

IN THE COURT OF COMMON PLEAS

PROBATE DIVISION

FILED
CLARK COUNTY, OHIO
CLARK COUNTY PROBATE COURT

IN THE MATTER OF

THE ESTATE OF

FLOREDA J. HOLLAND

FEB 22 2017

RICHARD P. CAREY
PROBATE JUDGE

CASE NO. 20170015

ENTRY

This matter came before the Court this 22nd day of February, 2017 to consider the application to admit into probate a copy of what is represented to be a lost will executed by Floreda J. Holland. Appearing before the Court were the following, to-wit: Attorney Andrew Elder, and co-applicants, Brenda Stultz and James Holland, who are two of the five children born to Floreda Holland.

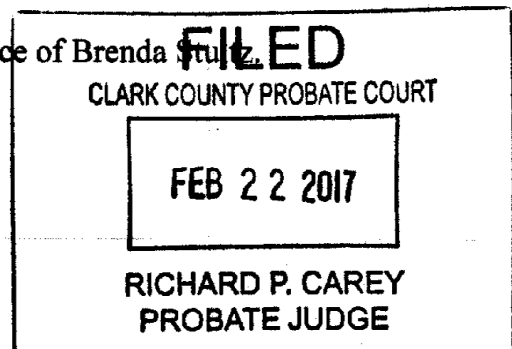
The Court was presented with Exhibit A which purports to be a copy of the Last Will and Testament of Floreda Holland executed on October 16, 1984. The Court does find what appears to be the signature of the testatrix, Floreda Holland, followed by the signature of two witnesses who at that time resided in Springfield, Ohio. On the form of the Will, is the name of Attorney Carl Juergens who is now retired and living out of state. Per the representation of Attorney Elder, one witness, Thomas Crowley, is now deceased, and the second witness, Caroline Wornstaff, cannot be located. Attorney Carl Juergens apparently has no independent recollection of the execution or nature of the Last Will and Testament of Floreda Holland.

The Court did receive, however, the testimony of Brenda Stultz, the oldest daughter of the decedent, who lived next door to the decedent and recalls her parents discussing the fact that they had visited the office of Attorney Carl Juergens --- a

Please purchase 'DocPrint PDF Driver' on <http://www.verypdf.com/artprint/index.html> to remove this message.

classmate of James Holland, the predeceased husband of Floreda Holland --- for the purpose of executing their Last Wills. Ms. Stultz also testified that in October of 1984, that both of her parents were of sound mind and memory and in all other respects legally competent. Ms. Stultz testified that her father, James Holland, died in 2004 and that she and her brother, James, were appointed to serve as the co-executors of their father's estate. The original Last Will and Testament of their father was admitted to probate on February 14, 2005. An exact copy of this original document was presented to the Court and marked as "Exhibit B". All efforts to locate the original Last Will of Floreda Holland, however, proved to be fruitless.

Both Brenda Stultz and James Holland testified that they recognized the signatures of their parents on the documents marked as Exhibit A and Exhibit B. A review of the exhibits by the Court reveals that said documents are precisely the same in nature and therefor may be characterized as reciprocal wills, both executed on the same day. The Court also notes that there are no unusual bequests made in either last Will. Rather, the documents present the normal testamentary intention of individuals in that they leave the entire estate to the surviving spouse if living and if not the estate would be divided equally between the five children. Finally, the Court received testimony that there was never any suggestion by James or Floreda Holland that either intended to revoke the aforesaid Last Wills, rescind any part of the same, or create new wills or codicils thereto. Indeed, from the date of James Holland's death through her demise, Floreda Holland would have lacked testamentary capacity to create a subsequent Will and likely could have only done so with the direct assistance of Brenda Stultz.

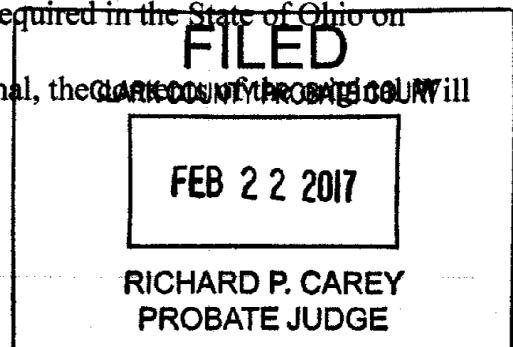


Please purchase 'DocPrint PDF Driver' on <http://www.verypdf.com/artprint/index.html> to remove this message.

R.C. 2107.26 does present the Court with the findings necessary to admit a copy of an original Will purported to be lost, spoliated or destroyed. Specifically, the Probate Court is directed to admit the same if it finds both of the following, to-wit: first that the proponent of the Will establishes by clear and convincing evidence that the Will was “executed with the formalities required at the time of execution by the jurisdiction in which it was executed” and the “contents of the Will”; and second that no person opposing the admission of the Will to probate establishes by a preponderance of the evidence that the testator had revoked the Will.

Normally, it is anticipated that the proponents will cause the witnesses to the Will to appear before the Court to testify. R.C. 2107.27(B). However, in this case, said witnesses are not available. R.C. 2107.27(B) also permits the proponents to call “other witnesses that have relevant and material knowledge about the Will” to appear before the Court to testify.

In this case, the Court received clear and convincing evidence that James Holland and Floreda Holland, who were married at the time and had testamentary capacity, spoke about executing their Last Wills at the office of Attorney Carl Juergens on or about 1984. An original Last Will and Testament of James Holland was presented and admitted to probate in 2005 upon his death. A copy of an exact reciprocal Will is now before the Court marked Exhibit A with the signature of Floreda Holland and the signature of two witnesses to her execution of her Last Will and Testament. A review of the same reveals that this document was executed with the formalities required in the State of Ohio on October 16, 1984. As Exhibit A is a copy of the original, the Court is admitting the Will



Please purchase 'DocPrint PDF Driver' on <http://www.verypdf.com/artprint/index.html> to remove this message.

are now clearly exhibited within the same. The original Will appears to be lost and there is no evidence suggesting that the testatrix had revoked the original Will.

The Court now weighs the fact that it has reciprocal Wills before it --- the original of one having been admitted to probate in 2005; the original of the second now being lost.

After due consideration, and in consideration of R.C. 2107.26, the Court now rules that even though the witnesses to a will are unavailable to testify, a copy of a Last Will may be admitted to probate where the evidence is clear and convincing that a testamentary document, otherwise properly executed, is a reciprocal Will, and that the original of the twin has already been duly admitted. To that end, the Court now makes the requisite findings necessary to admit to probate Exhibit A as the precise copy of the original Last Will and Testament of Floreda Holland.

IT IS SO ORDERED.


RICHARD P. CAREY, PROBATE JUDGE

