

**FINAL
APPEALABLE ORDER**

**IN THE COURT OF COMMON PLEAS
PROBATE DIVISION
CLARK COUNTY, OHIO**

FILED

IN THE MATTER OF: CLARK COUNTY PROBATE COURT CASE NO. 20170021

THE ESTATE OF
JOAN E. SHAW
DECEASED

FEB 13 2017

**RICHARD P. CAREY
PROBATE JUDGE**

JUDGE RICHARD P. CAREY

ENTRY

This matter came before this Court for hearing this 9th day of February, 2017 to consider an Application to Probate a copy of a lost will. Attorney Shawn Taylor appeared in support of this application. Also appearing before the Court were the following three children of the decedent, Lisa Shaw, David Shaw, and William Shaw. Attorney Taylor did introduce into evidence his Affidavit which presented the following particulars, to-wit:

The decedent, Joan E. Shaw, had been a client of Attorney Douglas A. Henson --- a partner with the law firm of Gorman, Veskauf, Henson & Wineberg --- with whom Attorney Taylor now serves as a partner. Attorney Henson prepared a Last Will and Testament for Joan Shaw. Attorney Taylor represents in said Affidavit that this Last Will and Testament, a copy of which was presented to this Court, was "signed in our office on February 18, 1997 and it was witnessed by Douglas A. Henson and Kimberly Myers." Said Affidavit also presents to the Court that the proposed fiduciary, Deborah A. Fleming, made a diligent search for the original Last Will and Testament of Joan Shaw but was unsuccessful in locating the same.

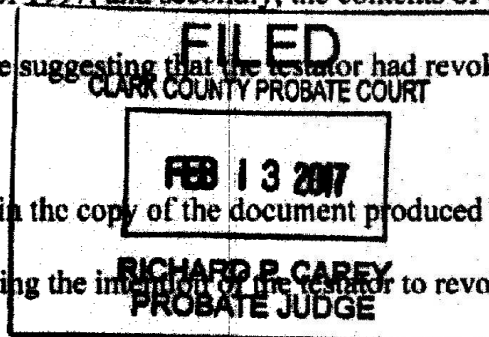
Upon review of the proposed Last Will and Testament in question, the Court does find what appears to be a copy of a document described to be the "Last Will and Testament of Joan E. Shaw." This document does appear to be testamentary in nature. However, it is readily apparent, that there is no signature of either the testatrix, Joan Shaw, or any witness to the Will.

The Affidavit of Shawn Taylor indicates that it was the practice of said law firm, when having clients execute their original Last Will and Testament, to either keep the original or to give the original to the client and keep a copy of the Last Will and Testament in the client's file. In 1997, it was the protocol of that law firm to make the copy of the Last Will and Testament before the same was signed; and that upon the execution of the same, that the initials of the witnesses and the date the document was signed would be affixed to the top right hand corner of the first page of the Last Will and Testament. Indeed, the Court finds the writing on top of the document in question: "signed 2-18-1997 witness - DAH" and "KM".

The matter now invokes two principal sections of the Ohio Revised Code, to-wit: R.C. 2107.26 and R.C. 2107.03. As to the former, it directs that when an original Will is lost, which appears to be the case herein, the Probate Court shall admit a copy of the same so long as two conditions are met, to-wit: first, the proponent of the Will establishes by "clear and convincing evidence" that the Will was executed with the formalities required in Ohio in February of 1997, and secondly, the contents of the Will; and also that there is no preponderance of the evidence suggesting that the testator had revoked the Will.

In this case, the contents of the Will are clearly within the copy of the document produced by counsel. Moreover, the Court received no evidence suggesting the intention of the testator to revoke or otherwise destroy the Will in question.

The question at bar is whether there is clear and convincing evidence that the Will was executed with the formalities required in Ohio in February of 1997. R.C. 2107.03 requires that the Will be written, signed at the end by the testator, and witnessed by two competent witnesses in the conscious presence of the testator. As stated above, the document in question was not signed by the testator or by two competent witnesses. Instead what the Court has before it is the representation that the markings on



the document were the representation of legal counsel that the testator had signed the document in the presence of two witnesses. In essence the Court is left with a double hearsay representation, that is a hearsay statement apparently written by Attorney Douglas Henson --- who is now deceased --- as interpreted and represented by Attorney Shawn Taylor.

Unfortunately, this representation does not rise to the threshold of clear and convincing evidence necessary to warrant the submission of this document into probate. To that end, the Court must now deny the Application to Probate a copy of a Lost Will. Moreover, as the Court received no testimony by witnesses to the execution of the Will, the record taken herein shall not be reduced to writing per R.C. 2107.27(B).

IT IS SO ORDERED.

THIS IS A FINAL APPEALABLE ORDER.


RICHARD P. CAREY, PROBATE JUDGE

cc: Shawn Taylor, Esq.

