NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0019

SUCCESSION OF ROSEMOND ALFRED ARCENEAUX, JR.

On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, Louisiana
Probate No. 93,695, Section 25
Honorable Wilson O. Fields, Judge Presiding

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BEFORE: PARRO, GUIDRY, AND DRAKE, JJ.

Judgment rendered DEC 19 2013

PARRO, J.

Appellant challenges a trial court order, which appointed the appellee as the dative testamentary executor for the estate of Rosemond Alfred Arceneaux, Jr. For the reasons that follow, we affirm.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY[1]

Rosemond Alfred Arceneaux, Jr. (Alfred) died on June 22, 2011, while domiciled in East Baton Rouge Parish. Alfred had been married twice in his lifetime. At the time of his death, he was married to Patricia Kay Crossland Arceneaux (Kay). Four children were born to Alfred during his first marriage, namely, Celia Arceneaux Burton (Celia), John Arceneaux, Brian Arceneaux, and Michael Arceneaux. No other children were born to Alfred, nor did he adopt anyone.

On November 21, 2000, Alfred executed a last will and testament in notarial form (the 2000 testament), in which he made a special bequest leaving all of his interest in the family home and all household effects situated therein to his wife, Kay. He further made certain special and pecuniary bequests to his children.[2] Finally, he left the remainder of his estate to his children.

Thereafter, on March 2, 2010, Alfred executed a new last will and testament (the 2010 testament), which revoked all prior wills and codicils he had executed. In the 2010 testament, Alfred granted Kay a lifetime usufruct over all his assets, but only to the extent necessary to provide her a monthly payment of $5,500. The testament specifically prohibited Kay from expending additional sums of principal or interest. The balance of the estate was left to his children to share equally, subject to the usufruct.

On September 30, 2011, Celia filed a petition for probate of the 2000

[1] Many of the facts enumerated are taken from an earlier opinion of this court in Succession of Rosemond Alfred Arceneaux, Jr., 12-1624 (La. App. 1st Cir. 5/31/13), 2013 WL 2393093 (unpublished opinion).

[2] These bequests centered on a debt owed by John and Alfred's forgiveness of that debt in the 2000 testament. The testament provided that the other children were to be given a sum in dollars equal in value, if any, to the amount of John's debt that was still outstanding, along with any accrued interest, at the time of Alfred's death.

testament, which she alleged was in notarial form and, therefore, self-proving. In this petition, Celia sought to be appointed as the independent executrix[3] in accordance with the 2000 testament. In support of her desire to be appointed executrix, Celia alleged in her petition that Alfred's succession was complex and would require administration. She further sought to file a copy of the purported 2010 testament, which Celia alleged was invalid, because it did not contain a proper notarial attestation clause. With regard to the 2000 testament, the petition noted that, pursuant to LSA-C.C.P. art. 2891, a notarial testament does not need to be proven. However, Celia acknowledged in the petition that she was aware that Kay planned to oppose the probate of the 2000 testament; therefore, in her petition, Celia requested a contradictory hearing to address the probate of the 2000 testament. See LSA-C.C.P. art. 2901.

On November 18, 2011, Kay filed a petition for probate of the 2010 testament. Since that testament did not name an executor, Kay sought to be appointed as the dative testamentary executrix pursuant to the provisions of LSA-C.C.P. arts. 3083, 3097, and 3098. Kay further requested that the trial court set a contradictory hearing on the issue of the validity of the 2010 testament.

After this hearing on the issue of the validity of the 2010 testament, the trial court rendered judgment declaring the 2010 testament to be valid, granting Kay's petition to probate the 2010 testament, and ordering that Alfred's last will and testament be executed and filed in accordance with law. The judgment further denied Celia's petition to probate the 2000 testament.[4] Thereafter, after a hearing on the issue of the appointment of the executrix, the trial court signed an order appointing Kay as the dative testamentary executrix of Alfred's estate. The order further provided that letters

[3] Celia was designated to serve as the executrix of her father's succession in the 2000 testament.

[4] Celia appealed this judgment to this court. See Succession of Rosemond Alfred Arceneaux, Jr., 2013 WL 2393093.

testamentary would issue to Kay upon her posting security in the amount of $1,267,000. It is from this order that Celia has appealed.[5]

DISCUSSION

The sole issue before this court is whether the trial court erred in appointing Kay as the dative testamentary executrix of Alfred's estate. According to Celia, there is no need for an administration of the succession, because, according to the preliminary detailed descriptive list filed into the record, the succession did not have any debts at the time of Alfred's death.

If no executor has been named in the testament, the court shall appoint a dative testamentary executor in the manner provided for the appointment of an administrator of an intestate succession. See LSA-C.C.P. art. 3083. The legatees may be sent into possession without an administration in accordance with LSA-C.C.P. art. 3031, which provides as follows:

> A. When a testament has been probated or given the effect of probate, and subject to the provisions of Article 3033, the court may send all of the legatees into possession of their respective legacies without an administration of the succession, on the ex parte petition of all of the general and universal legatees, if each of them is either competent or is acting through a qualified legal representative, and each of them accepts the succession, and none of the creditors of the succession has demanded its administration.
>
> B. In such cases, the surviving spouse in community of the testator may be recognized by the court as entitled to the possession of the community property, as provided in Article 3001.

As a preliminary matter, we note that, in her petition, Celia sought to be appointed as the executrix of Alfred's succession in accordance with the provisions of the 2000 testament. In support of her appointment, Celia alleged that Alfred's succession was complex and would require administration. This allegation in her petition is contrary to her current position that an administration of Alfred's succession is not required.

[5] See LSA-C.C.P. art. 2974.

Louisiana Civil Code article 1853 defines a judicial confession as follows:

> A judicial confession is a declaration made by a party in a judicial proceeding. That confession constitutes full proof against the party who made it.
>
> A judicial confession is indivisible and it may be revoked only on the ground of error of fact.

An admission by a party in a pleading constitutes a judicial confession and is full proof against the party making it. C.T. Traina, Inc. v. Sunshine Plaza, Inc., 03-1003 (La. 12/3/03), 861 So.2d 156, 159. A judicial confession has the effect of waiving evidence as to the subject of the admission. Id.

Prior to the hearing on Kay's petition to appoint herself as the dative testamentary executrix of Alfred's succession, Celia did not attempt to amend or otherwise modify her own allegation for error of fact. Indeed, Celia specifically relied on this allegation as support for her own claim to be named executrix of Alfred's succession. Therefore, Celia clearly judicially confessed that an administration of Alfred's succession was necessary, and no evidence was required on this issue.[6]

Celia also contends that, since the succession has no debts, LSA-C.C.P. art. 3031 further supports her claim that no administration is necessary. Celia's reliance on this Article is misplaced.

The plain wording of this Article does not require that the legatees be sent into possession of their respective legacies simply because the succession does not have any substantial debts. Rather, the Article provides that, **if** all of the general and universal legatees file an *ex parte* petition accepting the succession **and** none of the creditors has demanded an administration, the court may send all of the legatees into possession of their respective legacies without an administration. However, in this case, none of Alfred's children, the general and universal legatees, has filed a petition seeking to accept the

[6] Celia has made certain allegations concerning the necessity of an administration in her brief to this court. Specifically, Celia contended that certain property of the succession was already being managed by third parties, and thus, no administration of this property was necessary. There is nothing in the record to support these allegations; therefore, we do not address these claims.

succession. In fact, Celia challenged the validity of the 2010 testament in the trial court and on appeal. Furthermore, none of Alfred's other children has filed a petition accepting the succession. Therefore, Article 3031 is not applicable to this matter, and after a thorough review of the record, we find no error in the trial court's order appointing Kay as the dative testamentary executrix of Alfred's succession.

CONCLUSION

For the foregoing reasons, we affirm the order of the trial court. All costs in this matter are assessed to appellant, Celia Arceneaux Burton.

AFFIRMED.