Opinion issued March 29, 2022

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00073-CV

JEANNINE DARLENE NORRIS JONES, Appellant

V.

JONATHAN JONES, Appellee

On Appeal from the Probate Court No. 1
Travis County, Texas[1]
Trial Court Case No. C-1-PB-18-000093

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[1] The Texas Supreme Court transferred this appeal from the Court of Appeals for the Fourth District of Texas. TEX. GOV'T CODE § 73.001 (authorizing transfer of cases between courts of appeals). We are unaware of any conflict between the precedent of the Court of Appeals for the Third District and that of this Court on any relevant issue in this case. *See* TEX. R. APP. P. 41.3.

O P I N I O N

Jeannine Darlene Norris Jones ("Jeannine") filed an application for probate of an attested will for her husband, decedent Wendell Mark Jones ("Wendell"). Jonathan Jones ("Jonathan"), Wendell's son from a previous marriage, filed a petition contesting the will, and the trial court denied Jeannine's application to probate Wendell's will. In what we construe as one issue,[2] Jeannine argues that the trial court erred in denying her application because the evidence establishes that the will was validly executed.

We reverse, render judgment admitting the will to probate, and remand for further proceedings.

Background

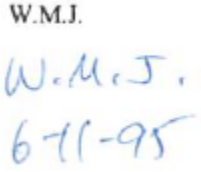
Wendell Mark Jones, the decedent, married Ladan Jamshidi Jones in 1979. Wendell and Ladan remained married until her death on January 27, 1995. They had

[2] Jeannine presents seven issues summarized as follows: whether the evidence was legally and factually sufficient to support the trial court's findings that (1) the purported will did not contain decedent's signature, (2) the two subscribing witnesses testified that they saw the decedent sign the will but did not see him initial the will, (3) there was no handwriting testimony regarding the initials, (4) the purported will was never signed by the decedent and, as such, the subscribing witnesses could not have seen what they purportedly attested to, (5) the purported will and self-proving affidavit were not executed with the requisite formalities and were therefore invalid, and (6) the purported will should not be admitted to probate; and whether (7) the trial court erred by concluding the purported will was not executed in accordance with Texas Estate Code Sections 251.051, 251.101, 251.105, and 251.1045.

three children during their marriage: Susan Ladan Jones Toler, Daniel Mehdie Jones, and appellee Jonathan Mark Jones.

After the death of Ladan, Wendell married Jeannine on June 11, 1995. On the same day, following their wedding ceremony and reception, Wendell and Jeannine each executed their wills. Wendell drafted and typed the wills for himself and Jeannine. Wendell and Jeannine executed their wills on the day of their wedding because they were planning to fly to Oregon following the wedding and wanted to ensure Wendell's minor children would "be looked after if something should happen to [Wendell and Jeannine] when [they] went on the airplane and went out of state."

Wendell's will provided for his estate to be awarded to his wife, Jeannine, if she survived him, and named her as the executor of his estate. If she did not survive him, his will provided that his estate would pass to his children. The first six pages of Wendell's will contain substantive provisions disposing of his property, appointing an executor, and providing for the guardianship of his minor children. These first six pages contain the initials "W.M.J." and the date "6-11-95" in the bottom left corned of each page:



At the top of the seventh page, there is a place with blanks for the date and Wendell's signature:

IN WITNESS WHEREOF, I WENDELL MARK JONES, hereby publish this as my last Will, signing my name on this day of , 19 at

WENDELL MARK JONES

His handwritten signature does not appear on the seventh page, only his typewritten name. Below the blank for Wendell's signature is an attestation clause, which states: "The foregoing instrument was in our presence signed by WENDELL MARK JONES and declared by him to be his last Will. We, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as witnesses on this ____ day of _____ 19__." Four witnesses attested to Wendell's will: David W. Evans, Diane L. Evans, Mohommad "Mo" Onvani, and Robert Michael "Mike" Woolsey.

Wendell's will also contained a self-proving affidavit, signed by a notary public. Like the signature page, the self-proving affidavit contained Wendell's typewritten name, but not his handwritten signature.

Wendell passed away on November 27, 2017. On January 17, 2018, Jeannine, the named executor, offered Wendell's June 11, 1995 will (the "1995 will") for admission to probate in Travis County, Texas. On February 15, 2018, Wendell's son

Jonathan filed his Original Petition Contesting Will. On March 19, 2018, Jonathan filed his First Amended Petition Contesting Will, asserting claims that the will does not comply with the requirements of a validly executed will.

On September 9, 2019, the trial court conducted a hearing on Jonathan's will contest. At the hearing, two of the subscribing witnesses to Wendell's 1995 will, Onvani and Woolsey, testified about the will signing. Onvani testified that he participated in the signing of the 1995 will following Wendell and Jeannine's wedding. He testified that he spoke briefly to Wendell at the wedding, though he could not recall what was discussed. On cross examination, Onvani admitted he did not recall all of the details about the wedding or the will signing, but he did recall Wendell asking him to witness the 1995 will. Onvani also testified he saw Wendell initial the 1995 will:

JONATHAN'S COUNSEL: Did you see him [Wendell] initial the will?

ONVANI: Yeah, he initialed it and then – yeah.

Although Onvani saw Wendell initial the 1995 will, he testified that he did not see Wendell's handwritten signature or a date on the attestation clause or on the self proving affidavit.

Woolsey also testified at the hearing that he attended Wendell and Jeannine's wedding and recalled signing as a witness to the will. Woolsey testified that he recalls the will signing because it "made an impression" on him as it was "the only

time before or since that [he'd] ever been asked to witness a legal document at a wedding." He testified that Wendell signed the 1995 will in the presence of the four witnesses, that Wendell declared to the witnesses that the document was his will, and that Wendell asked Woolsey and the other witnesses to sign his will as witnesses. Woolsey also testified that Wendell initialed and dated the 1995 will in his presence:

JONATHAN'S COUNSEL:	Did Wendell Mark Jones sign his initials and date on the will in your presence?
WOOLSEY:	Yes, he did.
JONATHAN'S COUNSEL:	Now, with regard to the will there are one – the first page, second, third, fourth and fifth pages all have the initials WMJ 6-11-95. Is – is that what you're saying Wendell Mark Jones signed on the will on that day?
WOOLSEY:	Yes, it is.

Woolsey further testified that he did not have "any doubt that [Wendell] expected this to be his will."

On cross examination, Woolsey testified that he did not have a clear memory of the details of the wedding and reception, and admitted he was not sure who asked him to sign as a witness, it could have been either Wendell or Jeannine. However, he again testified that he saw Wendell initial the 1995 will but did not see him initial every page. He testified that he did not have a "specific recollection of how many pages" of the will Wendell initialed. Woolsey also testified that he did not see

Wendell's handwritten signature on either the page with the attestation clause or on the self-proving affidavit.

At the conclusion of the hearing, the trial court denied Jeannine's application to probate the 1995 will, finding no signature on the will and noting that although Wendell initialed pages 1-6 of the will, there were "no initials on the attestation clause or the self-proving [affidavit]." The trial court entered a written order denying the 1995 will to probate on September 16, 2019. On October 7, 2019, Jeannine requested that the trial court enter its findings of fact and conclusions of law. On October 16, 2019, Jeannine filed a Motion for Reconsideration and New Trial. On November 1, 2019, the trial court entered its Findings of Fact and Conclusions of Law.

This appeal followed.

A. Standard of Review

In an appeal from a judgment rendered after a bench trial, the trial court's findings of fact have the same weight as a jury's verdict, and we review the legal and factual sufficiency of the evidence used to support them just as we would review a jury's findings. *Woods v. Kenner,* 501 S.W.3d 185, 195 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (citing *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994)).

An appellant attacking the legal sufficiency of an adverse finding on an issue on which she had the burden of proof must show that the evidence conclusively

establishes all vital facts in support of the issue. *Orr v. Walker*, 438 S.W.3d 766, 768 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001)). In other words, the appellant must show there is no evidence to support the adverse finding and that the evidence establishes the opposite of the finding as a matter of law. *Id.*; *see also Woods*, 501 S.W.3d at 196 (no evidence supports finding if record shows: (1) complete absence of evidence of vital fact; (2) rules of law or evidence bar court from giving weight to only evidence offered to prove vital fact; (3) evidence offered to prove vital fact is no more than scintilla; or (4) evidence conclusively establishes opposite of vital fact).

In conducting a legal-sufficiency review, the test is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). In making this determination, we credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *Id.* If the evidence falls within the zone of reasonable disagreement, we may not substitute our judgment for that of the factfinder. *Id.* at 822.

An appellant attacking the factual sufficiency of an adverse finding on an issue on which she had the burden of proof must show that the adverse finding is against the great weight and preponderance of the evidence. *Orr*, 438 S.W.3d at 768 (citing *Dow Chem. Co.*, 46 S.W.3d at 242). We will review both the evidence supporting

and contrary to the judgment. *Id.* ("To determine whether the evidence is factually sufficient to support a finding, an appellate court considers and weighs all evidence that was before the trial court.").

We review the trial court's conclusions of law de novo. *Haedge v. Cent. Tex. Cattlemen's Ass'n*, 603 S.W.3d 824, 827 (Tex. 2020); *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). Legal conclusions cannot be challenged for factual sufficiency; however, we may review the legal conclusions drawn from the facts to determine their correctness. *Marchand*, 83 S.W.3d at 794. "If the reviewing court determines a conclusion of law is erroneous, but the trial court rendered the proper judgment, the erroneous conclusion of law does not require reversal." *Id.*

B. Analysis

The essence of Jeannine's arguments on appeal is that the trial court erred in concluding that Wendell's 1995 will was not properly executed. Specifically, Jeannine argues that (1) Wendell's initials were sufficient to satisfy the signature requirement for a valid will, and (2) the 1995 will was properly attested to by at least two witnesses. We agree.

The party offering a will to probate bears the initial burden of proof to establish that it was properly executed and that the testator had testamentary capacity at the time of execution. *Austin v. Austin*, No. 03-18-00678-CV, 2019 WL 4309569,

at *2 (Tex. App.—Austin Sept. 12, 2019, no pet.) (mem. op.) (citing *In re Estate of Danford*, 550 S.W.3d 275, 281 (Tex. App.—Houston [14th Dist.] 2018, no pet.)). Because Jeannine has the burden here, and because the trial court found that the will was not properly executed, we may only reverse that finding if Jeannine conclusively establishes all facts in support of her claim. *See Orr*, 438 S.W.3d at 768.

"Except as otherwise provided by law," a will must be: (1) in writing; (2) signed by the testator in person;[3] and (3) "attested by two or more credible witnesses who are least 14 years of age and who subscribe their names to the will in their own handwriting in the testator's presence." TEX. EST. CODE § 251.051. Here, the parties do not dispute that the 1995 will was in writing, but rather dispute whether the will was properly signed and attested. We address each requirement in turn.

1. Do Wendell's initials on the first six pages of the 1995 will satisfy the signature requirement of Section 251.051?

The trial court made the following findings related to the presence of a signature on the 1995 will:

- Finding of Fact 9: "The [1995 will] does not contain [Wendell's] signature, only his computer-typed name in the signature section."
- Finding of Fact 10: "The [1995 will] contains the initials 'W.M.J.' along with a date of '6-11-95' on the bottom of pages 1-6. No initials nor date appear on page 7, the signature page."

[3] The Texas Estates Code also allows a will to be signed by "another person on behalf of the testator: (i) in the testator's presence; and (ii) under the testator's direction." TEX. EST. CODE § 251.051(2)(B). But that permission is not relevant here.

- Finding of Fact 11: "Two subscribing witnesses, Mo Onvani and Mike Woolsey, testified at the hearing on September 9, 2019. Both witnesses testified they witnessed [Wendell] sign the [1995 will]. Neither testified he witnessed [Wendell] initial the [1995 will]."
- Finding of Fact 13: The 1995 will "was never signed by [Wendell] nor any agent acting at his direction."
- Finding of Fact 14: The 1995 will was "not executed with the requisite testamentary formalities and [is] invalid."
- Finding of Fact 15: The 1995 will "has not yet been admitted to probate and should not be admitted to probate."

Jeannine challenges the legal and factual sufficiency of the evidence to support these findings.

"Texas courts have been lenient regarding the location and form of a 'signature.'" *In re Estate of Standefer*, 530 S.W.3d 160, 166 (Tex. App.—Eastland 2015, no pet.); *see, e.g.*, *id.* at 166–67 (holding there is no requirement that testator's signature match exactly type-written version of his name and, therefore, testator's signature consisting of middle and last names only, rather than first, middle, and last names as shown in type-written letters, was sufficient on attested will); *Orozco v. Orozco*, 917 S.W.2d 70, 73 (Tex. App.—San Antonio 1996, writ denied) (holding testator's "X" mark alone was sufficient for valid signature); *Phillips v. Najar*, 901 S.W.2d 561, 561–62 (Tex. App.—El Paso 1995, no writ) (holding rubber stamp of testatrix's signature was valid, and alternatively, testatrix's handwritten mark near stamp was valid substitute for signature); *Zaruba v. Schumaker*, 178 S.W.2d 542, 543–44 (Tex. App.—Galveston 1944, no writ) (holding signature was sufficient

where testatrix's will "was wholly written by [testatrix] upon a typewriter . . . and signed by her by writing her name thereupon . . . said typewriter"); *Mortg. Bond Corp. of N.Y. v. Haney*, 105 S.W.2d 488, 491 (Tex. App.—Beaumont 1937, writ ref'd) (approving "X" as sufficient signature on attested will).

A signature may be informal, and its location of secondary importance, if the maker intended his or her name or mark to constitute a signature expressing approval of the instrument as the maker's will.[4] *See In re Estate of Standefer*, 530 S.W.3d at 166 (noting while courts are lenient on location and form of signature, "it is necessary that the maker intend that his name or mark constitute a signature, i.e., that it expresses approval of the instrument as his will" (citations and quotations omitted)); *In re Estate of Romancik*, 281 S.W.3d 592, 596 (Tex. App.—El Paso 2008, no pet.) (concluding testator intended his signature that appeared in section of

[4] Jonathan argues that the only Texas cases analyzing the validity of a signature or other mark in the body of a will or codicil do so in the context of unattested holographic wills. Not so. While it is true that many cases analyzing this issue involve holographic wills, we are aware of at least two cases involving attested wills in which the courts upheld as valid a "signature" in the body of the will. *See In re Estate of Matteson*, No. 05-12-01420-CV, 2013 WL 3355385 (Tex. App.—Dallas July 2, 2013, no pet.) (mem. op.) (concluding testator's initials next to handwritten changes in body of attested will satisfied Section 251.051's signature requirement); *In re Estate of Romancik*, 281 S.W.3d 592, 596 (Tex. App.—El Paso 2008, no pet.) (concluding signature in body of will was valid because testator intended signature to be his testamentary mark). We therefore disagree with Jonathan that Wendell's initials could never satisfy Section 251.051's signature requirement because they appear in the body of the 1995 will rather than on the signature page. The relevant inquiry is whether, by signing his initials on pages one through six of the 1995 will, Wendell intended to approve of the document as his last will and testament.

typewritten attested will entitled "REVOCATION OF WILLS—CODICILS" to be his testamentary mark and, therefore, signature satisfied statutory requirements for valid will). The facts and circumstances surrounding the instrument's execution may be considered in determining whether the maker intended a testamentary disposition of his property. *In re Estate of Romancik*, 281 S.W.3d at 596.

Further, Texas courts have also explicitly held that a signature by initials is sufficient to execute a will, whether holographic or attested, if it is testamentary in character. *See, e.g.*, *In re Estate of Matteson*, No. 05-12-01420-CV, 2013 WL 3355385, at *1–2 (Tex. App.—Dallas July 2, 2013, no pet.) (mem. op.) (acknowledging rule that "signature by initials is sufficient to execute a will if it is testamentary in character," and holding previously executed typewritten will, along with handwritten changes initialed by testator, was valid attested will executed with requisite testamentary formalities); *Trim v. Daniels*, 862 S.W.2d 8, 10 (Tex. App.—Houston [1st Dist.] 1992, writ denied) (noting "signature by initials is sufficient to execute the instrument as a will, if it is testamentary in character," and holding brief statement handwritten on backside of greeting card and initialed by decedent constituted valid holographic will signed by testator). "The key inquiry, however, remains whether the testator intended the mark to constitute an expression of his testamentary intent." *In re Estate of Romancik*, 281 S.W.3d at 597.

Considering this case law, we conclude that Wendell's initials on pages one through six of his will are sufficient to satisfy Section 251.051's signature requirement, just as any other mark made by him would be, so long as he "intended the mark to constitute an expression of his testamentary intent." *Id.*

On the issue of whether Wendell intended his initials to constitute an expression of his testamentary intent, we find the decision in *Mortgage Bond Corp. of New York v. Haney* instructive. There, the appellees argued that statute did not "provide that a testator may execute his will by making his mark as his signature to the will" and that "a will so executed is not 'signed by the testator' as required by law." *Haney*, 105 S.W.2d at 491. The Beaumont Court of Appeals rejected this argument, stating: "Such is not the rule in Texas[.]" *Id.* The court noted that the will showed that the testator signed by her mark, and one of the witnesses to the will testified "that he was present and saw the testator 'sign' the will, and heard her declare same to be her last will and testament." *Id.* Therefore, the court held that "any question of the intent of the testator that the 'mark' was intended by her as her signature was fully met." *Id.*

The Dallas Court of Appeals in *Estate of Matteson* relied on similar evidence in support of its conclusion that the testator's initials were made with the requisite intent to satisfy the signature requirement. There, the testator previously signed a typed will that was attested by two witnesses. *In re Estate of Matteson*, 2013 WL

3355385, at *1. Three years later, the testator hand wrote and initialed several changes to the previous will, including striking his daughters' names as devisees and naming his granddaughter as his sole devisee and independent executor. *Id.* After the testator made and initialed these changes, three witnesses each signed the document. *Id.* The granddaughter sought to probate the modified will, but the probate court denied her application. *Id.* On appeal, the granddaughter argued that the initials on the modified document satisfied the signature requirement because the testator signed the modified document "by initialing the changes with intent to approve the document as his will." *Id.* The Dallas court agreed. *Id.* at *2. The court first noted that because the document was not entirely in the testator's handwriting, in order to be considered a valid will, it had to be in writing, signed by the testator, and attested by two or more credible witnesses. *Id.* at *1. As to the signature requirement, the Dallas court acknowledged that a signature by initials is sufficient to execute a will if it is done with the requisite intent. *Id.* As evidence of the requisite intent, the court cited to testimony in the record from the attesting witnesses that the testator "asked them to witness the changes he was making to his will and that he made the changes and initialed them," and the attesting witnesses testified the typed will along with the testator's handwritten changes constituted his last will and testament. *Id.* at *2; *see also In re Estate of Standefer*, 530 S.W.3d at 166 (holding decedent's signature reading "Ross Standefer" instead of "Elwin Ross Standefer"

was sufficient because evidence from decedent's accountant, who drafted will, showed decedent wanted to sign will, accountant witnessed decedent sign will, and decedent signed with intent to make it his will).

Jeannine presented the same type of evidence in this case. Specifically, Jeannine offered the testimony of two of the four subscribing witnesses at the hearing—Onvani and Woolsey. Both provided uncontroverted testimony that they participated in the will signing ceremony following Wendell and Jeannine's wedding. And although the trial court found that neither Onvani nor Woolsey testified that they saw Wendell *initial* the 1995 will, only that they saw him *sign* the will, both witnesses unequivocally testified that they saw Wendell sign his initials on the 1995 will. Specifically, Woolsey testified that Wendell "signed" the 1995 will in the presence of four witnesses. Woolsey then testified that Wendell "sign[ed] his initials and date on the [1995] will" in Woolsey's presence. Woolsey clarified that the "initials WMJ 6-11-95" on the first six pages were what he saw Wendell "sign[]" on the 1995 will. And he confirmed on cross-examination that he did see Wendell "initial the will or sign the will." Likewise, Onvani testified that he saw Wendell initial the 1995 will:

JONATHAN'S COUNSEL: Did you see him [Wendell] initial the will?

ONVANI: Yeah, he initialed it and then – yeah.

As further evidence of Wendell's intent to sign the 1995 will, and like the *Haney* and *Matteson* cases, Onvani testified that Wendell asked him to sign as a witness to his will. Woolsey testified that Wendell declared to the witnesses that the 1995 will was his last will and testament. Woolsey further testified that he had no "doubt that [Wendell] expected this to be his will."

As evidence of the *lack* of testamentary intent of Wendell's initials, Jonathan points this Court to the following: (1) Wendell drafted the 1995 will, and therefore, must have been aware of the two spaces above his typewritten name on the signature page and self-proving affidavit for his signature, (2) although the signature page and self-proving affidavit had space for Wendell's signature, they do not contain Wendell's handwritten signature, and (3) Jonathan testified that his father was "fastidious" and did not believe Wendell would have made the mistake of not signing the will. We acknowledge that it is undisputed that the 1995 will does not contain Wendell's handwritten signature on the signature page. But as we have concluded, the presence of Wendell's initials constitutes his signature on the 1995 will, so long as he made them with the requisite testamentary intent. Therefore, the *lack* of a handwritten signature on the last page of the will does not impact our analysis of his intent. Indeed, if omission of a handwritten signature could always be evidence of a testator's intent not to execute a will, then no other mark would ever satisfy the signature requirement of Section 251.051. This interpretation is

contrary to the numerous Texas cases holding that there is no formal requirement as to the form or location of the signature. *See In re Estate of Standefer*, 530 S.W.3d at 166; *In re Estate of Matteson*, 2013 WL 3355385, at *1–2; *In re Estate of Romancik*, 281 S.W.3d at 596; *Orozco*, 917 S.W.2d at 73; *Phillips*, 901 S.W.2d at 562; *Trim*, 862 S.W.2d at 10; *Zaruba*, 178 S.W.2d at 543; *Haney*, 105 S.W.2d at 491.

Additionally, apart from his testimony describing Wendell as a "fastidious person" and "the smartest person [he had] ever known," Jonathan did not present any testimony at the hearing that Wendell did not approve of the 1995 will as his will, that Wendell did not intend his initials to indicate his approval of the 1995 will as his will, or that Wendell intended not to sign the 1995 will. In fact, Jonathan admitted that the subject of his father's will was "never something that [he] discussed with [his] dad[.]" Rather, Jonathan stated he had "just assumed [executing a will] was something [Wendell] had taken care of." Jonathan further testified that he did not know anything about a will until "it was filed in January of 2018."

We also disagree with Jonathan's position that because Wendell drafted his own will, and included the attestation clause and self-proving affidavit with a space above his typewritten name but failed to sign, this can only be evidence of an unfinished document or lack of intent to sign the will. While this could be one interpretation of the evidence if considered alone, the fact that Wendell drafted and typed his own will, which included his typewritten signature, when combined with

the evidence that Wendell gathered a group of four witnesses at his wedding to attest to his will, initialed pages one through six of his will in the presence of Woolsey and Onvani, and declared the document to be his last will and testament, could also be viewed as evidence that Wendell signed the 1995 will and did so with the intent that it be his will. *See Zaruba*, 178 S.W.2d at 543 (noting Texas courts have "uniformly held that a typed signature is a valid and binding signature," and holding will written and "signed" by testatrix on typewriter, presented by testatrix to two witnesses "as her last will and testament," and signed by these two witnesses "at her request and in her presence," was sufficient to satisfy statutory requirements for valid will).

We are mindful that in a legal sufficiency review, we may not substitute our judgment for that of the factfinder so long as the evidence falls within the zone of reasonable disagreement. *City of Keller*, 168 S.W.3d at 822. Here, however, we cannot ignore the settled Texas case law that allows for initials and other marks to satisfy the signature requirement of Section 251.051. Based on this case law, and the specific evidence introduced here that Wendell drafted the 1995 will himself, gathered witnesses for a will signing ceremony after his wedding to Jeannine, asked at least one witness to sign as a witness to the will, initialed pages one through six before Woosley and Onvani, and declared the will to be his last will and testament, there can be no reasonable disagreement that Wendell signed his initials to indicate his approval of this document as his will. *See City of Keller*, 168 S.W.3d at 827

(indicating contrary evidence that could not be disregarded by reasonable factfinder need not be disregarded in legal-sufficiency review on appeal).

Thus, based on the facts introduced in this case, we conclude that Wendell's initials on the first six pages of the 1995 will satisfy the signature requirement of Section 251.051 and there was legally insufficient evidence to support the trial court's findings to the contrary.

2. Was Wendell's 1995 will properly attested?

Next, we consider whether the 1995 will was attested. The trial court found that although Onvani and Woolsey testified that they witnessed Wendell *sign* the will, neither testified he witnessed Wendell *initial* the will. However, the trial court found that because the 1995 will was never signed by Wendell, Onvani and Woolsey "could not have seen him sign that which they purportedly attest to." Therefore, the trial court concluded that the 1995 will was not executed with the requisite formalities.

Where, as here, an attested will is not-self proved,[5] the will "may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to

[5] The trial court found that the "Purported Will's Self-Proving Affidavit contains neither a signature nor initials purporting to belong to the Decedent, rendering it invalid." Jeannine does not challenge this finding on appeal and, in fact, admits that the 1995 will was not self-proved. There is no requirement, however, that a will be self-proved to be valid. Instead, if a will is not self-proved, the proponent may prove the will through the sworn testimony of one or more of the subscribing witnesses to the will. *See* TEX. EST. CODE § 256.153(a), (b).

the will taken in open court." TEX. EST. CODE § 256.153(b). "[T]he attestation of a will is the act of witnessing the performance of the statutory requirements to a valid execution of the will." *Zaruba*, 178 S.W.2d at 543. "This is done by the witnesses signing their names to the instrument in the presence of the testator." *Davis v. Davis*, 45 S.W.2d 240, 241 (Tex. App.—Beaumont 1931, no writ). A "credible witness" in this context is one who is competent to testify, and "[a] competent witness to a will is one who receives no pecuniary benefit under its terms." *Triestman v. Kilgore*, 838 S.W.2d 547, 547 (Tex. 1992). So long as at least two non-inheriting witnesses attest to the signature and at one of those witnesses provides sworn testimony, a will that is not self-proving satisfies the statutory formalities. TEX. EST. CODE §§ 251.051(3), 256.153(b).

An attesting witness is simply a witness to the signature of the testator. *See Brown v. Traylor*, 210 S.W.3d 648, 666 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (citation omitted). The statute does not require the attesting witnesses to see the testator sign the will, so long as "they can attest, from direct or circumstantial facts, that the testator in fact executed the document that they are signing." *Id.* at 661. "[T]he statute does not require that a will's contents be published to its witnesses." *In re Estate of Arrington*, 365 S.W.3d 463, 467 (Tex. App.—Houston [1st Dist.] 2012, no pet.). Nor do the attesting witnesses need to know the signed document they are witnessing is a will. *Brown*, 210 S.W.3d at 662.

Here, the trial court's conclusion that the will was not properly attested and was not executed with the formalities required by the Texas Estates Code rested on its findings that the two witnesses testified they saw Wendell *sign*, but not *initial*, the will, but that no signature was present anywhere on the will. Therefore, according to the trial court's findings, the two witnesses could not have seen Wendell sign that which they purportedly attested to.

However, as discussed above, both Onvani and Woolsey testified that they saw Wendell initial the will:

> JONATHAN'S COUNSEL: Did Wendell Mark Jones sign his initials and date on the will in your presence?
>
> WOOLSEY: Yes, he did.
>
> JONATHAN'S COUNSEL: Now, with regard to the will there are one – the first page, second, third, fourth and fifth pages all have the initials WMJ 6-11-95. Is – is that what you're saying Wendell Mark Jones signed on the will on that day?
>
> WOOLSEY: Yes, it is.

* * * * *

> JONATHAN'S COUNSEL: Did you see him [Wendell] initial the will?
>
> ONVANI: Yeah, he initialed it and then – yeah.

Because there is no evidence to contradict this testimony, there can be no reasonable disagreement as to what this evidence shows, *i.e.*, that both Onvani and Woolsey witnessed Wendell initial the will. We conclude that there is legally

insufficient evidence to support the trial court's finding that "[n]either [witness] testified he witnessed Decedent initial the Will."

Furthermore, we have already concluded that the initials were sufficient to satisfy the signature requirement of Section 251.051. Therefore, by testifying that that they each saw Wendell initial the will, Onvani and Woolsey attested to Wendell's "signature" and that Wendell "in fact executed the document that they are signing" as witnesses. *Brown*, 210 S.W.3d at 661. We conclude that there is legally insufficient evidence to support the trial court's finding that the purported will "was never signed by the Decedent" and "the purported witnesses could not have seen him sign that which they purportedly attest to."

The trial court further found that the purported will was signed by four subscribing witnesses, including Onvani and Woolsey, and that "[a]ll of the witnesses were over 14 years of age at the time and signed in the presence of the Decedent." The parties do not dispute this finding. Accordingly, we hold that the evidence introduced at the hearing conclusively established that the requisite testamentary formalities necessary to execute the will were fulfilled and the trial court erred in concluding otherwise. *See* TEX. EST. CODE § 251.051 (requiring valid will to be in writing, signed by testator or another person on testator's behalf under certain circumstances, and attested by two or more credible witnesses who are at least 14 years of age and sign their names to the will in the presence of the testator).

We therefore sustain Jeannine's sole issue.

Conclusion

Because we hold that Wendell's will was properly executed in accordance with Texas Estates Code Section 251.051, we reverse and render judgment admitting Wendell's will, dated June 11, 1995, to probate and remand for further proceedings consistent with this opinion.

Amparo Guerra
Justice

Panel consists of Justices Countiss, Rivas-Molloy, and Guerra.