

**SUCCESSION OF EDWARD
ROBIN, SR.**

VERSUS

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* NO. 2018-CA-0538
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA
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CONSOLIDATED WITH:

**SUCCESSION OF EDWARD
ROBINS, SR.**

CONSOLIDATED WITH:

NO. 2018-C-0315

BARTHOLOMEW-WOODS, J., DISSENTS WITH REASONS

I respectfully dissent. A testator may revoke his will by authentic act. La.C.C. 1607. An authentic act requires a signed writing, two witnesses, and a notary. La.C.C. 1833. It does not require a date. The testator’s revocation meets these basic criteria. Affidavits of the notary and one of the witnesses were provided to the court as evidence that the revocation was signed after the 2004 will. However, the district court incorrectly refused to consider these affidavits, suggesting they constituted inadmissible parol evidence. La.C.C. art. 1848 provides:

“Testimonial or other evidence may not be admitted **to negate or vary the contents** of an authentic act or an act under private signature. Nevertheless, in the interest of justice, that evidence may be admitted to prove such circumstances as a vice of consent or to prove that the written act was modified by a subsequent and valid oral agreement.”

(emphasis added).

The affidavits in question do not “negate” or “vary” the contents of the revocation. They simply provide context as to when it was executed. Parol evidence is admissible for such purposes, i.e., to “give effect” to the authentic act. *Comeaux v.*

C.F. Bean Corp., 1999-0924, p. 13 (La.App. 4 Cir. 12/15/99), 750 So.2d 291, 299–300 (“When the terms of a written contract are susceptible to more than one interpretation, or there is uncertainty or ambiguity as to its provisions, or the intent of the parties cannot be ascertained from the language of the contract, parol evidence is admissible to clarify the intent of the parties.”); *Wimbush v. Jones*, 136 So.2d 704, 706 (La.App. 2 Cir. 1961) (“Our courts have consistently construed Article 2276 to allow parol evidence when it tends to support and not destroy the authenticity of the act.”); *Heth v. Moore*, 316 So.2d 764, 767 (La.App. 1 Cir. 1975) (“[a]lthough the article [La.C.C.P. art. 2276¹] prohibits parol evidence Against and Beyond what is contained in an act affecting immovable property, it does not prohibit parol when such evidence is offered and used to Support and Give effect to the contract.”).

The district court does correctly point out that the Revision Comments to La.C.C. art. 1607 state that:

“[W]hen revocation is involved, the undated writing must of necessity be subsequent to the testament it seeks to revoke, and dating is therefore less significant than a clear identification of the testament to be revoked and a clear manifestation of the intention to revoke.”

However, the court reads “clear identification of the testament to be revoked” as a requirement that the testament to be revoked be specifically named/mentioned. However, I do not read this so narrowly. I find that the revocation in question, which revoked “any and all prior wills and codicils” as clearly—though not specifically—identifying the 2004 will.

Accordingly, I would reverse and remand this matter with the appropriate instructions to the district court.

¹ This statute read, at the time, “Neither shall parol evidence be admitted against or beyond what is contained in the acts, nor on what may have been said before, or at the time of making them, or since.”

