

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
November 4, 2004 Session

**ESTATE OF CURTIS MARSHALL SELLE, Deceased, and PATRICIA B.  
SELLE, v. JACQUELYN TEAL SELLE, Administrator of the Estate of  
CURTIS MARSHALL SELLE, Deceased**

**Direct Appeal from the Chancery Court for Maury County  
No. P-061-03 Hon. Jim T. Hamilton, Judge**

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**No. M2003-01633-COA-R3-CV - Filed December 3, 2004**

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This appeal involves a dispute between the mother and wife of a decedent concerning the attempted revocation of his will. Following the decedent's death, his mother filed a petition in the Chancery Court for Maury County seeking to admit her son's will to probate. Her daughter-in-law moved to dismiss the petition on the ground that the will had been revoked by a later instrument. The Trial Court determined that the later instrument did not qualify as a will or as a document of revocation. However, the Court determined that the act of executing the later instrument amounted to a cancellation of the will under Tenn. Code Ann. § 22-1-201(3) (2001). The decedent's mother has appealed. We have determined that the act of executing the later instrument was not a cancellation of the earlier will and, therefore, reverse the Trial Court.

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

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM BRYAN CAIN, J., joined.

Scott C. Williams, and Stephanie S. Maxwell, Columbia, Tennessee, for Appellant.

William S. Fleming, Columbia, Tennessee, for Appellee.

**OPINION**

Curtis M. Selle wrote his own will on October 23, 1997. It was in the form of a typewritten letter to his mother signed by Mr. Selle and attested to by two witnesses. The letter expressed Mr. Selle's desire that "my belongings remain with my blood family" and contained detailed instructions regarding the disposition of his real and personal property.

Less than one year later, on September 28, 1998, Mr. Selle prepared a second instrument called “Revised Will.” Reflecting a change of heart regarding his wife, the “Revised Will” stated that it “supercedes” all prior wills including the October 23, 1997 will. It also designated his wife as his executor “[i]n the event of my untimely death.” Mr. Selle signed this instrument; however, it was witnessed by only one person.

Mr. Selle was killed in a plane crash on March 27, 2003. His widow filed a petition in the Chancery Court for Maury County seeking to be appointed the administrator for Mr. Selle’s estate. Mr. Selle’s mother thereafter filed a petition to admit his October 23, 1997 will to probate and to remove his widow as administrator. Mr. Selle’s widow moved to dismiss her mother-in-law’s petition on the ground that Mr. Selle had effectively revoked his October 23, 1997 will.

The Trial Court, treating the widow’s motion as a motion for summary judgment, concluded as a matter of law that the September 28, 1998 document effectively revoked Mr. Selle’s October 23, 1997 will by cancellation pursuant to Tenn. Code Ann. § 32-1-201(3) (2001). Mr. Selle’s mother has appealed to this Court.

We are focusing here on Tenn. Code Ann. § 32-1-201, which defines the ways that a will may be revoked in Tennessee. It provides that a will may be revoked by executing a subsequent will. Tenn. Code Ann. § 32-1-201(1), or by executing a “document of revocation” with the same formalities required for executing a will. Tenn. Code Ann. § 32-1-201(2). There is no dispute that the September 28, 1998 document does not meet the requirement of either provision because it has only one attesting witness. Because of this defect in attestation, the October 23, 1997 will remains valid unless Mr. Selle revoked it through other means. *See* 1 Jack W. Robinson & Jeff Mobley, Pritchard on the Law of Wills and Administration of Estates § 285, at 452 (5<sup>th</sup> ed. 1994) (stating “if the will intended to be substituted is inoperative from defect in attestation or any other cause, the revocation fails also, and the original will remains in force.”).

The Trial Court seized on the word “cancelled” in Tenn. Code Ann. § 32-1-201(3) and determined that the September 28, 1998 document reflected Mr. Selle’s intention to cancel his will, and therefore that the will was revoked in accordance with Tenn. Code Ann. § 32-1-201(3). The Trial Court stretched the concept of “cancellation” far beyond its accepted meaning in order to achieve its desired result. While the September 28, 1998 document is a clear expression of Mr. Selle’s intent, executing the September 28, 1998 document is not itself an act of “cancellation” for the purpose of Tenn. Code Ann. § 32-1-201(3).

It has long been the law in Tennessee and elsewhere that the revocation of a will, other than by a subsequent will, must be by injury to the instrument itself. *Gregory v. Susong*, 185 Tenn. 232, 241, 205 S.W.2d 6, 10 (1947). Accordingly, the encyclopedic authorities point out that it is both legally and commonly understood that cancellation of a will is accomplished by any of the following destructive acts: (1) drawing lines over or across with the intention to nullify them; (2) obliteration, defacement, or mutilation of the instrument itself; or (3) writing words of cancellation across the dispositive or material parts of the instrument. 95 C.J.S. *Wills* § 411, at 499 (2001); 79

Am.Jur.2d *Wills* §§ 507, 513 (2002); *see also* Uniform Probate Code § 2-507(2). 8 U.L.A. 367 (1998).

Based on these authorities, an act of cancellation under Tenn. Code Ann. § 32-1-201(3) must be a destructive act of some sort performed on the will itself with the intent to revoke all or part of the will. By definition, Mr. Selle's execution of the September 28, 1998 document cannot constitute a cancellation of the October 23, 1997 will. Therefore, the Trial Court erred by determining that Mr. Selle had effectively revoked his October 23, 1997 will by cancellation under Tenn. Code Ann. § 32-1-201(3).

For the foregoing reasons, we vacate the summary judgment and additional orders by the Trial Court and remand for further proceedings consistent with this Opinion. The cost of the appeal is assessed to Jacquelyn Teal Selle.

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HERSCHEL PICKENS FRANKS, P.J.