

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-1048

Filed 05 July 2023

Transylvania County, No. 20 E 31

IN THE MATTER OF THE WILL OF IMO JEAN LANCE

LINDA JEAN COLE, et al, Caveators,

v.

JAMES THOMAS LANCE, Propounder.

Appeal by Caveator from order entered 29 August 2022 by Judge Peter Knight in Transylvania County Superior Court. Heard in the Court of Appeals 23 May 2023.

*Donald H. Barton, PC, by Donald H. Barton, for Caveator-Appellant.*

*The Neumann Law Firm, by Brian N. Stretcher, for Propounder-Appellee.*

CARPENTER, Judge.

Linda Jean Cole (“Caveator”) appeals from judgment after a jury found Imo Jean Lance’s (“Decedent’s”) purported will (the “Document”), propounded by James Thomas Lance (“Propounder”), to be Decedent’s valid will. On appeal, Caveator argues the trial court erred in denying her motions for directed verdict and motion for judgment notwithstanding the verdict. After careful review, we discern no error.

Therefore, we affirm the trial court's judgment.

**I. Factual & Procedural Background**

Caveator is a daughter of Decedent, who passed away in January 2020. After Decedent's death, Propounder, Decedent's son, submitted the Document for probate on 12 February 2020. On 21 February 2020, Caveator filed a caveat challenging the validity of the Document. On 26 and 27 July 2022, before the Honorable Peter Knight in Transylvania County Superior Court, a jury considered whether the Document was Decedent's valid will.

The Document tended to show signatures of Decedent, Phillip Golden, Paulette Lankford, and Lisa Courtney. At trial, Courtney testified to the following. She witnessed Decedent sign the Document. Courtney then signed the Document as a witness, in Decedent's presence. Phillip Golden also signed the Document as a witness, in Decedent's presence, and Phillip Golden witnessed Decedent sign the Document. Beth Golden, a notary public, notarized Phillip Golden's and Lisa Courtney's signatures. All of these events occurred on 12 May 2019.

Next, Paulette Lankford testified to the following. Decedent told Lankford that: (1) the Document was in fact Decedent's will; (2) Decedent signed the Document; and (3) Decedent wanted Lankford to sign the Document as another witness. Lankford signed the Document as a witness, in Decedent's presence. These events also occurred on 12 May 2019.

All signatures on the Document are dated 12 May 2019. The Document shows that all three witness-signatures were notarized by Beth Golden. The Document, however, was drafted by a non-lawyer; it was created through an online template at “RocketLawyer.com.” The Document also contains a clause stating that each witness signed in the presence of each other. Propounder concedes this clause is inaccurate, but he argues it is irrelevant to the validity of the Document.

At the close of Propounder’s evidence, Caveator moved for a directed verdict, asserting the Document lacked the requirements of a valid North Carolina will. The trial court denied the motion. Caveator renewed her motion at the close of all evidence, and the trial court again denied the motion. The jury ruled for Propounder, finding the Document was Decedent’s valid will. Caveator then moved for judgment notwithstanding the verdict, and the trial court denied the motion. Caveator timely appealed.

## **II. Jurisdiction**

This Court has jurisdiction pursuant to N.C. Gen. Stat. § 7A-27(b)(1) (2021).

## **III. Issue**

The issue on appeal is whether the trial court erred in denying Caveator’s motions for directed verdict and motion for judgment notwithstanding the verdict.

## **IV. Analysis**

Concerning the validity of wills, this Court exercises a deferential review of both a trial court’s denial of a motion for directed verdict and a trial court’s denial of

a motion for judgment notwithstanding the verdict. *In re Will of Everhart*, 88 N.C. App. 572, 574, 364 S.E.2d 173, 174 (1988). In reviewing both motions, “we must consider the evidence ‘in the light most favorable to the [Propounder, the non-movant], deeming [his] evidence to be true, resolving all conflicts in [his] favor, and giving [him] the benefit of every reasonable inference.” *Id.* at 574, 364 S.E.2d at 174 (quoting *In re Will of Dupree*, 80 N.C. App. 519, 521, 343 S.E.2d 9, 10 (1986)).

North Carolina requires the following for a valid will:

- (a) An attested written will is a written will signed by the testator and attested by at least two competent witnesses as provided by this section.
- (b) The testator must, with intent to sign the will, do so by actually signing the will or by having someone else in the testator’s presence and at the testator’s direction sign the testator’s name thereon.
- (c) The testator must signify to the attesting witnesses that the instrument is the testator’s instrument by signing it in their presence or by acknowledging to them the testator’s signature previously affixed thereto, either of which may be done before the attesting witnesses separately.
- (d) The attesting witnesses must sign the will in the presence of the testator but need not sign in the presence of each other.

N.C. Gen. Stat. § 31-3.3 (2021). In other words, to create a valid will: (1) the testator must intentionally sign the will; (2) the testator must acknowledge to at least two witnesses that the testator intentionally signed the will; and (3) at least two of those witnesses must sign the will in the testator’s presence. *See* N.C. Gen. Stat. § 31-3.3.

Here, trial testimony tended to show Decedent intentionally signed the Document, and Decedent signed the Document with the understanding that the

Document was her will. This testimony satisfies the first element of a valid will. *See* N.C. Gen. Stat. § 31-3.3(b). Trial testimony further revealed three witnesses signed the Document in Decedent's presence, and those same witnesses signed the Document after Decedent acknowledged her signature on the Document. This testimony satisfies the second and third elements of a valid will. *See* N.C. Gen. Stat. § 31-3.3(c)–(d). Although the Document inaccurately states each witness was present for the signatures of other witnesses, N.C. Gen. Stat. § 31-3.3 does not require compliance with that clause to create a valid will. It is also irrelevant that the notary public failed to testify at trial because at least two of the attesting witnesses to the will gave testimony establishing the Document was properly witnessed and attested. *See* N.C. Gen. Stat. § 31-3.3.

Therefore, viewing all evidence as true and favorable to Propounder, the trial court did not err in denying Caveator's motions for directed verdict and motion for judgment notwithstanding the verdict because the jury correctly found each element of a valid North Carolina will was satisfied. *See* N.C. Gen. Stat. § 31-3.3; *In re Will of Everhart*, 88 N.C. App. at 574, 364 S.E.2d at 174.

## **V. Conclusion**

Accordingly, we hold the trial court did not err in denying Caveator's motions for directed verdict and motion for judgment notwithstanding the verdict.

**AFFIRMED.**

Chief Judge STROUD and Judge DILLON concur.

IN RE: LANCE

*Opinion of the Court*

Report per Rule 30(e).