IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II (2025)

IN THE MATTER OF THE ESTATE OF DAVID M. KROIER, Deceased:

DAVID LEMKE,

Appellant,

vs.

ERIC KROIER and AARON KROIER,

Appellees.

Case No. 122,451

APPEAL FROM THE DISTRICT COURT OF
OKLAHOMA COUNTY, OKLAHOMA

HONORABLE THOMAS C. RIESEN, SPECIAL JUDGE

REVERSED AND REMANDED

Shanika Chapman
OKLAHOMA ESTATE ATTORNEYS, PLLC
Edmond, Oklahoma — For Appellant

Eric S. Kroier
ELTON JENKINS LAW, PLLC
Norman, Oklahoma — For Appellees

OPINION BY GREGORY C. BLACKWELL, JUDGE:

David Lemke, personal representative and friend of the decedent, David Kroier, appeals the trial court's order determining that the decedent's holographic will was wholly inconsistent with his previous attested will. Upon

review, we reverse the order of the trial court and remand for further proceedings consistent with this opinion.

I.

David Kroier died on June 8, 2022. He has three heirs, being his three children. They are his two sons, Eric and Aaron Kroier—appellees herein[1]—and a daughter, Melissa Kroier. In August 2022, the brothers first petitioned the court below for letters of administration, stating that they "believe[d] that the Decedent did not execute a valid and legally effective Last Will and Testament." Such letters were granted.

The following month, David Lemke filed a motion to set those letters aside, having discovered what he believed were two wills left by the decedent. In the same filing, Mr. Lemke sought an order admitting both instruments, noting that the latter will did not expressly revoke the former, and arguing that the provisions of the latter document were not "wholly inconsistent with the terms of the former will," such that 84 O.S. § 105 should not operate as a revocation of the prior will as a matter of law.

The first such document was an attested will signed August 8, 2019. The 2019 will made no specific legacies or devises. It distributed one hundred percent of the residuary of the estate to Mr. Lemke. It expressly disinherited both Eric and Aaron and pretermitted Melissa. Mr. Lemke was named as personal representative.

---

[1] Both brothers are licensed Oklahoma attorneys. Eric entered his appearance in this appeal on behalf of himself and his siblings, though Melissa Kroier is not a party.

The second document submitted for probate is a handwritten instrument, apparently dated and signed by David Kroier on May 2, 2022. The decedent's name is written at the top of the instrument. Just below that are four names with four associated percentages, as follows: David E. Lemke, 25%; Melissa D. Kroier, 20%; Richard Kroier II, 15%; and, Abigail Kroier, 40%.[2] The will then states, "Give good deals to my friends," and lists twelve individuals, who are identified as legatees in Mr. Lemke's motion to admit. It is also noted that "Melissa is POD on Chase." There are various other scribblings and notations that are not decipherable. This document makes no reference to either Kroier brother.

The brothers filed an objection to Lemke's motion to set aside their letters of administration, but that instrument is not included in the record on appeal. Apparently, an agreement was struck between the parties, as the next instrument in the record is an agreed order admitting *both* wills to probate, appointing David Lemke as personal representative, and removing Eric and Aaron as co-administrators. The order states the court determined that both instruments described above were valid wills of the decedent and both were admitted to probate. However, the court also reserved several key issues. Most notably, the court reserved "[t]he issue of whether the provisions of the later will are wholly inconsistent with the former will," "how and whether the provisions

---

[2] Richard is the decedent's adult nephew and Abigail is his minor granddaughter. Just below Abigail's name are apparent stipulations to the gift, stating "help her get a used car [at] 16" and "[r]est of the money @ 21" and "[r]est at 30 years old."

of the former will are consistent with the later will," and "whether Eric and Aaron Kroier should be considered pretermitted heirs ...." ROA, 19.[3]

A year later, having fully administered and liquidated the estate, Mr. Lemke filed a final accounting and motion seeking approval of the same. In his proposed distribution, Mr. Lemke sought to give effect to both instruments, which included honoring the disinheritance of the Kroier brothers, as prescribed by the 2019 will. The Kroier brothers filed an objection to the final account, arguing the two wills were wholly inconsistent and that the second instrument thereby revoked the first pursuant to 84 O.S. § 105. As such, they argued, only the provisions under the second will—in which they were not mentioned, and thereby likely pretermitted—could be given effect. Ultimately, the court issued an order rejecting Lemke's final account. The order specifically found that the second will was wholly inconsistent with the first, that the second will thereby revoked the first will as a matter of law, and that the Kroier brothers were pretermitted and entitled to their intestate share. Lemke appeals.

II.

Probate proceedings are of equitable cognizance. *In re Estate of Fulks*, 2020 OK 94, ¶ 9, 477 P.3d 1143. While an appellate court may and will examine and weigh the evidence, the findings and decree of the trial court cannot be disturbed

---

[3] We find this conditional admittance problematic, at best. When two wills are tendered for probate, the trial court must make an initial determination as to whether the second purported will wholly revoked the first, whether expressly or as a matter of law. If so, ***the first instrument cannot be admitted to probate***, as it has been revoked and thus is not the will of the decedent. While the trial court's procedure is not supported by Oklahoma law, no party challenged the order conditionally admitting the two wills to probate. Thus, we will not address the question further in this appeal.

unless found to be clearly against the weight of the evidence or some governing principle of law. *Matter of Estate of Bartlett*, 1984 OK 9, ¶ 4, 680 P.2d 369, 374. As always, legal questions are reviewed *de novo*. *In re Estate of Jackson*, 2008 OK 83, ¶ 9, 194 P.3d 1269, 1272. "Such review is plenary, independent, and non-deferential." *Id.*

III.

On appeal, Lemke contends that the court erred in finding that the provisions of the decedent's second will were wholly inconsistent with the first will and the first will was thereby revoked by operation of law. Title 84 O.S. § 105 provides:

> A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the will.

The decedent's second will does not expressly revoke the first, thus, the question on appeal is whether the two wills are "wholly inconsistent." Upon review, we determine that the trial court's holding that the two wills were irreconcilable was contrary to law.[4]

In examining the two wills, we note that the 2019 will made no specific legacies or devises and it distributed one hundred percent of the residuary of the estate to Lemke. Meanwhile, the decedent's second will made certain specific

[4] Here, there is no evidence to review other than the two wills themselves. The trial court did not hear any evidence and appears to have made its determination from the face of the two wills and the argument of counsel. We agree with the appellant that whether the former will revoked the prior, where the facts are uncontested, is a question of law to be reviewed *de novo*.

bequests and gifted the entirety of the remaining estate to four individuals in varying percentages, one of whom was Lemke. Thus, the wills are clearly consistent in seeking to leave a sizable portion of the estate to Lemke. While the second will *partially* modifies the clause distributing the remainder of the residuary to persons other than Lemke, the remainder of the changes appear minor and are not wholly inconsistent with the prior will but appear to act as a form of codicil. *See* CODICIL, *Black's Law Dictionary* (12th ed. 2024) (defining codicil as "[a] supplement or addition to a will, not *necessarily* disposing of the entire estate but modifying, explaining, or otherwise qualifying the will in some way." (emphasis added)). The term "codicil" is generally used synonymously with "will" in Oklahoma. *See also* 12 O.S. § 19 ("The term 'will,' as used in this chapter, includes all codicils as well as wills.").

For example, the second will states ""Melissa is POD on Chase," presumably attempting to add (or confirm) his daughter Melissa as a beneficiary of this account. However, whether that was accomplished will be determined by whose name is actually on the account. POD accounts do not pass through probate. *See* 6 O.S. § 901; *Tinker Fed. Credit Union v. Grant*, 2017 OK CIV APP 9, ¶ 31, 391 P.3d 766, 772. The gift of "help[ing] [Abigail] get a used car" appears to be a portion of her 40%. The "gift" of "good deals to my friends" is likely so ambiguous as to be illusory. *See, e.g., Matter of Estate of Paris*, 1993 OK CIV APP 50, ¶ 7, 856 P.2d 583, 586 ("[T]he bequests stating "money for Kathryn," and "money for Louis" fail because of vagueness."). No party argues that the specific bequests of a crossbow and possibly a .22 rifle, to the extent they are indeed

decipherable in the latter instrument, are in substantial conflict with the prior will. In short, while there are *some* inconsistencies to be sure, the additions made by the second instrument, which may be better thought of as a codicil, are not *wholly* inconsistent with the prior will. *See O'Neal v. James*, 1957 OK 126, ¶ 9, 312 P.2d 889, 891 ("A codicil is not effective to revoke the prior will or to change the provisions thereof more than is absolutely necessary to give the provisions of the codicil effect and is ordinarily construed, as far as possible, as reaffirming and republishing the original will.").

Of course, the most significant "change" to the will, at least from the Kroier brothers' perspective, is that they are not mentioned in the second will, and therefore, would be considered pretermitted if that will stood alone. Similarly, the decedent's daughter, Melissa Kroier, was not mentioned in the first will but was specifically provided for in the second will and thus would be pretermitted if only the first will were considered. But viewing the two instruments as one solves any perceived issues in this regard. The documents are actually quite consistent in not providing for either Kroier brother in any capacity. If the decedent believed he had disinherited his sons in the first instrument, he would have no cause to do so again in the second—unless he believed the second instrument revoked the first and he still wished to disinherit the brothers. Similarly, when viewing the two wills together, it is clear the decedent wished to reduce Lemke's total share but provide for Melissa and two others from that share. Under this reading, the decedent did not fail to mention any child in his estate planning, which generally aligns with the likely intent of most testators.

See Matter of Tayrien's Estate, 1980 OK 8, ¶ 11, 609 P.2d 752, 755 ("It is presumed in Oklahoma, a testator intends to dispose of his entire estate and avoid intestacy in whole or in part."); *Matter of Estate of Worsham*, 1993 OK CIV APP 122, ¶ 7, 859 P.2d 1134, 1136 (finding such a proposition "well settled").

Finally, the decedent also expressly appointed Lemke to serve as the personal representative of his estate in the first will but made no provision for a personal representative in the second will. The failure to name a personal representative cannot be considered inconsistent with the prior designation. Rather, it appears likely the decedent omitted a personal representative from the second instrument because he had already named one in the first—just as he saw no need to repeat the disinheritance of his sons. These omissions do not suggest inconsistency; instead, they indicate that the decedent most likely believed he was modifying, not eliminating, his prior will.

* * *

Based on the foregoing, we hold that the provisions of the second will are not wholly inconsistent with the first. Oklahoma courts have consistently held that "[o]f paramount importance in a probate proceeding is discerning and implementing a decedent's intent." *In re Estate of Carlson*, 2016 OK 6, ¶ 13, 367 P.3d 486, 491. Title 84 O.S. § 151 provides: "[a] will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible." Further, "[s]everal testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument." 84 O.S. § 158. Although it is now impossible to fully

ascertain the decedent's intent, because the terms of the second will are not wholly inconsistent with the first, we hold that reading the two instruments together gives effect, as far as possible, to the decedent's intent. As such, the trial court erred in granting the Kroier brother's objection to Lemke's petition to approve his final account, in finding the second will revoked the first, and allowing the Kroier brothers to take as pretermitted heirs when they were expressly disinherited in the first will. As such, the order appealed is reversed, and this matter is remanded for additional proceedings consistent with this opinion.[5]

REVERSED AND REMANDED.

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

March 18, 2026

---

[5] Because we find that the Kroier brothers are not pretermitted, we need not address Mr. Lemke's arguments regarding 84 O.S. § 133.