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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II (2025)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

MAR 27 2026

SELDEN JONES
CLERK

IN THE MATTER OF THE ESTATE OF PERRY WILBURN WEBB, Deceased:

ARTHUR PERRY WEBB,

Appellant,

vs.

REBECCA MACARTHUR and PRISCILLA CARDER,

Appellees.

Rec'd (date) 3-27-26
Posted
Mailed
Distrib
Publish ____ yes X no

Case No. 122,745

APPEAL FROM THE DISTRICT COURT OF
CANADIAN COUNTY, OKLAHOMA

HONORABLE PAUL HESSE, DISTRICT JUDGE

AFFIRMED

Keith F. Sellers
SELLERS LAW FIRM, P.C.
Tulsa, Oklahoma — For Appellant

Laurence K. Donahoe
LKDLAW, P.C.
Edmond, Oklahoma — For Appellees

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Arthur Webb, son of the decedent, Perry Webb, appeals the trial court's admission of a copy of his father's 1991 will to probate. Upon review, we find that the orders of the trial court finding that the appellees sufficiently proved

that the original will was in existence at the time of decedent's death and met the other evidentiary requirements of 58 O.S. § 82 related to a lost or destroyed will were not clearly contrary to the weight of the evidence. Accordingly, the court did not err in admitting a copy of the 1991 will to probate.

BACKGROUND

Arthur is the only son of Perry and Perry's ex-wife. Arthur was born in Arizona in 1949, and the record reflects that Perry moved to a different state shortly after Arthur was born; however, the pair maintained contact over the years. In 1966, Perry married Betty Moles. Betty had two daughters from a prior marriage, Rebecca MacArthur and Priscilla Carder.

In 1991, Betty and Perry went to the Bass Law firm, where attorney John "Andy" Bass drafted wills for them. In 1995, Perry and Betty created a revocable trust named the "Living Trust of Perry W. Webb and Betty L. Webb." The trust document was not drafted by Andy Bass or anyone else at Bass Law. No evidence of any pour-over will associated with this trust was admitted at the hearings below.

In 1998, Betty passed away. Perry returned to Bass Law in 1999, informed the firm of Betty's passing, and requested that Mr. Bass prepare an affidavit of surviving joint tenancy. Perry also amended their trust the same year. Later in 2004, Perry again returned to Bass Law to have Mr. Bass draft a statutory power of attorney, which appointed Rebecca as his agent. In 2006, Perry amended his and Betty's trust again.

On January 3, 2008, Perry passed away. No one took any action to initiate probate proceedings for either Betty or Perry until Arthur, Rebecca, and Priscilla were contacted in 2024 by two oil companies who offered to buy mineral interests titled in Perry's name. Then, on April 29, 2024, some sixteen years after Perry died, both Arthur and Rebecca initiated probate proceedings for Perry Webb.[1] Arthur filed a petition alleging that Perry died intestate and praying for summary administration pursuant to 58 O.S. § 245. Rebbeca filed a petition seeking to be appointed administrator of the estate of Perry Webb in which she also represented that Perry died intestate. Rebecca's petition included copies of Betty and Perry's trust and its amendments.

Unbeknownst to each, Arthur and Rebecca filed probate actions for Perry's estate almost simultaneously. The cases ultimately were treated as consolidated. However, before the judges assigned to each case realized two probate actions regarding the same decedent had been filed, Judge Hesse entered an order for summary administration in Arthur's probate action and approved the notice to creditors and notice of a hearing before the court was made aware that another petition had been filed. Meanwhile, Judge Strubhar, who was assigned Rebecca's case, filed an order for hearing the petition for letters of administration. Although an order of consolidation does not appear in the record,[2] Arthur acknowledges

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[1] Rebecca also initiated probate proceedings for Betty at this time.

[2] Canadian County Local Rule 9 provides, "Whenever two or more cases involving identical issues and involving one or more parties common to all cases are pending, the judge of the division to which the lowest numbered case is assigned may consolidate and reassign all such cases to that assigned judge. Cases will be consolidated to the lowest case

that Judge Hesse, at a status conference, found that the two cases would be handled by a single judge in a consolidated proceeding.[3]

On May 17, 2024, Rebecca and Priscilla filed an amended petition because the family had discovered copies of the 1991 wills executed by Perry and Betty. Priscilla apparently suggested that counsel for Rebecca should reach out to the Bass Law firm to see if they had any wills executed by Perry. The Bass Law firm was able to produce a copy of Perry's 1991 will and indicated that the original had been destroyed in 2017. The amended petition requested that Priscilla be named the personal representative to comply with Perry's will and also acknowledged that there was another probate matter regarding Perry pending in the same county.

On the same day, Judge Hesse issued an order acknowledging receipt of Rebecca's amended petition and set a hearing on the petition. The hearing was held on June 12, 2024, and Andy Bass, Rebecca, and Jennifer Osborn, Rebecca's daughter, all testified. The hearing was continued to September 23, 2024, at which three former Bass Law employees—being both witnesses to and the notary for the 1991 will—testified.

After this hearing, the court did not rule on the admission of the 1991 wills to probate; rather, it requested that the parties submit findings of fact and conclusions of law. After receiving both parties' findings of fact and conclusions

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number. A copy of the order of consolidation shall be filed in each case affected by the consolidation." Neither the record before us nor the docket sheet in either of the cases below reflect that an order of consolidation was ever filed.

[3] Documents from both case numbers are contained in the record on appeal, and no party complains that a designated document does not appear in the record on appeal.

of law, the court issued an order on November 20, 2024, vacating its previous order granting Arthur's petition for summary administration and also issuing an order and decree on the will contest that admitted the copy of Perry's will to probate. Arthur filed a motion to reconsider on December 2, 2024. The court issued another order admitting the will to probate on December 5, 2025. Arthur timely appealed both the November 20 and December 5 orders.[4]

STANDARD OF REVIEW

Probate proceedings are of equitable cognizance. *Matter of Estate of Maheras*, 1995 OK 40, ¶ 7, 897 P.2d 268, 271–72. "While an appellate court will examine and weigh the record proof, it must abide by the law's presumption that the nisi prius decision is legally correct and cannot be disturbed unless found to be clearly contrary to the weight of the evidence or to some governing principle of law." *Id.* (citations omitted). "Because a trial judge has an opportunity that is unavailable to an appellate court to observe the demeanor and conduct of the witnesses, deference should be accorded on review to the trial tribunal's resolution of conflicting testimony." *In re Estate of Holcomb*, 2002 OK 90, ¶ 8, 63 P.3d 9, 13 (citations omitted). If legally correct, a district court's ruling will not be reversed because of its faulty reasoning, erroneous finding of fact or its consideration of an immaterial issue. *Maheras*, 1995 OK 40, ¶ 7.

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[4] We note that the Supreme Court issued an order inquiring about whether the appeal should not be dismissed as premature on January 7, 2025, due to an apparently pending post-trial motion. After a response was filed, the Supreme Court noted that their jurisdictional inquiry was satisfied, allowed the appeal to proceed, and assigned the case to this Court for resolution.

ANALYSIS

On appeal, Arthur alleges that the court's order admitting the copy of the 1991 will as a lost or destroyed will pursuant to 58 O.S. § 82 was contrary to law as it was not based on clear and convincing evidence. Specifically, he contends that Rebecca and Priscilla did not sufficiently prove that the will was in existence at the time of Perry's death and that the court incorrectly assigned Arthur the burden of proof.

After Perry died, no one was able to find a will in his home; thus, Arthur and Rebecca both assumed Perry died intestate and proceeded with their probate petitions accordingly. As detailed above, a will was later discovered after the petitions had been filed. However, only a copy of Perry's original will was located by the appellees because Perry's original will was destroyed by Bass Law in 2017. Thus, the copy of Perry's will was admitted to probate under 58 O.S. § 82, which provides specific requirements for proving a lost or destroyed will.

Title 58 O.S. § 82 reads as follows:

> No will shall be proved as a lost or destroyed will, unless the same is *proved to have been in existence at the time of the death of the testator* or is shown to have been fraudulently destroyed in the lifetime of the testator, nor unless *its provisions are clearly and distinctly proved by at least two credible witnesses*. For purposes of this section, a copy of the alleged lost or destroyed will can be admitted into evidence, whether or not the copy reflects the signature or signatures appearing on the original will, if the copy is properly identified, and the court shall determine what probative value, if any, is to be assigned to such copy.

58 O.S. § 82 (emphasis supplied). Under this statute's provisions and the authorities construing it, the burden is on the proponent of the will to prove the will was in existence at the time of the death of the decedent. *Janzen v.*

Claybrook, 1966 OK 200, ¶ 27, 420 P.2d 531, 535. It follows that it is also the will proponent's burden to produce two witnesses who can clearly and distinctly prove the provisions of the will. Upon review, we find that the appellees presented clear and convincing evidence that the will was in existence at the time of Perry's death and that the will's provisions were proved by at least two credible witnesses.

Mr. Bass testified that he prepared wills for Betty and Perry Webb on June 24, 1991. Tr. (June 12, 2024), pg. 10. He stated that in 1991, the wills would have been kept in a bank box. *Id.* at 13. Mr. Bass noted that in the early 2000s they purchased a fireproof vault and safe that the wills would have been kept in. *Id.* at 14. He affirmed that he was in possession of the original will until 2017. *Id.* Mr. Bass specifically testified that sometime after Perry passed, the original will was moved to a general file in the office. In 2017, all of the contents of the general file were scanned, and after they were scanned, the general files were shredded. Mr. Bass was specifically asked: "So, it would be your testimony before the Court today that you had the original will in your possession?" *Id.* at 21-22. He responded, "Yes, until 2017 when it was scanned and shredded." *Id.* at 22. Arthur did not call any witnesses to testify that this 1991 will was not in existence when Perry died in 2008, nor did he present any other kind of evidence proving the same.

Ultimately, as stated above, we must abide by the law's presumption that the court's decision is legally correct and cannot be disturbed unless found to be clearly contrary to the weight of the evidence or to some governing principle of

law. *Matter of Estate of Maheras*, 1995 OK 40, ¶ 7, 897 P.2d 268, 271–72. The trial judge is able to observe the demeanor and conduct of the witnesses. In this case, the court heard the testimony of Mr. Bass, who unequivocally maintained that the original will was in existence and being stored at his office until 2017, nine years after Perry's death. Upon hearing that testimony and the testimony of the other employees who worked with Mr. Bass, the court determined that Rebecca and Priscilla sufficiently proved that the will was in existence at the time of Perry's death. Upon review, we agree.

Section 82 also provides that a lost or destroyed will must be clearly and distinctly proved by at least two credible witnesses. First, Mr. Bass testified regarding the procedure that was followed when executing Perry's will. He testified, "I can tell you, our procedure is to have testators and testatrixes initial each page of a will." Tr. (June 12, 2024), pg.16. He noted that Perry's will was signed in his presence at his office. *Id.* He testified that the witnesses present were Terry Bradford and Theresa Miller, and that the notary was Deborah Hutchens. *Id.* When asked if Perry declared that he intended for the document he was signing to be his will, Mr. Bass responded, "We do that in every case. So, yes, he did." *Id.* at 36.

Theresa Miller, a former Bass Law employee, testified that she remembered the Webbs when they came to Bass Law. Tr. (Sept. 23, 2024), pg. 11. She testified that she typed Perry's will and was a witness to the document. Specifically, she stated that the Webbs were absolutely competent and knew what they were

signing. *Id.* at 11. She testified that she and the other witnesses watched Perry and Betty initial each page of the document. *Id.* at 12.

Additionally, Terri Bradford, a current Bass Law employee, testified that while she did not remember the Webbs specifically, she knew that she had witnessed the execution and signing of the will. *Id.* at 26. She stated that Bass Law strictly adhered to the following procedure: "The attorney would call us in and we would go through questions, is this your will, have you read the will, does it dispose of your property the way you would like and would you like these ladies to be your witnesses. And then we would watch them sign, initial it, and then sign it, and then we would witness." *Id.* at 27. Counsel for Rebecca and Priscilla asked Ms. Bradford if her signature would have been on the document if she had not personally seen Perry sign the documents, to which she replied "No." *Id.* Counsel also asked if the will was executed in her presence, and she answered in the affirmative. *Id.* Additionally, counsel asked Ms. Bradford if she had any reason to believe that the will was entered while Perry was incompetent, to which she responded: "No, I don't." *Id.* at 28.

Finally, the court heard testimony from Deborah Glenn (formerly Hutchens), who also worked for Bass Law until she retired. *Id.* at 36. She testified that she did not specifically recall Mr. Webb; however, she stated that her notary was on his will. *Id.* at 37. Counsel for Rebecca and Priscilla asked, "Did you ever sign your signature as a notary when you didn't see the document executed?" She responded, "No." *Id.* at 41. She testified that Bass Law always adhered to the following procedure: "we would all be in the room sitting around a table and

we would watch the signature being signed and then there would be a notary and two witnesses." *Id.* at 41-42.

In reviewing the testimony of the witnesses at trial, we find that Priscilla and Rebecca called two credible witnesses to clearly and distinctly prove Perry's 1991 will. Arthur takes issue with the fact that some of the witnesses did not specifically remember Perry. However, these witnesses were asked to recall a specific event that occurred roughly thirty-three years ago. Additionally, each of the witnesses testified, to varying degrees, that they would not have served in their role as witness or notary if regular firm procedure had not been followed, that Perry was competent when executing his will, that they witnessed the signing of the will, and more. We hold that Rebecca and Priscilla met their burden on both requirements in § 82. Therefore, the court properly admitted the copy of Perry's will to probate as a lost or destroyed will.

Arthur also argues that the trial court's order is clearly erroneous because the burden of proof was incorrectly assigned to him and that the order fails to apply the presumption of revocation. Arthur does not explain how the court's order incorrectly assigns the burden of proof; rather, he contends that "because it has not been proved with clear and convincing evidence that Perry Webb's original will was in existence at the time of his death, the presumption of revocation has not been rebutted." *Brief-in-Chief*, pg. 25. The Court in *In re Shaw's Estate,* 1977 OK 237, ¶ 18, 572 P.2d 229, held that "failure to produce or find a will known to have been in the possession of the testator or readily accessible thereto prior to his death, raises a presumption of revocation of such

instrument." However, the Court then also held that when the decedent's "executed duplicate will was presented for probate and the proponents proved valid execution and mental capacity, the presumption of revocation brought about by the missing duplicate was overcome. The burden of proving revocation shifted and was placed where it belonged, on those persons contesting or more particularly claiming revocation under 84 O.S.1971 § 104." *Id.* ¶ 25.

Arthur points to *Janzen v. Claybrook*, 1966 OK 200, 420 P.2d 531, to support his contention that Rebecca and Priscilla did not sufficiently rebut the presumption of revocation. In *Janzen*, the decedent's brother petitioned the court for probate of a lost will. *Id.* ¶ 4. The decedent's brother had a carbon copy of a will that was drafted by the decedent in 1958. *Id.* The attorney who drafted the will testified that the original will and the copy were delivered to the possession of the decedent. *Id.* ¶ 14. However, the original will could not be found. Thus, the Court found that "there was no evidence adduced showing the will was in existence at the time of death of the decedent." *Id.* ¶ 18. We find that *Janzen* is distinguishable from the present case for several reasons. First, the testimony at trial established that the original will was not given to Perry and was instead kept at Bass Law until 2017 when it was destroyed. Perry died in 2008. Thus, there was ample evidence that the will was in existence at the time Perry died. Further, in *Janzen*, a witness testified that the decedent said he had destroyed his will by tearing it up. *Id.* ¶ 28. The Court found that that testimony was evidence that the decedent did not have a will in existence when he died in 1962. *Id.* ¶ 29. As discussed below, there was no testimony or evidence presented in

this case regarding Perry's destruction or revocation of the will, nor was there any testimony or evidence presented that a will associated with the 1995 trust existed.

Here, the proponents of the will presented an exact copy of Perry's 1991 will. The will substantially complied with the requisite statutory formalities. Rebecca and Priscilla would have been able to produce the original will but for the original being destroyed in 2017, almost ten years after Perry died. Multiple witnesses testified about the will's proper execution and that Perry had capacity to make the will. We find that Priscilla and Rebecca provided clear and convincing evidence that the will was in existence at the time Perry died, that the copy of the will that was produced and the witnesses who testified regarding its execution sufficiently rebutted the presumption of revocation, and, therefore, the burden of proof for revocation shifted to Arthur. Arthur did not call any witnesses at trial or present evidence. In pleadings, Arthur asserts that his father did not mention a will to him, but he was, however, sent a copy of the trust. Title 84 O.S. § 101 provides different methods of revocation of a will such as burning, tearing, destroying, or drafting another will that declares such revocation. We find that a decedent's failure to mention a will to an heir who was later removed from the trust and was never mentioned in the will, does not constitute evidence of revocation.

Ultimately, we find that the court's order did not improperly assign the burden of proof to Arthur and that Perry's 1991 will was properly admitted to probate.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

March 27, 2026