Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **8th day of September, 2023,** are as follows:

BY Griffin, J.:

2022-C-01763 IN RE: THE SUCCESSION OF DIANA BARTLETT MORGAN (Parish of East Baton Rouge)

REVERSED. SEE OPINION.

Retired Judge Charles Porter, appointed Justice ad hoc, sitting for Genovese, J., recused in case number 2022-C-01763 only.

Weimer, C.J., dissents and assigns reasons.
Hughes, J., additionally concurs and assigns reasons.
Crichton, J., additionally concurs and assigns reasons.
McCallum, J., additionally concurs and assigns reasons.
Porter, A.H.J., dissents for reasons assigned by Weimer, C.J.

SUPREME COURT OF LOUISIANA

No. 2022-C-01763

IN RE: THE SUCCESSION OF DIANA BARTLETT MORGAN

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of East Baton Rouge

GRIFFIN, J.[*]

We granted this writ to address the manner in which the proponent of a notarial testament must prove conformity with its statutory form requirements; specifically, whether an unsigned copy of a lost notarial testament may be probated with extrinsic evidence only. Finding that the evidence presented fails to meet the requirements, we hold the purported testament is absolutely null.

FACTS AND PROCEDURAL HISTORY

This matter arises out of a petition to open the small succession of the decedent, Diana Bartlett Morgan, filed by her daughter, Diana Lynn Ford. The petition alleged the decedent died intestate as an executed Last Will and Testament could not be located or produced by the surviving spouse, James William Morgan. The trial court opened the succession and Ms. Ford was appointed administratrix.

Mr. Morgan subsequently filed a petition to probate a lost will alleging that the decedent executed a proper one-page notarial testament on June 22, 2016. Mr. Morgan sought to remove Ms. Ford as administratrix, to be named as independent executor, and for the issuance of letters of independent administration arguing that Ms. Ford failed to advise the court of the existence of a copy of decedent's will. He further alleged that the original notarial testament was believed to have been deposited into a safety deposit box belonging to Lawrence Dupre, the drafting

[*] Retired Judge Charles Porter, appointed Justice ad hoc, sitting for Justice James T. Genovese.

attorney. After a search of the box, the notarial testament could not be located. In support of his petition, Mr. Morgan submitted an unsigned copy of the lost notarial testament.[1] Mr. Morgan also submitted the affidavits of himself, Mr. Dupre, and the two witnesses to the testament (collectively "narrative affidavits"). These narrative affidavits attested that the unsigned copy of the lost notarial testament was a correct copy and that the original testament was properly signed in the presence of the decedent and two witnesses. Ms. Ford argued the unsigned copy was not in proper notarial form pursuant to La. C.C. art. 1577 because it did not bear the signatures of the testator, two witnesses, or notary. Similarly, Ms. Ford argued that – given the absence of signatures – the unsigned copy of the lost notarial testament was not a duplicate pursuant to La. C.E. art. 1001. The trial court admitted the unsigned copy of the lost notarial testament for probate, removed Ms. Ford as administratrix, and confirmed Mr. Morgan as independent executor.

The court of appeal affirmed observing a distinction in the jurisprudence between probating an original testament that is invalid on its face, and probating a lost original testament by relying on extrinsic evidence to prove that a valid testament existed. *Succession of Morgan*, 22-0403, p. 10 (La. App. 1 Cir. 11/4/22), 356 So.3d 38, 45. The court of appeal concluded this distinction allows proponents of a lost will to satisfy their burden of proof as to its existence by relying on extrinsic evidence despite such evidence itself not satisfying the formal statutory requirements applicable to the original testament. *Id*., 22-0403, p. 11, 356 So.3d at 45.

[1] The copy did not bear the signatures of the decedent, the two witnesses, and the notary. The only writings on the document were the typewritten contents and stamped text which read:

COPY
Original on file
in the safety deposit box of
Attorney Lawrence T. Dupre
at the Bank of Zachary, LA

Ms. Ford's writ application to this Court followed, which we granted. *Succession of Morgan*, 22-1763 (La. 2/14/23), 354 So.3d 1241.

DISCUSSION

The issue before this Court is whether the unsigned copy of the lost notarial testament and narrative affidavits serve as sufficient proof that the statutory form requirements of a notarial testament were met. Statutory interpretation is a question of law subject to *de novo* review. *Berkley Assurance Co. v. Willis*, 21-1554, p. 3 (La. 12/9/22), 355 So.3d 591, 593.

In Louisiana, there are two types of testaments: olographic and notarial. La. C.C. art. 1574. "A notarial testament is one that is executed in accordance with formalities of Articles 1577 through 1580.1." La. C.C. art. 1576. If the testator can read and physically sign his name, the notarial testament must be in writing, dated, and signed in the presence of a notary and two witnesses at the end of the testament and on each separate page. La. C.C. art. 1577. The notary and witnesses are required to sign a declaration at the end of the testament, an attestation clause, acknowledging that the testator properly signed the instrument in their presence. *Id.* The formalities prescribed for the execution of a notarial testament must be observed or the testament is absolutely null. La. C.C. art. 1573.

The "failure to find a will which was duly executed and in the possession of, or readily accessible to, the testator, gives rise to a legal presumption of revocation by destruction." *Succession of Talbot*, 530 So.2d 1132, 1134-35 (La. 1988) (citing *Succession of Nunley*, 224 La. 251, 69 So.2d 33 (1954)). This presumption may be rebutted upon clear proof: 1) that the testator made a valid will; 2) of the contents or substance of the will; and 3) that the testator did not revoke it. *Nunley*, 224 La. at 257, 69 So.2d at 35.

Ms. Ford argues that Mr. Morgan cannot meet the first element necessary to rebut the presumption of revocation of a lost will pursuant to *Nunley* – that the

decedent made a valid will. She contends that the unsigned copy of the lost notarial testament is not a duplicate as defined by La. C.E. art. 1001(5)[2] because the document does not satisfy the signature requirements of La. C.C. art. 1577. In the absence of a duplicate, Mr. Morgan cannot meet his burden to prove a valid will was executed. Mr. Morgan counters that compliance with La. C.C. art. 1577 may be established by affidavit testimony of the individuals who signed, and observed the decedent sign, the purported testament at issue. *See* La. C.E. art. 1004(1) (providing other evidence of the contents of a writing is admissible if the original is lost or destroyed); *Nunley*, *supra*; *Succession of Bagwell*, 415 So.2d 238 (La.App. 2d Cir. 1982); *Succession of Jones*, 356 So.2d 80 (La.App. 1st Cir. 1978); *Succession of Franks*, 170 So.2d 178 (La.App. 4th Cir. 1964). We disagree.

Where an original notarial testament is lost, only a duplicate will suffice to prove a valid will was executed in conformity with La. C.C. art. 1577. Testaments offered for probate are excluded from the type of duplicates that are admissible to the same extent as an original. La. C.E. art. 1003(3). However, Comment (a) explains that "[w]hen a duplicate is inadmissible under [La. C.E. art. 1003], it may nevertheless be admissible under Article 1004." Comment (b) further elaborates that La. C.E. art. 1003(3) requires that the proponent of a duplicate testament must first establish an excuse for non-production of the original as provided in La. C.E. art. 1004. This includes when the original has been lost or destroyed. La. C.E. art. 1004(1). The "it" in Comment (a) plainly refers to a duplicate.[3] Thus, an excuse for non-production of an original under La. C.E. art. 1004 merely enables a proponent

[2] La. C.E. art. 1001(5) provides that:

> A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic re-recording, or electronic imaging, or by chemical reproduction, or by an optical disk imaging system, or by other equivalent techniques, which accurately reproduces the original.

[3] This is reinforced by Comment (b)'s reference to "the proponent of a duplicate," i.e., the proponent is providing an excuse under La. C.E. art. 1004 to submit the duplicate for consideration.

of a lost or destroyed testament to rely on a duplicate which would otherwise be prohibited under La. C.E. art. 1003(3). Article 1004 does not create a free-standing method for probating a testament or proving compliance with statutory form requirements by way of extrinsic evidence. *See Arabie v. CITGO Petroleum Corp.*, 10-2605, p. 4 (La. 3/13/12), 89 So.3d 307, 312 ("While the Official Revision Comments are not the law, they may be helpful in determining legislative intent."); *Burge v. State*, 10-2229, p. 5 (La. 2/11/11), 54 So.3d 1110, 1113 (observing the "general rule of statutory construction is that a specific statute controls over a broader, more general statute"). Such an interpretation is consistent with the codal provision that a notarial testament is self-proving. *See* La. C.C.P. art. 2891. We further agree with Ms. Ford that the cases relied upon by Mr. Morgan and the court of appeal are of limited utility in analyzing the issue under the facts of this case.[4] *See Bergeron v. Richardson*, 20-1409, p. 9 (La. 6/30/21), 320 So.3d 1109, 1116 (even if a line of cases rise to the status of *jurisprudence constante*, legislation is the primary source of law).

The language of La. C.C. art. 1577 is clear that a notarial testament must be signed by the testator on each page and at the end, accompanied by the signatures of the witnesses and notary on the attestation clause. Here, the unsigned copy of the lost notarial testament and the narrative affidavits fail to meet those requirements. "While extrinsic evidence may be used to resolve ambiguity in a testament, extrinsic

[4] In *Nunley*, this Court observed the issue of whether there was "[c]onfection of a valid olographic will … [was] not seriously disputed." 224 La. at 257, 69 So.2d at 35. Similarly, *Bagwell* focused on the third element of *Nunley* – revocation – with the court ultimately concluding that plaintiff therein did not put forth sufficient evidence to rebut the presumption that the decedent destroyed his will. 415 So.2d at 240. *Jones* involved a Xerox copy of a will that, while reflecting the appropriate signatures, the drafting attorney filled in a missing date that had been cut off. 356 So.2d at 82. Notably *Jones* predates and is inconsistent with this Court's ruling in *Succession of Holloway*, 531 So.2d 431, 434 (La. 1988). Finally, in *Franks*, counsel for appellant only challenged the issue of revocation and conceded in his argument to the court that the decedent made a valid will. 170 So.2d at 180.

evidence cannot cure a testament which is *materially defective* on its face."[5] *Successions of Toney*, 16-1534, p. 16 (La. 5/3/17), 226 So.3d 397, 408 (emphasis added). The lack of signatures on a notarial testament – or its purported duplicate – represents a material deviation from the statutory form requirements prescribed by the legislature and is fatal to the validity of a will. *See Succession of Roussel*, 373 So.2d 155, 157 (La. 1979). The use of the word "shall" relating to the signature requirements in La. C.C. art. 1577 reflects a policy decision by the legislature that the risk of mistake, imposition, undue influence, fraud, or deception is so significant that the absence of signatures constitutes a material deviation.[6] *See Roussel*, 373 So.2d at 158. When the positive law requires certain formalities of execution to make a notarial testament valid and self-proving on its face, proponents of a testament may not prove its compliance with extrinsic evidence. To do so would eviscerate the requirements of La. C.C. art. 1577 and condition such compliance on credibility determinations of after-the-fact affidavits.

DECREE

For the foregoing reasons, the lower courts are reversed and the testament is declared absolutely null.

REVERSED

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[5] The court of appeal relies on language from *Succession of Boyd*, 306 So.2d 687, 692 (La. 1975), that states "if [a] will is lost, the entire will can be proved by extrinsic evidence." However, immediately thereafter, this Court observed that the issue in front of it was one of ambiguity: "if the century of the date is uncertain, extrinsic evidence, such as the date of death of the testator, may be used to make the date certain; if the will bears two different dates, it is not stricken with invalidity." *Id*. *Boyd* specifically held that "extrinsic evidence is admissible to establish the certainty of an ambiguous date on an olographic will." *Id*.; *see also Holloway*, 531 So.2d at 434 (clarifying *Boyd* and observing that when "a date is not recited in the first instance, the statutory requirement has not been satisfied and extrinsic evidence should not be considered").

[6] In contrast, the issue in *Succession of Liner*, 19-2011 (La. 6/30/21), 320 So.3d 1113, concerned only the language of the attestation clause which, under La. C.C. art. 1577(2) need only be "substantially similar" to the wording of the statute. *Liner* does not alter the requirements that a notarial testament must be in writing, dated, signed by the decedent on every page and at the end, and the signing of an attestation clause by the notary and two witnesses. *See Succession of McKlinski*, 21-1818 (La. 2/8/22), 332 So.3d 642 (Genovese, J., dissenting).

SUPREME COURT OF LOUISIANA

No. 2022-C-01763

IN RE: THE SUCCESSION OF DIANA BARTLETT MORGAN

On Writ of Certiorari to the Court of Appeal, First Circuit,
Parish of East Baton Rouge

WEIMER, C. J., dissenting.

I very respectfully dissent.

Unfortunately, under the guise of interpreting the law, the majority opinion fashions an entirely new rule of law, one which upends decades of jurisprudence,[1] and hornbook law,[2] regarding proof of a lost testament. The opinion declares: "Where an original notarial testament is lost, only a duplicate will suffice to prove a valid will was executed in conformity with La. C.C. Art. 1577." **In re: The Succession of Diana Bartlett Morgan**, 22-01763 (La. 9/__/23), slip op. p. 4. The single authority cited for this novel proposition is the word "it" appearing in comment (a) to La. C.E. art. 1003(3). An analysis of the statutory law simply does not support this departure from what has been the law for almost a century.

By its plain words, La. C.E. art. 1003(3) provides that a duplicate is not admissible "to the same extent as an original" when the original is a testament offered for probate. La. C.E. art. 1003(3). As the majority notes, the comments to La. C.E. art. 1003 make clear that when an original is central to the case (as in the case of a testament offered for probate), the focus of the inquiry shifts and an explanation for

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[1] **In re Succession of Nunley,** 69 So.2d 33 (La. 1953); **Succession of O'Brien,** 168 La. 303, 121 So. 874 (1929).

[2] **10 La. Civ. L. Treatise, Successions and Donations § 14:6** (2 ed.) ("A testament that has been lost or unintentionally destroyed may be probated if it can be established that such a will was executed, what its content was and that after diligent search the testament cannot be found and was never revoked." citing **In re Succession of Nunley,** supra; **Succession of Franks,** 170 So.2d 178 (La. App. 4 Cir. 1964)).

the absence of the original must be proved. As the comments explain: "The addition of Paragraph (3) requires that the proponent of a duplicate of an original there listed first establish an excuse for non-production as provided in Article 1004." La. C.E. art. 1003, Comment (b). In other words, in the case of a testament offered for probate, admissibility of a duplicate requires proof of an additional element: that one of the five circumstances set forth in La. C.E. art. 1004 exists. This is entirely consistent with the jurisprudence, which holds that when the original of a testament shown to have been in the possession of or accessible to the testator at the time of his or her death cannot be located, a rebuttable presumption arises that the will was revoked by destruction. **In re Succession of Nunley**, 69 So.2d 33, 35 (La. 1953). Proof that the original was lost or could not be produced is one of the elements necessary to overcome the presumption of revocation. ***Id.*** Indeed, this is exactly what the comment to La. C.E. art. 1003(3) acknowledges when it explains that requiring proof of this additional element " more closely follows current Louisiana law." La. C.E. art. 1003, Comment (b). Contrary to the majority's suggestion, the article expresses no intent to overturn current and longstanding law.

What neither La. C.E. art. 1003, La. C.E. art. 1004, nor the comments thereto state is that a duplicate is the *only* means of proving the contents of a testament when the original is lost. Indeed, the title of La. C.E. art. 1003 is "Admissibility of duplicates."[3] That article is followed by La. C.E. art. 1004, entitled "Admissibility of *other evidence* of contents." (Emphasis added.) Clearly, the title of the article does not evince an intent to restrict proof of an original to duplicates. See,

[3] Notably, as the court of appeal opinion points out, the unsigned copy of the testament that Mr. Morgan introduced into evidence does not purport to be a "duplicate" as that term is defined in La. C.E. art. 1001(5) because, being unsigned, it does not "accurately reproduce[] the original." La. C.E. art. 1001(5); **In re Succession of Morgan**, 22-0403, p. 10 (La. App. 1 Cir. 11/4/22), 356 So.3d 38, 45.

Authement v. Shappert Engineering, 02-1631, p. 8 (La. 2/25/03), 840 So.2d 1181, 1186 ("[T]he title of a statute may be instructive in determining legislative intent.").

In any event, as the court of appeal recognized, what is presented here (and what is at issue) is not an attempt to cure deficiencies in the unsigned copy of Mrs. Morgan's testament by means of extrinsic evidence, but rather an attempt to prove the existence and contents of a *lost original* testament, including its compliance with all legal form requirements, by relying on the unsigned copy of that testament as well as the affidavits of the attorney who confected it and the witnesses thereto. **In re Succession of Morgan**, 22-0403, p. 10 (La. App. 1 Cir. 11/4/22), 356 So.3d 38, 45. The majority opinion loses sight of this important distinction and, instead, creates a new rule of law. In the process, it effectively overrules a long line of cases, beginning with this court's decision in **Nunley**, on the premise that these cases are of "limited utility" to the issue before this court,[4] and, in any event, jurisprudence cannot prevail over statutory law. However, the only statutory law the majority opinion cites is La. C.E. art. 1004, which, it holds, "does not create a free-standing method for probating a testament or proving compliance with statutory form requirements by way of extrinsic evidence." **Morgan**, slip op. at 5. At the risk of being repetitive, Mr. Morgan is not attempting to prove compliance with statutory form requirements by

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[4] While the majority opinion does not expressly overrule **Nunley,** it effectively does so, distinguishing the case on grounds that the confection of a valid olographic will in that case "[was] not seriously disputed." **Morgan,** slip op. at 5, n.4. However, the issue in **Nunley** was not whether a valid olographic will had been confected, but whether the proponents of the lost will had sustained their burden of proving that the testator had made a valid will, the contents of that will, and that the will had not been revoked: *the exact issue presented here*. As in this case, proof that a valid will was confected – in the form of a typewritten (unsigned) copy and the testimony of the attorney who assisted in its preparation – was uncontradicted. (Here, there was a typewritten copy of the will, valid in form, unsigned, and testimony from the attorney who drafted it and the witnesses who signed that was similarly uncontradicted). The only difference between this case and **Nunley** is the form of the will: **Nunley** involved an olographic will, whereas the testament here is notarial. In failing to expressly overrule **Nunley** despite its inability to adequately distinguish it, the majority opinion creates two lines of cases, an untenable and unjustified result.

way of extrinsic evidence; he is attempting to probate a lost original testament by relying on extrinsic evidence to prove that a valid testament existed and thereby prove its contents. Furthermore, the majority has pointed to no positive written law that prohibits this. Indeed, La. C.E. art. 1004 allows this and a long line of jurisprudence specifically endorses this method of proof.

It is undeniable that the rule the majority opinion announces, requiring the confection of a duplicate original when a testament is executed, could be a sound practice. However, there is no positive written law requiring such. **Nunley** was issued by this court in 1953.[5] It has been followed in a succession of cases, culminating in the clear and unequivocal pronouncement of this court in **Succession of Boyd**, 306 So.2d 687 (La. 1975) that: "We have arrived at this point in Louisiana: if the will is lost, the entire will can be proved by extrinsic evidence ...." ***Id.*** at 692. It is notable that the legislature, which is presumed to know the law, has taken no steps to overrule **Nunley** and/or **Boyd** and to amend the relevant statutes to impose the requirement the majority opinion imposes by judicial fiat today. See, **Fontenot v. Reddell Vidrine Water Dist.**, 02-0439, p. 13-14 (La. 1/14/03), 836 So.2d 14, 24 (We interpret legislative language with the assumption that the legislature was aware of existing statutes, rules of construction, and judicial decisions interpreting those statutes).

Ultimately, as this court noted in **Boyd**, "[t]he object of the law is surely *not* to frustrate the will of the testator." **Boyd**, 306 So.2d at 692 (emphasis added). Yet, that is precisely what the rule announced in this case does. There was uncontroverted proof offered below to establish that Mrs. Morgan executed a valid notarial testament,

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[5] And, **Nunley** was not the first case in this line of jurisprudence. See, e.g., **Fuentes v. Gaines,** 25 La. Ann. 85 (1873); **Succession of O'Brien,** 168 La. 303, 121 So. 874 (1929).

the contents and substance of that testament, that the testament could not be found after diligent search, and that the will was not revoked. Ms. Ford offered not one scintilla of evidence to rebut the evidence submitted by Mr. Morgan in this regard.

The unfortunate reality is that we live in a place where disaster strikes far too often. Inevitably, documents will be lost. Original testaments and duplicate originals are equally subject to the destructive forces of flood, fire and wind. The rules of evidence and long standing jurisprudence provide an avenue for honoring the intent of a testator and proving the validity and contents of a lost testament in the absence of a duplicate original. While it is certainly a far better practice to have a duplicate original, until the majority's opinion, the statutory law and the jurisprudence did not require one. Rather, the validity and content of the will could be tested in the crucible of litigation, with the trial court and its evaluation of evidence and testimony serving as the check on any questions of fraud, credibility, or sufficiency of proof.

There is no statutory law that requires a signed duplicate and the long-standing jurisprudence, which has consistently held a signed duplicate is not necessary, should be respected. Again, and with all due respect to the majority, this is not a case about curing deficiencies in a will by means of extrinsic evidence; rather it is a case about proving the existence and contents of a lost original testament. As a result, this is not a case governed by La. C.C. art. 1577, which is silent on the issue presented, but by the Code of Evidence and the jurisprudence which directs what evidence is sufficient to prove a lost original testament.[6] In this case, the proof of the validity of the testament and of the testator's intent was unassailed at trial. I must respectfully dissent from the majority's decision to thwart that intent with its decision today.

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[6] As a statutory provision, proper civilian analysis is due the Code of Evidence. That analysis supports this dissent, as does longstanding jurisprudence, a secondary source of authority.

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Hughes, J., additionally concurring.

The philosophy of the Civil Code is to dissuade litigation, not encourage it. The rules and presumptions of the Civil Code were designed to prevent swearing matches, especially in the case of testaments. Testimony cannot establish a will which may never have existed, or if it did, was subsequently revoked.

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CRICHTON, J., additionally concurs and assigns reasons:

It is axiomatic that "[a] cardinal rule of the interpretation of wills is that the intention of the testator as expressed in the will must govern." *See*, *e.g.*, *Succession of Liner*, 2019-02011 (La. 6/30/21), 320 So. 3d 1133, 1137 (collecting cases). Critical to evaluating any disputed testament, "[i]n service to this rule, the formalities of a notarial will provide a protective function of guarding the testator against the risk of fraud." *Id.* In other words, adherence to the formalities of the Civil Code articles is intended to ***protect*** the testator.[1]

With those broad principles in mind, I agree with the majority's holding to reverse the court of appeal and, in so doing, adhere to our Civilian tradition:

> In those civilian systems that have adopted a code, the respect due the code and the manner of interpreting it are based on the thesis of legislative supremacy, combined with respect for the inherent qualities of the code and the Romanist tradition. Judges are primarily interpreters of law, without the law-development functions assigned to common law judges.

Alvin B. Rubin, Hazards of A Civilian Venturer in Federal Court: Travel and Travail on the Erie Railroad, 48 La. L. Rev. 1369, 1371 (1988). *See also Bergeron v. Richardson*, 20-1409, p. 10 (La. 6/30/21), 320 So. 3d 1109, 1117 (Crichton, J., concurring, quoting same).

[1] Of course, however, "an act of the legislature, repugnant to the constitution, is void." *Marbury v. Madison*, 5 U.S. 137, 177 (1803).

In my view, the Code of Evidence does not dictate the result in this matter. More specifically, the dissent's reasoning that La. C.E. art. 1004 allows the admission of extrinsic evidence to prove the existence of a valid will ignores not only the primary objective of protection of the testator, but also the necessity of properly applying the specific Civil Code articles related to succession law under the facts of this case. Furthermore, notwithstanding the jurisprudence cited by the dissent, in our Civilian system, legislation is the primary source of law and, as Judge Alvin Rubin so aptly wrote, we must dutifully fulfill our roles as interpreters of that law - in this case, the Louisiana Civil Code.

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McCallum, J., additionally concurs and assigns reasons.

Ex nihilo nihil fit. There is no last will and testament in this case. There is no duplicate copy of a last will and testament. The decedent, by definition, died intestate as no testament could be found. The Louisiana Civil Code is clear: "There are two forms of testaments: olographic and notarial." La. C.C. art. 1574. With this as our starting point, the resolution of this case becomes straightforward.

Nothing in the record remotely meets the Civil Code requirements for a testament. "An olographic testament is one entirely written, dated, and signed in the handwriting of the testator." La. C.C. art. 1575. "A notarial testament is one that is executed in accordance with formalities of Articles 1577 through 1580.1." La. C.C. art. 1576. "The notarial testament shall be prepared in writing and dated" and signed "[i]n the presence of a notary and two competent witnesses … at the end of the testament and on each other separate page." La. C.C. art. 1577. "In the presence of the testator and each other, the notary and the witnesses shall sign" a declaration at the end of the testament, an attestation clause, with specifically prescribed language acknowledging that "[i]n our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _____, ____." La. C.C. art. 1577. "The formalities prescribed for the execution of a testament must be observed or the testament is absolutely null." La. C.C. art. 1573.

This leads to the ultimate conclusion that what the lower courts have approved for probate does not legally exist. The proposition that something that does not exist can be subject to probate is a logical fallacy that the majority thankfully rejects.