

SUPREME COURT OF GEORGIA

Singelman v. Singelmann, 273 Ga. 894

548 S.E.2d 343 (2001) · No. S01A0282 · Decided June 11, 2001

SUMMARY

The Supreme Court of Georgia held that a self-proved will may be admitted to probate without live testimony from subscribing witnesses, and that witness testimony may also be provided through written interrogatories or other authorized procedures. The probate court erred by requiring the witnesses to appear personally and by improperly assessing the propounder's burden regarding testamentary capacity. The denial of probate and the motion for a new hearing or to set aside were reversed, and the case was remanded.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Hines, Justice
JURISDICTION	Georgia
DECIDED	June 11, 2001
DOCKET	S01A0282
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal by the propounder of a will from the probate court's refusal to grant a new trial or set aside its order denying probate of the purported last will and testament.
STANDARD OF REVIEW	The Supreme Court reviewed the probate court's legal conclusions concerning the evidentiary requirements for proving the will and the allocation of the burdens of proof. It held that the probate court's conclusions could not be sustained on the stated grounds.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Georgia.
PARTIES	Michael Singelman v. Caveators, including three other children of Oliver Pierce Singelmann

TOPICS

- probate procedure
- will contests
- testamentary capacity
- appellate procedure
- standard of review

PRACTICE AREAS

probate

wills and estates

appellate procedure

QUESTIONS PRESENTED

1. Whether the probate court could require the personal appearance and live testimony of the subscribing witnesses where the will was self-proved or, alternatively, where their testimony had been submitted by written interrogatories.
2. Whether the propounder established a prima facie case of due execution, testamentary capacity, and voluntary execution sufficient to shift the burden to the caveators.
3. Whether the evidence identified by the probate court was sufficient to establish or rebut lack of testamentary capacity.

HOLDINGS

1. Personal appearances of the subscribing witnesses were not required. A self-proved will may be admitted without testimony from any subscribing witness, and even a non-self-proved will may be proved through written interrogatories, depositions, or other authorized discovery procedures.
2. The propounder established a prima facie case by showing the will, the testator's apparent testamentary capacity, and voluntary execution. The burden then shifted to the caveators, and the probate court could not deny probate without identifying evidence rebutting that prima facie showing.
3. The probate court erred in concluding that the propounder failed to establish testamentary capacity or in denying probate on that basis. Evidence that the ninety-one-year-old testator had hearing and sight impairments, misunderstood his income, or might not have understood what he signed was insufficient, particularly where the latter conclusion was speculative.

KEY QUOTATIONS

"When this has been done, the burden of proof shifts to the caveator." (273 Ga. at 895)

"When a will is self-proved, it 'may be admitted to probate without the testimony of any subscribing witness.'" (273 Ga. at 895)

"Indeed, advanced age and weakness of intellect do not amount to incapacity, for testamentary capacity is that which is necessary to give the testator a deciding and rational desire about the disposition of the testator's property." (273 Ga. at 897)

FACTUAL BACKGROUND

Oliver Pierce Singelmann executed a will on September 13, 1997, and died on October 17, 1998. The will was signed by two witnesses and included a notarized self-proving affidavit; a clinical social worker also provided an affidavit stating that the decedent was oriented, understood his assets, and understood the will. The decedent's other children challenged the will based on undue influence, lack of testamentary capacity, and allegedly suspect witnessing. The propounder submitted the witnesses' executed interrogatories, but neither subscribing witness testified in person.

PROCEDURAL HISTORY

Michael Singelman petitioned the probate court to probate his father's 1997 will in solemn form. Three of the decedent's other children filed caveats alleging undue influence, lack of testamentary capacity, and a defect in the witnessing. The probate court denied probate, concluding that the propounder failed to produce the subscribing witnesses and failed to establish execution and testamentary capacity; it later denied relief by new trial or set-aside motion. The Supreme Court of Georgia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The probate court must reconsider the probate proceeding consistently with the Supreme Court's opinion, including the statutory methods for proving the will and the proper allocation of the burdens concerning execution and testamentary capacity.

CASES CITED

- Skelton v. Skelton, 251 Ga. 631, 632(2), 308 S.E.2d 838 (1983)
- Pendley v. Pendley, 251 Ga. 30, 31(2), 302 S.E.2d 554 (1983)
- Ehlers v. Rheinberger, 204 Ga. 226, 228, 49 S.E.2d 535 (1948)
- Thompson v. Davitte, 59 Ga. 472, 475(2) (1877)
- Heard v. Estate of Lovett, 273 Ga. 111(1), 538 S.E.2d 434 (2000)
- Hickox v. Wilson, 269 Ga. 180, 496 S.E.2d 711 (1998)
- Miller v. Miller, 104 Ga. App. 224, 121 S.E.2d 340 (1961)
- Norton v. Ga. R. Bank &c. Co., 248 Ga. 847, 848(1), 285 S.E.2d 910 (1982)
- Cornelius v. Crosby, 243 Ga. 26, 27(5), 252 S.E.2d 455 (1979)
- Pope v. Fields, 273 Ga. 6, 9(2), 536 S.E.2d 740 (2000)
- Wood v. Lane, 102 Ga. 199, 201, 29 S.E. 180 (1897)
- Sullivan v. Sullivan, 273 Ga. 130, 132(2), 539 S.E.2d 120 (2000)