

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ESTATE OF : ORPHANS COURT DIVISION
WILLIAM E. TEBBS : NO. 41—05-0124
Deceased :

OPINION AND ORDER

Before the Court is the petition to admit a conformed copy of an original will to probate, filed March 17, 2005 in the above-captioned matter. William E. Tebbs (“Decedent”), died on June 22, 2004 in Williamsport. Decedent executed a Will on November 24, 1998 (the “Will”), but it could not be located following his death. The petition alleges that the Will was accidentally lost, the terms of the Will represent the testamentary intent of Decedent, and that it was never the Decedent’s intent to revoke, destroy or amend the Will. A hearing was held on the petition on July 13, 2005.

Decedent was unmarried and is survived by two brothers, Gifford Tebbs and Max Tebbs. The Petitioner, Jeanette Cochran, was the long-time companion of Decedent. Petitioner resided with Decedent until he moved to a nursing home in November, 2003. The Will named Petitioner and Michael Flanigan Executors. Michael Flanigan died in January, 2003. Attorney Michael H. Collins prepared the will and retained a conformed copy. According to Decedent’s brothers, Petitioner, Petitioner’s son, and attorney

Collins, there was never any mention of altering, destroying or revoking the Will by Decedent.

“Our Supreme Court has repeatedly held that ‘where a [testator] retains the custody and possession of [his] will and, after [his] death, the will cannot be found, a presumption arises, in the absence of proof to the contrary, that the will was revoked or destroyed by the [testator]’” *In re Estate of Janosky*, 2003 PA Super 230, 827 A.2d 512, 519 (2003); *citing, In re Estate of Murray*, 404 Pa. 120, 129, 171 A.2d 171, 176 (1961). “To overcome that presumption, the evidence must be positive, clear and satisfactory.” *Id.* To prevail over the presumption and establish the existence of a lost will, “the proponent of the copy of the will must prove that: 1) the testator duly and properly executed the original will; 2) the contents of the will were substantially as appears on the copy of the will presented for probate; and 3) when the testator died, the will remained undestroyed or revoked by him.” *In re Estate of Janosky*, 827 A.2d at 519-520; *citing Burns v. Kabboul*, 407 Pa.Super. 289, 595 A.2d 1153 (1991).

Applying the three-pronged test to the present matter, the Court finds that Decedent duly and properly executed the original Will and that the contents of the Will were substantially as appears on the copy presented for probate. The Court also finds based upon the evidence that when Decedent died, the will had not been destroyed or revoked by him. The evidence makes clear that Decedent intended for the Will to be controlling at the time of his death and that there had not been any intention to alter or revoke its terms. Decedent’s move to the nursing home in 2003 was undoubtedly a difficult transition and it is not surprising that in reorganizing and reassessing the affairs of Decedent, the document was lost. In addition, the Court believes that the parties

were under the impression that attorney Collins' copy was either the original or as valid and controlling as the original, and that it had always been safely stored in his offices.

ORDER

AND NOW, this ____ day of July 2005, after hearing and based on the foregoing opinion, the petition to admit a conformed copy of the Will to probate is hereby GRANTED. It is ORDERED and DIRECTED that the conformed copy of the Will of William E. Tebbs be admitted to probate as if it were the original.

By The Court,

Nancy L. Butts, Judge

cc: Michael H. Collins, Esq.
Annabel Miller, Register of Wills
Honorable Nancy L. Butts
Judges
Law Clerk
Gary Weber, Esq.