Michigan Law Review

Volume 43 | Issue 4

1945

WILLS-NECESSITY OF SIGNATURE-STATUTORY REQUIREMENTS SATISFIED BY TYPEWRITTEN NAME

Craig E. Davids S.Ed.
University of Michigan Law School

WILLS—NECESSITY OF SIGNATURE—STATUTORY REQUIREMENTS SATISFIED BY TYPEWRITTEN NAME—Testatrix, having predeceased her husband by three hours, was believed to have died intestate, and her property passed to her husband's estate. Appellee, mother of testatrix, filed a claim against the estate for money owed by her daughter and son-in-law. A year after her claim had been settled by appellants, appellee filed for probate testatrix's will, in which appellee was named the sole legatee. The signature affixed to the instrument was not in the handwriting of testatrix but consisted only of her typewritten name, which testatrix had acknowledged as her signature before two witnesses on separate occasions. The lower court admitted the will to probate, holding that a typewritten name, if properly witnessed, constituted a sufficient signature to comply with the requirement of the Texas will statute.[1] *Held*, affirmed. *Zaruba v. Schumaker*, (Tex. Civ. App. 1944) 178 S.W. (2d) 542.

Though no signature was required under the original wills act,[2] most states now have statutes requiring the signature of the testator to effectively pass either personalty or realty.[3] This requirement of signature, however, has been loosely interpreted by the courts. Signatures are sustained even though the name is illegible, misspelled, or incomplete.[4] In fact, most courts have held even a mark or

absolute Box considered it a mortgage and conveyed to defendant. Defendant agreed to hold the land and the proceeds in case of sale in trust for the plaintiff, but later refused to keep his promise. The court said, "Assuming that the land was conveyed to the defendant upon an oral trust, invalid under the statute of frauds and of uses and trusts, . . . yet it was lawful for him to perform it, and he has fully performed it, so far as it required him to dispose of the land. . . . Though the statutes might have justified the defendant's refusal to dispose of the land as he had orally agreed, yet, having disposed of it, he has voluntarily emerged from the field of their protection and exposed himself to the law, which deals with him as a trustee of personal property realized for plaintiff's benefit . . ."

[1] Tex. Civ. Stat. Ann. (Vernon, 1925), art. 8283 provides, "Every last will and testament except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of 14 years, subscribing their names thereto in the presence of the testator."

[2] Doe v. Pattison, 2 Blackf. (Ind.) 417 (1831); Avery v. Pixley, 4 Mass. 460 (1808). The original English statute of frauds, copied to a great extent in most American jurisdictions, provided that a devise of reality should be "signed by the party so devising the same or by some other person in his presence and by his express direction." 29 Car. II, c. 3, § 5 (1677).

As to personalty, the statute of frauds required the will to be in writing unless it came within the general exceptions outlined in the statute, but it did not require a signature by testator.

[3] Bruce v. Sierra, 175 Ala. 517, 57 S. 709 (1912); In re Seaman's Estate, 146 Cal. 455, 80 P. 700 (1905); In re Carey's Estate, 56 Colo. 77, 136 P. 1175 (1913); Martin v. Martin, 334 Ill. 115, 165 N.E. 644 (1929); In re Brennan's Estate, 244 Pa. 574, 91 A. 220 (1914); Remington v. Metropolitan Savings Bank of Baltimore, 76 Md. 546, 25 A. 666 (1893); Clay v. Layton, 134 Mich. 317, 96 N.W. 458 (1903). In re Charles's Estate, 118 Neb. 634, 225 N.W. 869 (1929).

[4] In re Iverson's Estate, 39 Wyo. 482, 273 P. 684 (1929) the court declared "Mere illegibility of signature, intended and adopted by testator as his and made while

seal sufficient,[5] although some courts sustain them as signatures only where the testator is illiterate or physically incapable of writing his name.[6] Nor does it matter how the signature is affixed to the document. Besides being written in ink, the signature may be written by pencil, engraved and applied by a rubber stamp, printed by lithograph, and, as held by the court in the principal case, written by typewriter.[7] The testator's hand may even be guided by another when he subscribes his name or makes his mark,[8] but if the testator is unable to complete the signature he has started, it is not a valid signing.[9] The test applied by the courts is whether the mark or writing affixed to the will was intended by the testator to be his signature and to thereby authenticate the document as his last will and testament. In the principal case the court rested its decision mainly on the fact that typewritten names have been sustained as valid and binding signatures when affixed to deeds, bonds, and other legal documents, and by analogy, should be so regarded when affixed to wills. It should be noted that there exists in the case of wills, as distinguished from other legal documents, an added danger of fraud in that the alleged maker is not living to deny the execution of the instrument. However, the case is in step with the present trend of judicial decisions towards the eventual abandonment of the requirement of testator's signature.[10]

Craig E. Davids (S.Ed.)

in possession of his faculties, does not prevent it from being legal signature of will." Succession of Bradford, 124 La. 44, 49 S. 972 (1909) where the testator signed his true name of J. W. Bradford as "J. W. Bradfor"; In Kimmel's Estate, 278 Pa. 435, 123 A. 405 (1924) the court sustained merely the signature "Father." In Quimby v. Greenhawk, 166 Md. 335, 171 A. 59 (1933) the initials only were held sufficient, though the last name was later added by another.

[5] In re Mueller's Will, 188 Wis. 183, 205 N.W. 814 (1925); In re Severance's Will, 96 Misc. 384, 161 N.Y.S. 452 (1916).

[6] In re Guilfoyle's Will, 96 Cal. 598, 31 P. 553 (1892); Rook v. Wilson, 142 Ind. 24, 41 N.E. 311 (1895); Succession of Gauthreaux, 173 La. 993, 139 S. 322 (1936).

[7] Knox's Estate, 131 Pa. 220, 18 A. 1021 (1890)—the signature of testator was written in pencil; In re Bullivant's Will, 82 N.J. Eq. 340, 88 A. 1093 (1913)—signature was affixed by a rubber stamp; In re Romaniw's Will, 296 N.Y.S. 925, 163 Misc. 481 at 488 (1937) the court declared "a signature [to a written instrument such as a will]if adopted as such, generally may be printed, lithographed, or typewritten as well as written."

[8] In re Clark's Estate, 170 Cal. 418, 149 P. 828 (1915); In re Jernsberg's Estate, 153 Minn. 458, 190 N.W. 990 (1922). In re Miller's Estate, 37 Mont. 545, 97 P. 935 (1908). Fritz v. Truner, 46 N.J. Eq. 515, 22 A. 125 (1890); Sheehan v. Kearney, 82 Miss. 688, 21 S. 41 (1896).

[9] In re Plate's Estate, 148 Pa. 55, 23 A. 1038 (1892) the testator collapsed after finishing first stroke of his name; In Everhart v. Everhart, (Cir. Ct. Miss. 1888) 34 F. 82 the testator completed only a small scratch.

[10] See "The Rule in Lemayne v. Stanley," in 29 MICH. L. REV. 685 (1931) where Professor Philip Mechem suggests that the statutory requirement of testator's signature should be repealed. He submits that the statutes should only require the courts to determine two factors: (a) whether the testator made it clear to the witnesses that he adopted the instrument as his will and (b) whether the witnesses had attested this fact by writing their names on the will.