

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
May 17, 2023 Session

FILED 08/01/2023 Clerk of the Appellate Courts
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IN RE ESTATE OF DARIEL BLACKLEDGE WASHINGTON

**Appeal from the Circuit Court for Davidson County
No. 22P184 Andra J. Hedrick, Judge**

No. M2022-01326-COA-R3-CV

Decedent’s siblings filed a document they alleged to be decedent’s last will and testament. Decedent’s husband, the personal representative of her estate, moved to declare the alleged will invalid for lack of an effective signature. The trial court concluded that the will was ineffective due to the lack of decedent’s signature, and declined to admit it to probate. Discerning no error, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed and Remanded**

KENNY ARMSTRONG, J., delivered the opinion of the court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

Sarah Mansfield, Wesley Clark, and Frank Brazil, Nashville, Tennessee, for the appellants, Devon Blackledge, Sr. and Michele Blackledge.

Peggy D. Mathes, Nashville, Tennessee, for the appellee, Marcus Washington.

OPINION

I. Background

On February 7, 2021, DarIEL Shanese Washington (“Decedent”) died. At the time of her death, Decedent was married to Appellee Marcus Washington and had three children from a previous marriage, Shara White, Shatara White, and Shomari White. On February 2, 2022, in the Circuit Court for Davidson County, Probate Division (“trial court”), Appellee filed a petition for letters of administration. In the petition, Appellee alleged that

Decedent died intestate.

On February 8, 2022, Decedent's siblings, Devon Blackledge, Sr. and Michele Blackledge (together, "Appellants"), filed a separate petition in the trial court to probate a purported last will and testament dated June 13, 2018 (the "Will"). In the petition, Appellants alleged that the Will named them as co-executors of Decedent's Estate and also listed them as "beneficiaries [] as Trustees for" Decedent's children. Despite being married to Decedent at the time the alleged Will was executed, Appellee was not named as a beneficiary thereunder.

On February 16, 2022, Appellee was appointed the personal representative of Decedent's Estate. On May 12, 2022, Appellee filed a response to Appellants' petition to probate the Will. Relevant here, Appellee denied that the Will was valid, alleging that it was not properly executed because Decedent signed an affidavit but not the Will itself. Appellee further argued that the Will was revoked because Decedent made certain markings on it.

On May 19, 2022, the trial court heard Appellants' petition to probate the Will. By order of September 16, 2022, the trial court denied the validity of the Will. Specifically, the trial court found that: (1) because Decedent did not sign any part of the Will, it was not properly executed; (2) the affidavit, which Decedent signed, was a wholly separate document from the Will itself; (3) the signed affidavit did not satisfy the statute requiring a testator's signature on a will; (4) because the signed affidavit was not part of the Will, and because Decedent did not sign any other part of the Will, the Will was defective on its face and invalid; and (5) the Will was also defective due to the markings on it. As such, the trial court refused to admit the Will to probate. Appellants timely appealed.

II. Issue

Although Appellants raise two issues for review, we conclude that the dispositive issue is whether Decedent satisfied the statutory requirements for execution of an attested will.

III. Standard of Review

"The issue raised in this appeal involves statutory interpretation and presents a question of law." *In re Estate of Stringfield*, 283 S.W.3d 832, 834 (Tenn. Ct. App. 2008). Accordingly, our review of the trial court's conclusions of law are *de novo* with no presumption of correctness. *Brunswick Acceptance Co., LLC v. MEJ, LLC*, 292 S.W.3d 638, 642 (Tenn. 2008).

IV. Analysis

“The [Tennessee] Legislature has the authority to prescribe the conditions by which property may be transferred by will in this State.” *In re Estate of Chastain*, 401 S.W.3d 612, 618 (Tenn. 2012) (citing *Epperson v. White*, 299 S.W. 812, 815 (Tenn. 1927); *Eslick v. Wodicka*, 215 S.W.2d 12, 15 (Tenn. Ct. App. 1948)). The Legislature has authorized three types of wills: (1) attested wills; (2) holographic wills; and (3) noncupative wills. See Tenn. Code Ann. §§ 32-1-104 to -106; *In re Estate of Chastain*, 401 S.W.3d at 617 n.4. The statutes specify the requirements for proper execution of each type of will. Strict compliance with these statutes is mandatory, and “Tennessee courts will sustain a will as legally executed only if it is possible to do so consistently with statutory requirements.” *In re Estate of Chastain*, 401 S.W.3d at 619-20 (citing *Leathers v. Binkley*, 264 S.W.2d 561, 563 (Tenn. 1954)).

As mentioned above, this appeal involves the requirements for executing an attested will, which is governed by Tennessee Code Annotated section 32-1-104. Under section 32-1-104, an attested will **must** be signed by the testator and at least two witnesses as follows:

(1) The testator shall signify to the attesting witnesses that the instrument is the testator’s will and either:

- (A) The testator sign;
- (B) Acknowledge the testator’s signature already made; or
- (C) At the testator’s direction and in the testator’s presence have someone else sign the testator’s name; and
- (D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses;

(2) The attesting witnesses must sign:

- (A) In the presence of the testator; and
- (B) In the presence of each other.

Tenn. Code Ann. § 32-1-104(a). Although the statute requires a testator’s signature on the will itself, it is silent as to where the signature must appear on the document. *In re Estate of Chastain*, 401 S.W.3d at 621. However, a decedent’s signature on a “wholly separate document” does not satisfy the statutory requirement. *Id.* With the foregoing in mind, we turn to the dispositive issue in this appeal, *i.e.*, whether Decedent signed the Will.

Turning to the document at issue, it is twelve pages and does not contain page numbers. Presumably the first page of the document begins:

**LAST WILL AND TESTAMENT
OF
DARIEL BLACKLEDGE (WASHINGTON)**

I, Dariel Blackledge (Washington), of Nashville, Tennessee, revoke my former Wills and Codicils and declare this to be my Last Will and Testament ("Will").


Beneath the foregoing begins a series of "Articles." These Articles, *inter alia*, identify Decedent's family, dispose of her property, and create a trust for her children. The ninth and final Article, "Miscellaneous Provisions," begins on what we presume to be page nine of the document. Immediately following the conclusion of Article IX, is a blank signature line for Decedent's signature:

IN WITNESS WHEREOF, I have subscribed my name below, this __13th day of __June__,
__2018__.

Testator Signature: _____
Dariel Blackledge (Washington)

The following page, presumed to be page ten, contains witness signatures certifying that Decedent declared "the above instrument" to be her last will and testament and that Decedent signed such document in the presence of the witnesses:

We, the undersigned, hereby certify that the above instrument, which consists of /11/ pages, including the page(s) which contain the witness signatures, was signed in our sight and presence by Dariel Blackledge (Washington) (the "Testator"), who declared this instrument to be his/her Last Will and Testament and we, at the Testator's request and in the Testator's sight and presence, and in the sight and presence of each other, do hereby subscribe our names as witnesses on the date shown above.

Witness Signature: 

Name: Sonimar Santos
City: Nashville
State: Tennessee

Witness Signature: 

Name: Francina Anderson
City: Nashville
State: Tennessee


The next page, presumed to be page eleven, is titled "Affidavit". This "Affidavit" contains the only signature purported to be that of Decedent, to-wit:

AFFIDAVIT

I, Dariel Blackledge (Washington), the Testator, sign my name to this instrument this 13th day of June, 2018 and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Will and that I sign it willingly, in the presence of the undersigned witnesses, that I execute it as my free and voluntary act for the purposes expressed in the Will, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Testator Signature: 
Dariel Blackledge (Washington)

We, Sonimar Santos and Francia Anderson the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as the Testator's will and that the Testator signs it willingly in our presence, and that the Testator executes it as the Testator's free and voluntary act for the purposes expressed in the will, and that each of us, in the presence and hearing of the Testator, at the Testator's request, and in the presence of each other, hereby signs this will, on the date of the instrument, as witness to the Testator's signing, and that to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and memory, and under no constraint or undue influence, and the witnesses are of adult age and otherwise competent to be witnesses.

Witness Signature: 

Name: Sonimar Santos
City: Nashville
State: Tennessee

Witness Signature: 

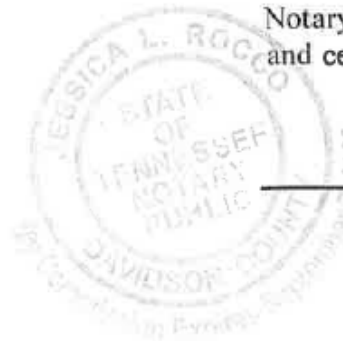
Name: Francia Anderson
City: Nashville
State: Tennessee

STATE OF TENNESSEE
COUNTY OF DAVIDSON

The twelfth and final page of the document contains a notary public's stamp and signature:

Subscribed, sworn to and acknowledged before me by Dariel Blackledge (Washington), the Testator; and subscribed and sworn to before me by Sonimar Santos and Francia Anderson witnesses, this

__13th__ day of __June__, __2018__.



Notary public, or other officer authorized to take and certify acknowledgments and administer oaths

Jessica L. Rogge

Appellants allege that the Affidavit was “unambiguously incorporated into the Will.” Thus, according to Appellants, by signing the Affidavit, Decedent signed the Will. As support for this argument, Appellants cite to the language preceding the witness signatures on the tenth page and the language that appears before Decedent’s signature on the Affidavit page. Specifically, Appellants argue that the cited language demonstrates that: (1) the Will is eleven pages; (2) the Affidavit is one of the eleven pages; and (3) the Affidavit “does not have instructions for it to be attached to the Will, nor does it refer to the Will as [a] separate document.” Thus, Appellants argue, “the language of the ‘Affidavit’ clearly states that it is a part of [] Decedent[’]s Will[.]”

We conclude that the Affidavit is not part of the Will, and that Decedent’s signature on the Affidavit does not cure her failure to strictly comply with the statutory requirements for executing an attested will. *See In re Estate of Chastain*, 401 S.W.3d at 620. As an initial matter, the entire document contains twelve pages, not eleven, and appears to be constructed accordingly: (1) the first nine pages contain Decedent’s Will insofar as these pages direct how Decedent desires her Estate to be distributed on her death with the ninth page containing a blank signature line for Decedent’s signature; (2) the tenth page contains the signatures of the witnesses, as required under Tennessee Code Annotated section 32-1-104(a)(2); (3) the eleventh page appears to be a self-proving affidavit, discussed below; and (4) the twelfth page contains a notary public’s stamp and signature, required for a self-proving affidavit, also discussed below. Furthermore, the language on the tenth page preceding the witness signatures provides that “the above instrument” was “signed in our sight and presence” by Decedent, “who declared this instrument to be [her] Last Will and Testament.” While the “above instrument,” *i.e.*, pages 1-9, appears to be Decedent’s last will and testament, Decedent’s signature does not appear on any of the nine pages.

Furthermore, the “Affidavit,” which Appellants contend is part of the Will (as opposed to a wholly separate document), appears on page eleven, *i.e.*, the following page, not “above,” or on a preceding page, as provided in the language on the tenth page.

We also cannot ignore that page eleven is titled “Affidavit” and includes language often found in self-proving affidavits. Under Tennessee Code Annotated section 32-2-110, attesting witnesses may execute an affidavit

stating the facts to which they would be required to testify in court to prove the will, which affidavit shall be written on the will or, if that is impracticable, on some paper attached to the will, and the sworn statement of any such witness so taken shall be accepted by the court of probate when the will is not contested as if it had been taken before the court.

Tenn. Code Ann. § 32-2-110. To be valid, such affidavit must be signed “before any officer authorized to administer oaths in or out of this state[.]” Tenn. Code Ann. § 32-2-110. As this Court has discussed, section 32-2-110 “provides an avenue for a party to prove the requirements in section 32-1-104 without the need for live testimony from the witnesses to the will.” *In re Estate of Lewis*, No. W2019-01839-COA-R3-CV, 2020 WL 6306515, at *3 (Tenn. Ct. App. Oct. 28, 2020) (citing *In re Estate of Harris*, No. W2016-01768-COA-R3-CV, 2018 WL 6444136, at *3 (Tenn. Ct. App. Dec. 10, 2018)). “In the absence of such an affidavit, however, at least one witness must testify to the requirements of section 32-1-104(a) where a will is uncontested.” *In re Estate of Harris*, 2018 WL 6444136, at *4 (citing Tenn. Code Ann. § 32-2-104(a) (“Written wills with witnesses, when not contested, shall be proved by at least one of the subscribing witnesses, if living.”)).

Returning to the language of the Affidavit page, therein, the witnesses attest to the following facts: (1) Decedent executed “this instrument” as her Will; (2) Decedent signed it “willingly in [their] presence,” free and voluntarily; and (3) “to the best of [their] knowledge,” Decedent was “under no constraint or undue influence[.]” These are merely the facts that the witnesses would testify to in court to prove the validity of Decedent’s will. Furthermore, the next and final page of the document contains a notary public’s stamp and signature, which are required to validate a self-proving affidavit. Tenn. Code Ann. § 32-2-110.

Based on the foregoing, we conclude that the Affidavit is a “wholly separate” document from the Will. Indeed, it appears that Decedent’s Will was located on pages one through nine, and that she failed to sign any of those pages. “Decedent’s signature on the wholly separate Affidavit does not rectify [her] failure to sign the Will,” and it does not “satisfy the statutory requirement that [she] sign the Will by one of the means provided by statute.” *In re Estate of Chastain*, 401 S.W.3d at 620-21. Because Decedent’s Will was not properly executed, it is not a valid will, and the trial court properly concluded that it

was invalid and should not be probated. In view of this conclusion, we pretermitt Appellants' remaining issue.

V. Conclusion

For the foregoing reasons, we affirm the trial court's order. The case is remanded for such further proceedings as are necessary and consistent with this opinion. Costs of the appeal are assessed to the Appellants, Devon Blackledge, Sr. and Michele Blackledge, for all of which execution may issue if necessary.

s/ Kenny Armstrong
KENNY ARMSTRONG, JUDGE