the legislature provides its own definition for a term, "the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature").

Samuel also argues the definition provided in section 4.1(39) allows for use of a rubber stamp reproduction in lieu of a writing. He argues that although the statute provides that the use of a stamp is permissible *if* a person has a disability, it does not state that is the *only* time a stamp may be used. We disagree. The statute requires two circumstances to exist before a rubber stamp may be used in lieu of a signature: (1) the stamp must be "adopted by the person with a disability for all purposes requiring a signature" and (2) it must be "affixed

by that person or another upon request and in the presence of the person with a disability." A plain reading of the statute shows a stamp may only be used by a person with a disability. Because Amy is not a person with a disability, the stamp does not suffice as a "written signature or mark."

Samuel's next argument is that the notarial stamp can meet the legislature's definition of a signature as a "written signature or mark." He argues that the term "marking" in the statute must mean something other than a "writing." It is true that we will not read a statute so that any provision will be rendered superfluous. *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 520 (Iowa 2012). However, our reading of section 4.1(39) is to require a written signature—a person's name—or other written mark. *See Scott v. Hawks*, 77 N.W. 467, 468 (Iowa 1898) ("To write out one's own name in full is doubtless the safest course, as well as the most natural; for such compliance best indicates a rational mind, free will, and physical power at the date of execution. But, undoubtedly, the making of his mark by the testator will satisfy the statute; and that, too, as various cases rule, notwithstanding he was able to write at the time."); *State v. LeGrand*, 501 N.W.2d 59, 62 n.1 (Iowa Ct. App. 1993) ("Where a person signs with a mark or illegible signature the better practice is to type or print his or her name under the signature."). Were we to read section 4.1(39) to allow the use of a stamp by a person without a disability, it would render subsection (b) superfluous, which would is disfavored.

Finding Amy's notarial stamp is insufficient to qualify as a signature by a witness to the will, the provisions of section 633.279 have not been met. We therefore affirm the district court order denying Samuel's petition.

AFFIRMED.