Third District Court of Appeal

State of Florida

Opinion filed April 8, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-0966
Lower Tribunal No. 17-1394

Sacha Zaidman and Patricia Zaidman,
Appellants,

vs.

Natchaya Zaidman,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Jorge E. Cueto, Judge.

Jonathan M. Drucker; Kula & Associates, P.A., and Elliot B. Kula and W. Aaron Daniel, for appellants.

Kluger, Kaplan, Silverman, Katzen and Levine, P.L., and Ryan Bollman and Abbey Kaplan, for appellee.

Before SALTER, LOGUE and GORDO, JJ.

SALTER, J.

This appeal is taken from an order of the Miami-Dade circuit court's probate division regarding two competing last wills and testaments: a 2012 document executed in Florida, and a 2015 document apparently executed in Belgium. The court concluded that, as a matter of law, the earlier Florida will controlled and had not been revoked by the later Belgian document. We affirm.

The competing wills were filed with the probate division following the 2017 death of René J.A. Zaidman ("Mr. Zaidman"). The first was presented by Natchaya Zaidman, designated as Mr. Zaidman's wife in the will (the appellee here; the "Wife"). That last will and testament was executed in Miami-Dade County on March 28, 2012, with the requisite formalities for self-authentication under the Florida Probate Code, section 732.502(1), Florida Statutes (2019), and is referred to as the "2012 Will."

The second will was filed on behalf of the appellants, Mr. Zaidman's son Sacha and daughter Patricia (the "Children"). The document was handwritten, dated May 17, 2015, and deposited with a Rabbi in Antwerp, Belgium (the "2015 Will"). The 2015 Will purports to revoke all previous wills, states that it is only to be revealed to the Children after Mr. Zaidman's death, and provides that any dispute

regarding it is to be resolved in the Orthodox Rabbinical Tribunal in Antwerp rather than in a secular court.[1]

The petition for administration was filed by the Wife in Miami. It alleged under oath that Mr. Zaidman and his Wife were residents of a single-family home in Aventura, Florida, and that Mr. Zaidman was domiciled in Miami-Dade County. The Children, themselves residents of Belgium and Israel, filed a counter-petition (and, later, an amended counter-petition) contending that the 2015 Will controlled and had revoked the 2012 Will. Following an adversary hearing, the trial court granted the Wife's motion to strike the Children's amended counter-petition with prejudice. This appeal followed.

Analysis

The issue before the trial court in this case is a question of law controlled by the applicable provisions of the Florida Probate Code. We review that legal issue de novo. The Florida Bar v. Greene, 926 So. 2d 1195, 1199 (Fla. 2006).

The Children's first contention, that the trial court signed the final order submitted by the attorneys for the Wife without a sufficient time for the attorneys for the Children to register their objections, is meritless. The trial court conducted

[1] These terms are gleaned from what was presented as a certified English translation of the document handwritten by Mr. Zaidman in Hebrew. Based on the procedural status of the case, we assume as true the allegations of the Children relating to the 2015 Will in their amended counter-petition.

a thorough hearing, invited the submission of the order, and the order simply granted the motion to strike with prejudice without extensive elaboration. Both sides had a full and fair opportunity to present their legal arguments regarding the competing wills.

The substantive legal issues raised by the Children warrant a more detailed analysis. "The primary goal of the law of wills, and the polestar guiding the rules of will construction, is to effectuate the manifest intent of the testator. Notwithstanding this goal, strict compliance with statutory requirements is a prerequisite for the valid creation or revocation of a will." In re Estate of Dickson, 590 So. 2d 471, 472 (Fla. 3d DCA 1991) (citations omitted).

In Florida, a will must be signed at the end by the testator and in the presence of two witnesses who witness the execution (or an acknowledgement by the testator) in the presence of each other. § 732.502(1)(a)-(c), Fla. Stat. (2015).[2] These statutory formalities apply to foreign wills, as section 732.502(2) provides:

> Any will, other than a holographic or nuncupative will, executed by a nonresident of Florida, either before or after this law takes effect, is valid as a will in this state if valid under the laws of the state or country where the will was executed. A will in the testator's handwriting that has been executed in accordance with subsection (1) shall not be considered a holographic will.

[2] "The purpose of the statute is to assure not only that the signature on the will is that of the testator, but to provide reasonable assurance of the circumstances under which the signature was affixed to the document." Manson v. Hayes, 539 So. 2d 27, 28 n.2 (Fla. 3d DCA 1989).

Thus, under section 732.502(2), a holographic will is a "will in the testator's handwriting"[3] and it must comply with subsection (1) to be a valid will in this state. Florida courts refuse to recognize holographic wills that are not executed in strict compliance with Florida's testamentary statutes, even if the will is valid under the laws of the state or country of execution.[4] Similarly, for a valid revocation of a will by writing, section 732.505, Florida Statutes (2015), provides a will (or codicil or any part of either) is revoked by writing:

> (1) By a subsequent inconsistent will or codicil, or any part of either, even though the subsequent inconsistent will or codicil does not expressly revoke all previous wills or codicils, but the revocation extends only so far as the inconsistency.
>
> (2) By a subsequent will, codicil, or other writing.[5]

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[3] See also Malleiro v. Mori, 182 So. 3d 5, 8 n.2 (Fla. 3d DCA 2015) ("A holographic will is a handwritten will.").

[4] See, e.g., In re Estate of Olson, 181 So. 2d 642 (Fla. 1966) (affirming court's order denying the probate of a holographic will "because it was not attested by two witnesses"); Lee v. Estate of Payne, 148 So. 3d 776, 777 (Fla. 2d DCA 2013) (holding that testator's handwritten will, which was valid under Colorado law, was invalid in Florida because the testator "signed his will without attesting witnesses"); In re Estate of Salathe, 703 So. 2d 1167, 1168 (Fla. 2d DCA 1997) (holding that holographic will executed by the decedent in Germany "is without force or effect under Florida law" and citing section 732.502(2), Florida Statutes).

[5] See also In re Estate of Tolin, 622 So. 2d 988, 990 (Fla. 1993) ("[I]t is well settled that strict compliance with the will statutes is required in order to effectuate a revocation of a will or codicil.").

Here, the 2015 Will was handwritten by the testator in the presence of (at best) one witness.[6] This alone makes the will invalid as a matter of law. See § 732.502(1), Fla. Stat. (2015). Contrary to the Children's assertion, there is no need for an evidentiary hearing to determine whether there was more than one witness. The affidavit of Mr. Matthias Moortgat, a Belgium notary, states that the testator executed the 2015 Will only "in the presence of Rabbi Yossef T. Hacohen." An evidentiary hearing would be futile.[7] As correctly stated by the Wife in her answer brief: "Even assuming that the 2015 Will is valid in Belgium, it is still invalid in Florida for failing to comply with the statutory formalities provided in Section 732.502(1)."

For their last issue on appeal, the Children challenge the procedure and substance of the court's ruling that the 2015 Will did not revoke the 2012 Will. This argument is unavailing. The parties argued revocation at the April 23 hearing. The

[6] This fact is borne out by an inspection of the 2015 Will and is not disputed by the Children.

[7] At the first hearing on the Wife's motion to dismiss, the probate court acknowledged the futility argument:

> **The Court:** As to the fact that no will was ever deposited for certification, I will grant the motion to dismiss without prejudice for you to do whatever you need to do.
>
> As to the petition of dismissal -- because futility is really what you're arguing to me -- with prejudice I'm denying that. I may grant it at the May … hearing.

Children cited a case on the issue and the Wife fully addressed that issue in her second motion to dismiss. The Children were on notice that the issue of revocation was to be decided at the April 23 hearing by the probate court.

The revocation clause within the 2015 Will fails under section 732.505, for the same reason the 2015 Will in its entirety fails under section 732.502--the formalities necessary for execution for an instrument of revocation are the same as those applicable to the Florida last will and testament sought to be revoked. In this case, those statutory formalities were not followed with respect to the purported revocation.

For these reasons, we affirm the order dismissing the Children's amended counter-petition with prejudice and determining that: "The alleged 2015 will does not revoke the 2012 will as a matter of law and has no force or effect in this proceeding." In affirming the order below, we acknowledge that the trial court did not pass upon the validity or invalidity of the 2015 Will in Belgium or in jurisdictions other than Florida. Based upon the limited scope of our appellate review and the record before us, we express no opinion on any such issues.

Affirmed.