

IN RE: DANIEL G. SNYDER, SR.
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch
Orphans' Court No. 73–2008

Appeal of Register's Decree – Standard of Review – Later Codicils – Remedy

1. Under 20 P.S. §908, a Decree of the Register of Wills that refuses to probate a later codicil can be appealed to the Court of Common Pleas for up to one year after its entry.
2. The standard of review limits the Court to a determination of whether the appellant can make out a prima facie case for a later codicil; the Court may not consider the actual validity of the document.
3. A prima facie case exists when the appellant can prove that two witnesses can prove the execution of the paper, that the paper is testamentary in nature, and that the paper was executed after the will that has already been admitted to probate.
4. A successful appeal permits the Court to open the Decree of the Register and direct the Register to reconsider the later codicils on their merits.

Appearances:

Vincent M. Monfredo, Esq., *Counsel for Petitioner*

Martha B. Walker, Esq., *Counsel for the Estate*

OPINION

Walsh, J., October 1, 2008

Facts

This matter came before the Court on Samantha Frey's Petition to Set Date for Hearing. On January 15, 2008, the testator, Daniel Snyder, Sr., died in a car accident. In a February 1, 2008 Decree of Probate and Grant of Letters, the testator's wife, Linda Snyder was granted Letters Testamentary by the Register of Wills, and the

testator's August 24, 2001 Last Will and Testament was admitted to probate. On April 29, 2008, the petitioner, Samantha Frey, attempted to probate two codicils that were apparently executed on January 14, 2008, the day before the testator died. As early as February 12, 2008, counsel for the executor became aware of the codicils. To determine the authenticity of the codicils, the parties agreed to have a handwriting expert examine them, and an appointment for the handwriting review was set for March 25, 2008 and then rescheduled to April 23, 2008. However, on April 24, 2008, counsel for the executor canceled the handwriting review, asserting that the three month deadline found in 20 P.S. §3138 prevented the codicils from being probated. On April 29, 2008, Samantha Frey attempted to probate the codicils, and the Register declined to accept them under 20 P.S. §3138.

On May 5, 2008, Frey filed a timely appeal from the probate decree, and, on May 13, 2008, the estate's executor answered the Petition. The Court scheduled a hearing for July 25, 2008, but, before the hearing, the parties agreed to submit the matter to the Court based on the uncontested facts set forth in the pleadings and upon briefs filed by the parties. The Court will now decide the issue.

Discussion

This case concerns an appeal of the attempted probate of two later codicils, both of which were executed after the August 24, 2001 will. The register declined to probate the codicils since a three month deadline had expired.

[1] The executor urges that 20 P.S. §3138 precludes the probate of the will, while Frey argues that 20 P.S.

§908(a) permits an appeal of any decree by the register within one year. [2] As the statutes' text indicates, 20 P.S. §3138 merely sets the duration of the register's inherent authority to open the probate record and does not diminish the power of a court to hear a timely appeal concerning a later will or codicil. 20 P.S. §908. For such an appeal, the Court may not consider the actual validity of the document, because the orphan's court lacks original jurisdiction for the probate of wills. Crawford v. Schooley, 66 A.743, 745 (Pa. 1907).

To prevail on an appeal from a probate decree concerning a later will or codicil, the appellant must present prima facie proof of the following three elements: (1) two witnesses who can prove the execution of the paper; (2) the testamentary nature of the paper; and (3) that the paper was executed after the will that has already been admitted to probate. Id. If the appellant carries this burden, the Court may open the probate record and direct the appellant to produce the paper and prove its validity and execution before the register. Id.

Here, two witnesses can prove the execution of these codicils. See Petition to Set Date for a Hearing: Exhibits A, B. Second, the codicils are definitely testamentary since they purport to give Frey the following items: a lifelong lease to certain real estate, \$75,000, a motorcycle, and a pasture near her barn. Id. Third, the codicils are dated January 14, 2008, so they are later codicils to the August 24, 2001 will. Thus, Frey has carried her burden of proof with respect to the later codicils, and the Court will direct the register to open the probate record and allow Frey to prove the validity and execution of the two codicils.

Conclusion

In conclusion, this case is properly before the Court as an appeal from a probate decree by the register, under

20 P.S. §908. Additionally, Frey has made out a prima facie case that the two later codicils modify the will, because two witnesses can prove the execution of the documents, which are clearly testamentary and executed after the operable will. So, the probate record will be opened, and the register will consider the validity of the documents.

ORDER OF COURT

October 1, 2008, upon consideration of the record, the Petition to Set Date for a Hearing, the Answer to the Petition, the parties' briefs, and the law, it is ordered that the February 1, 2008 Decree of Probate is opened and Linda Miller, the Register of Wills, is directed to reconsider the matter of the two January 14, 2008 codicils.

[1] "If a later will or codicil is submitted to the register for probate within three months of the testator's death but after the register shall have probated an earlier instrument, the register . . . shall have power to open the probate record, receive proof of the later instrument or instruments and amend his probate record." 20 P.S. §3138.

[2] "Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register may appeal therefrom to the court within one year of the decree." 20 P.S. §908.