

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

In re: ESTATE OF ETTA MAE CAPPS

: NO. 41-21-0682

: ORPHANS' COURT DIVISION

DECREE

AND NOW, following an evidentiary hearing on October 25, 2021 on Dixie Haldeman's Petition for Citation to Show Cause Why a Photocopy of the Will of Etta Mae Capps Should Not Be Admitted to Probate, the Court hereby issues the following DECREE.

Background

On September 16, 2021, Petitioner, Dixie Haldeman, daughter of Decedent Etta Mae Capps, filed a Petition to admit to probate a photocopy of Decedent's Will,¹ rather than the original. The Petition alleged that on December 3, 2020, Decedent validly executed a Will, with Decedent retaining the original and counsel for Decedent retaining a photocopy. After Decedent's death on August 7, 2021, Petitioner could not locate the Original among Decedent's possessions. The Court scheduled an evidentiary hearing to allow Petitioner to present evidence to overcome the presumption that an original will that cannot be found after a testator's death was revoked or destroyed by the testator.

Applicable Law

In situations where the testatrix retains possession of their will and after their death the original will cannot be found, a presumption arises that the testatrix revoked or destroyed the will.² This presumption may be overcome with positive, clear, and satisfactory evidence: "(1) that the testatrix duly and properly executed the original will; (2) that the contents of the executed will were substantially the same as on the copy of the will presented for probate; and (3) that the testatrix had not destroyed or revoked

¹ This Decree references three separate wills executed at various times by Decedent. For clarity, this Decree will refer to the previous versions as the "first will" and the "second will," and the current version as the "Will."

² *In re Wasco's Est.*, 281 A.2d 877, 879 (Pa. 1971) (citing *In re Bates' Est.*, 134 A. 513 (Pa. 1926)).

her will prior to her death.”³ The “two-witness rule” requires that the execution of the lost will be proven by the oaths or affirmations of two competent witnesses.⁴ The two-witness rule was long held to also apply to proof of the contents of the lost will. However, in 2016 the Supreme Court of Pennsylvania held in *In re Estate of Wilner* that any clear and convincing evidence may prove the contents of a lost will.⁵ As to the third factor, that the testatrix had not destroyed or revoked their will prior to their death, “[d]eclarations of intent, condition, and circumstances of family are insufficient to establish whether a will remains undestroyed or unrevoked by a decedent” and therefore such statements fail to rebut the existent legal presumption.⁶ “Accordingly, a court will not weigh the probability of the decedent’s wishes or otherwise speculate as to the motives which may or may not have influenced the testator in the direction of intestacy.”⁷

Testimony and Evidence

Petitioner Dixie Haldeman testified that Decedent had three children: Petitioner, Gary Hedgcock, and James Capps. As Gary Hedgcock and James Capps are both deceased, their children are potential heirs/beneficiaries of Decedent. Petitioner provided the Court with proof of service indicating that she informed the children of Gary Hedgcock and James Capps of the hearing.⁸ No party other than Petitioner appeared at the hearing, and Petitioner’s testimony and evidence was admitted without objection.

In addition to Decedent’s most recent Will, the photocopy of which Petitioner wishes to admit to probate, Petitioner introduced as exhibits two previous versions of

³ *In re Est. of Keiser*, 560 A.2d 148, 150 (Pa. Super. 1989) (citing *Michell v. Low et al.*, 63 A. 246 (Pa. 1906)).

⁴ *In re Est. of Wilner*, 142 A.3d 796, 801 (Pa. 2016) (quoting 20 Pa. C.S. § 3132).

⁵ See *id.* at 805-06.

⁶ *In re Est. of Janosky*, 827 A.2d 512, 521 (Pa. Super. 2003) (quoting *In re Est. of Keiser*, 560 A.2d at 150); see also *In re Est. of Maddi*, 167 A.3d 818, 822 (Pa. Super. 2017).

⁷ *Id.*

⁸ Specifically, Petitioner mailed a copy of the Petition to William Capps, Justin Capps, and Luke Hedgcock, the surviving grandchildren of Decedent. Petitioner testified that Luke Hedgcock received the Petition, and that she discussed it briefly with him, telling him it was entirely his decision how to respond to the Petition. Petitioner stated that she has not had contact with William or Justin Capps.

Decedent's will. The first will, introduced as Exhibit P3, dated from prior to 2017⁹ and divided Decedent's estate between her three children. Petitioner testified that after her brother Gary Hedgcock died, Decedent amended her will to divide her estate between James Capps and Petitioner. This second will was introduced as Exhibit P2. Following James Capps's death in early 2020,¹⁰ Decedent executed the instant Will Petitioner seeks to admit to probate. This Will leaves the entirety of Decedent's estate to Petitioner.

Petitioner testified that after Decedent executed the Will in December of 2020, she spoke with Decedent about the Will on many occasions. Decedent kept the Will, along with other important papers, in a yellow fireproof box by her bed that she did not keep locked. Shortly before her death, Decedent told Petitioner the original Will was located in that yellow box along with a number of other important documents. After Decedent's death, Petitioner did locate most of the important papers in the yellow box, but could not find the two documents she knew to have previously been on the top of the pile: the original Will, and documentation relating to Decedent's prepayment of funeral expenses. Although Petitioner searched the entire house, she could not locate these two items.

Petitioner explained to the Court that in May of 2021, she and Decedent had returned to Decedent's house and heard what sounded like a four-wheeler speeding away from the property. Upon entering the house, they found evidence that someone had been inside; some items were in slight disarray, and there was a hand-drawn map of Decedent's property which neither of them had seen before on the table. At the time, Petitioner and Decedent did not find anything missing, but Petitioner suggested that documents could have been taken at that time.

Ultimately, Petitioner explained that during her final conversations with Decedent, Decedent expressed satisfaction knowing that "everything [was] laid out the way she wanted it to happen," and had in no way suggested that she wished to destroy or revoke the Will or otherwise deviate from its terms.

⁹ The front page of Exhibit P3 has "void replaced 8/10/17" handwritten in marker.

¹⁰ The front page of Exhibit P2 has "Void New will 12/2020" handwritten in marker.

Petitioner called one other witness, David Chapman, Decedent's next-door neighbor. Chapman confirmed that he had witnessed Decedent's execution of the Will on December 3, 2020, and that the photocopy Petitioner wishes to admit to probate matches the original. He explained that Decedent had occasionally mentioned the Will, and had been clear that after her two sons passed away she wished to leave everything to Petitioner and Petitioner's husband. Chapman confirmed that the photocopy of the Will matched his understanding of Decedent's wishes, and that she had never suggested to him that she had changed her mind about leaving everything to Petitioner.

Counsel for Petitioner confirmed to the Court that he was the second witness to the December 3, 2020 execution of the Will, and that the photocopy matched the original.

Analysis

The Court finds that Petitioner has presented positive, clear, and satisfactory evidence sufficient to admit the photocopy of the Will to probate in the absence of the original. Petitioner easily met the first two prongs by presenting evidence that the Will was validly executed and the photocopy matched the original.

Petitioner's testimony about Decedent's wishes and the previous versions of the will, by itself, would have been insufficient to overcome the presumption that Decedent had destroyed or revoked the original. However, Petitioner testified to numerous conversations she had with Decedent, not just about the contents of the Will but about the location of the original along with other important documents. Petitioner additionally provided a plausible explanation for her inability to locate the original. The testimony that the Will was not the only document missing was persuasive; had Decedent intended to destroy or revoke the Will, there is no reason why she would have destroyed or hidden other end-of-life documents unrelated to the disposition of her estate.

Conclusion

For the foregoing reasons, it is hereby DECREED that the photocopy of the Last Will and Testament of Etta Mae Capps, executed December 3, 2020, shall be admitted to probate in place of the original.

It is so DECREED, this 10th day of November 2021.

BY THE COURT:

Eric R. Linhardt, Judge

cc: Mark L. Taylor, Esq.
Gary Weber, Esq. (Lycoming Reporter)