

**SUCCESSION OF EDWARD  
ROBIN, SR.**

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**NO. 2018-CA-0538**

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**COURT OF APPEAL**

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**FOURTH CIRCUIT**

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**STATE OF LOUISIANA**

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**CONSOLIDATED WITH:**

**CONSOLIDATED WITH:**

**SUCCESSION OF EDWARD  
ROBIN, SR.**

**NO. 2018-C-0315**

APPEAL FROM  
ST. BERNARD 34TH JUDICIAL DISTRICT COURT  
NO. 18-0030, DIVISION "B"  
Honorable Jeanne Nunez Juneau, Judge

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**JAMES F. MCKAY III  
CHIEF JUDGE**

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(Court composed of Chief Judge James F. McKay III, Judge Daniel L. Dysart,  
Judge Regina Bartholomew-Woods)

**BARTHOLOMEW-WOODS, J., DISSENTS WITH REASONS**

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**AFFIRMED**

**JANUARY 30, 2019**

On November 4, 2004, Edward Robin, Sr. executed a notarial will before notary public, Todd M. Villarrubia, and witnesses, Jan Gould and Russell S. Gehring. In the November 4, 2004 will, Mr. Robin left his gun collection to his son, Lee Nicholas Robin, and the remainder of his estate to two other sons, Brad Lee Robin and Don J. Robin. Mr. Robin left nothing to his other six surviving adult children. Mr. Robin also named Brad Lee Robin and Don J. Robin as co-executors of his estate.

Mr. Robin, allegedly, appeared before Mr. Villarrubia again on or about January 14, 2016. During this alleged visit, Mr. Robin allegedly executed a document entitled as “Revocation of Any and All Prior Wills and Codicils,” which was notarized by Mr. Villarrubia and witnessed by Ralph A. Litolff, Jr. and Monique D. Hardy. This document was not dated and it did not identify any will or codicil to be revoked by date.

Edward Robin, Sr. died in St. Bernard Parish, Louisiana on August 22, 2017.

On January 4, 2018, Mr. Robin's daughter, Chantel Robin Viada, filed a petition for appointment of administratrix and she was appointed as the administratrix that same day. On January 10, 2018, Brad Robin filed a petition for injunction and removal of succession representative. Concurrently, he filed a petition to file and execute notarial will and to confirm independent executor. That same day, the trial court both probated the 2004 testament and appointed Brad Robin as the independent executor per the terms of the 2004 testament. The trial court also issued a restraining order against Ms. Viada, preventing her from acting in any capacity as a representative of the succession of the decedent.

A hearing to formally remove Ms. Viada as succession representative took place on February 8, 2018. Ralph Litolff, Jr. was the only witness to testify live at this hearing. He testified that the attempted revocation was not dated at the time when everyone signed the document. Mr. Litolff discovered this defect when a copy of the attempted revocation was emailed to him later on the same day it was executed. Mr. Litolff then informed Mr. Villarrubia of the deficiency. Mr. Villarrubia testified via his affidavit which was admitted into evidence. In his affidavit, Mr. Villarrubia testified that Mr. Litolff informed him the day after the attempted revocation was executed that the document lacked a date. Mr. Villarrubia further testified that after Mr. Litolff notified him that the attempted revocation was undated, he (Mr. Villarrubia) instructed his paralegal to insert a date onto the attempted revocation. The trial court refused to admit into evidence the altered revocation document.

On March 12, 2018, the trial court issued a judgment which: ruled that the attempted revocation was not a valid authentic act, and therefore it did not revoke the 2004 testament; removed Ms. Viada as administratrix of the succession; ordered Ms. Viada to provide both an accounting of all assets of the succession since her appointment on January 4, 2018, and to return all succession property to Brad Robin; and confirmed the trial court's January 16, 2018 order, which probated the 2004 testament and appointed Brad Robin as the independent executor of the succession. Ms. Viada now appeals from this judgment.

On appeal, Ms. Viada raises the following assignments of error: 1) the trial court erred in invalidating the January 14, 2016 "Revocation of Any and All Prior Wills and Codicils"; 2) the trial court erred in holding that said revocation was invalid because it was not dated immediately at the time it was signed by Mr. Robin, the notary public and two witnesses; 3) the trial court erred in refusing to admit into evidence the revocation as dated by the notary's paralegal upon the notary's instruction correctly showing the date executed; 4) the trial court erred in relying on the rationale of Succession of Melancon, 330 So.2d 679 (La.App. 3 Cir. 1976) which case has been expressly overruled (La. C.C. art. 1607, Revision Comments); 5) the trial court erred in filing and ordering execution of the revoked will dated November 4, 2004, in removing Ms. Viada as duly-appointed succession administratrix and in appointing Brad Robin as independent executor; and 6) the court further erred in ordering Ms. Viada to provide an accounting to Brad Robin and to return all succession property to Brad Robin.

We will address Ms. Viada's first two assignments of error together. These assignments deal with the revocation of the 2004 testament and the validity of the revocation document. According to Ms. Viada's argument, her father's 2004 testament was revoked by the attempted revocation, which she alleges happened on January 14, 2016. In an action to annul a notarial testament, the party seeking to annul the will bears the burden of proving the invalidity of the testament.

Succession of Dalier, 2009-0393, (La.App. 4 Cir. 8/12/09), 19 So.3d 8, 10.

In the instant case, Edward Robin, Sr. executed a valid notarial will on November 4, 2004. According to Louisiana Civil Code Article 1607, the revocation of an earlier testament can occur in one of three ways. The first is that the testator physically destroys the testament, or has it destroyed at his direction. La. C.C. art. 1607. The second is that the testator declares it revoked in one of the forms prescribed for testaments or in an authentic act. Id. The third is that the testator identifies and clearly revokes the testament by a writing that is entirely written and signed by the testator in his own handwriting. Id. Based on the facts of the instant case, the first and third options are not applicable here. The only possible way that the decedent could have revoked his 2004 testament would have been by one of the forms prescribed for testaments or in an authentic act.

Ms. Viada argues that the attempted revocation, allegedly executed on January 14, 2016, was an authentic act. Louisiana Civil Code Article 1833 states:

- A. An authentic act is a writing executed before a notary public or other officer authorized to perform that function, in the presence of two witnesses, and signed by each party who executed it, by each witness, and by each notary public before whom it was executed. The typed or hand-printed name of each person shall be placed in a legible form immediately beneath the signature of each person signing the act.
- B. To be an authentic act, the writing need not be executed at one time or place, or before the same notary public or in the presence of the same witnesses, provided that each party who executes it does so before a notary public or other officer authorized to perform that function, and in the presence of two witnesses and each party, each witness, and each notary public signs it. The failure to include the typed or hand-printed name of each person signing the act shall not affect the validity or authenticity of the act.
- C. If a party is unable or does not know how to sign his name, the notary public must cause him to affix his mark to the writing.

Based on a reading of the article immediately above, it appears that a date is not required for an authentic act to be valid. However, it is undisputed that an authentic act must be self-proving. *See Acurio v. Acurio*, 2016-1395, pp. 6-7 (La. 5/3/17), 224 So.3d 935, 938-939. Furthermore, “[t]estimonial 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.” La. C.C. art. 1848.

It is evident that the attempted revocation is not an authentic act in the instant case. The document is not self-proving. We do not know when the document was executed. No specific testaments or codicils are identified in the document. It is only through extrinsic or testimonial evidence (in direct conflict with La. C.C. art.1848) that this information can be obtained. An attempted revocation cannot be self-proving when it is not known when it was executed or

what testament was revoked. Accordingly, we find no error regarding the appellant's first two assignments of error.

In her third assignment of error, Ms. Viada contends the trial court erred in refusing to admit into evidence the revocation as dated by the notary's paralegal upon the notary's instruction correctly showing the date executed. The trial court was absolutely correct when it refused to admit into evidence this altered document. The practice of altering documents from their original state is generally frowned upon. Comment (b) to Civil Code Article 1835 states that "[a] forged act is of course not authentic and can have no evidentiary effect." *See also Namas Noor Sdn Bhd v. Williams*, 112 F.Supp.2d 580 (M.D. La. 2000). We find no error with respect to appellant's third assignment of error.

In her fourth assignment of error, Ms. Viada contends the trial court erred in relying on the rationale of Succession of Melancon, 330 So.2d 679 (La.App. 3 Cir. 1976), which case has been expressly overruled (La. C.C. art. 1607, Revision Comments). However, the trial court did not rely on the rationale in the Succession of Melancon case but was specifically citing the revision comments to Article 1607, which references that case. As the trial court correctly pointed out, the revision comments to Article 1607 explain that the rationale in Succession of Melancon that a handwritten revocation needed to be dated, is no longer valid with the addition of Section (3) to Article 1607, so long as there is a specific reference in the testator's handwriting to a specific testament that is intended to be revoked.

The trial court then made an analogy to the facts in the present case; that is, the attempted revocation is neither dated nor does it refer to a specific testament. As the trial court explained, "[w]ithout a date of execution or a date identifying the specific testament to be revoked, there is no way to identify the testament the

decedent intended to revoke.” Accordingly, we find no merit in the appellant’s fourth assignment of error.

In her fifth assignment of error, Ms. Viada contends that the trial court erred in filing and ordering execution of the revoked will dated November 4, 2004, in removing her as duly-appointed succession administratrix and in appointing Brad Robin as independent executor. Based on our findings above, the November 4, 2004 testament was not revoked by the alleged attempted revocation on or about January 14, 2016. Accordingly, the trial court was correct in removing Ms. Viada from office as administratrix and confirming the trial court’s January 16, 2018 appointment of Brad Robin as independent executor.

In her final assignment of error, Ms. Viada contends that the trial court erred in ordering her to provide an accounting to Brad Robin and to return all succession property to Brad Robin. Although we agree with the trial court’s ruling and find no error, as a practical matter, this order has no effect since Ms. Viada never received or had any succession property in her possession.

## **CONCLUSION**

For the above and foregoing reasons, we affirm the judgment of the trial court.

**AFFIRMED**