

SUPREME COURT OF FLORIDA

In re Estate of Perry Carlton, Deceased

276 So.2d 832 (Fla. 1973) · No. No. 42110

SUMMARY

The Florida Supreme Court held that a proponent of a lost will established a prima facie case sufficient to survive a directed verdict by presenting the drafting attorney’s testimony about his custom and practice of retaining copies only for executed wills, a non-conformed carbon copy of the will, and evidence that the original may have been destroyed by water damage or by someone other than the decedent, thereby rebutting the presumption of revocation. The court reversed and remanded for further proceedings under Florida’s lost-will statutes, Fla. Stat. §§ 732.24(2) and 732.27(3).

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per Curiam; ADKINS; BOYD; McCAIN; DEKLE; SPECTOR
JURISDICTION	Florida
DOCKET	No. 42110
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for writ of certiorari to review decision of the District Court of Appeal, Fourth District, affirming trial court's judgment against petitioner at the close of his case.
STANDARD OF REVIEW	Whether a prima facie case was established (legal sufficiency of evidence).
PRECEDENTIAL VALUE	Published
PARTIES	Carl Carlton v. Sally Sue Sims, etc., et al.

TOPICS

- probate
- probate procedure
- evidence
- civil procedure
- appellate procedure

PRACTICE AREAS

- Wills, Trusts, and Estates

QUESTIONS PRESENTED

1. Whether petitioner established a prima facie case for probate of a lost will under Florida Statutes §§ 732.24(2) and 732.27(3).

HOLDINGS

1. Petitioner established a prima facie case sufficient to withstand a motion for judgment at the close of his case; the evidence, including the attorney's custom and practice, the copy of the will, and circumstances rebutting the presumption of revocation, required respondents to come forward with their evidence.

KEY QUOTATIONS

“Certainly, by any standards of statutes, case law and rationale, reasonable inferences to be drawn from the evidence, and by logic and reason, a prima facie case was established by petitioner, sufficient to withstand the assault at the close of his case, and to require respondents to come forward with their evidence.” (833-834)

“Upon the ultimate close of the evidence and the case, naturally, then the trial judge must weigh and consider the evidence, placing the weight and value where appropriate, consistent with reason, logic and law.” (834)

FACTUAL BACKGROUND

Decedent Perry Carlton's will was prepared by his attorney and given to him. After his death, the original will could not be found; a carbon copy was offered for probate as a lost will. The attorney testified that his custom was to keep a copy only if the will was executed. The decedent kept valuables in an old safe that was waterlogged and contained deteriorated papers. Decedent was eccentric but had repeatedly expressed intent to leave his estate to petitioner, and had exhibited a holographic will to that effect. The trial court entered judgment against petitioner at the close of his case, finding no prima facie case.

PROCEDURAL HISTORY

Petitioner sought to probate a lost will. At the close of petitioner's case, the trial court entered judgment against him. The Fourth District Court of Appeal affirmed. Petitioner sought certiorari in the Florida Supreme Court based on conflict jurisdiction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

For further proceedings consistent with the opinion; respondents to present evidence and trial judge to weigh evidence.

CASES CITED

- Stewart v. Johnson, Stewart v. Johnson, 194 So. 869 (Fla. 1940)
- In re Washington's Estate, In Re Washington's Estate, 56 So.2d 545 (Fla. 1952)
- In Re Manney's Estate, 42 So.2d 535 (Fla. 1949)

- Tillman v. Baskin, 260 So.2d 509 (Fla. 1972)
- Carlton's Estate, In re, 258 So.2d 524 (Fla. 4th DCA 1972)

OPINION

Carlton's Estate, In re Court: Florida Supreme Court Writing for the ppp cyRIAM; ADKINS Court: Citation: Carlton's Estate, In re, 276 So.2d 832 (Fla. 1973) Decision Date: 26 April 1973 Docket Number: No. 42110, 42110 Parties: In re ESTATE of Perry CARLTON, Deceased. Carl CARLTON, Petitioner, v. Sally Sue arties: SIMS, etc., et al., Respondents. Page 832 276 So.2d 832 In re ESTATE of Perry CARLTON, Deceased.

Carl CARLTON, Petitioner, v. Sally Sue SIMS, etc., et al., Respondents. No. 42110. Supreme Court of Florida. April 26, 1973. Rehearings Denied May 17, 1973. [*833] Peter J. Winders, of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, Tampa, for petitioner. Richard P. Kenney, Miami, Errol S. Willes and William F. Willes, of Willes, Bittan & Willes, Fort Pierce, for respondents.

PER CURIAM. By petition for writ of certiorari, we have for review a decision of the District Court of Appeal, Fourth District, reported at 258 So.2d 524, which conflicts with the prior decisions of this Court in Stewart v. Johnson (1940), 142 Fla. 425, 194 So. 869; In Re Washington's Estate, Fla.1952, 56 So.2d 545; In Re Manney's Estate, Fla.1949, 42 So.2d 535; and Tillman v. Baskin, Fla.1972, 260 So.2d 509.

This conflict is patently reflected in the record proper, i.e., the rulings, findings and ultimate final judgment of the trial judge. We have jurisdiction pursuant to Fla.Const., Article V, § 3(b)(3), F.S.A. Petitioner attempted to admit to probate as the Last Will and Testament of the decedent a carbon, but not conformed copy of his alleged 'Will' under the provisions of our statutes relating to lost wills.

At the close of his case, judgment was immediately entered against him, and upon appeal the Fourth District Court of Appeal affirmed. Accordingly, we are concerned with the limited issue of whether a prima facie case was established by petitioner. F.S. 732.24(2), F.S.A., relating to proof of wills, provides that if the witnesses' testimony cannot be obtained within a reasonable time, then the executor (or any person having no interest in the estate) may qualify the will by testimony that he believes the writing to be the true Last Will and Testament.

Additionally, provision is made for a correct copy to be deemed the equivalent of one witness. F.S. 732.27(3), F.S.A., relating to the probate of a lost will, provides for establishing such a 'lost will' through the clear and distinct testimony of two disinterested witnesses. Petitioner established at least a prima facie case under the criteria of the statutes cited and the cases --- Page Break --- appertaining.

Without question, a Last Will and Testament was prepared for the decedent and given to him by his attorney. 'The copy introduced was in fact the 'true copy'. The problem surrounds whether the original was executed and duly witnessed.

The attorney's testimony reveals that his custom, habit and practice was to only place a copy of such a will in his active files if in fact the 'Will' had been duly executed and witnessed. Sub judice, the copy was in his active files. See *In Re Manney's Estate*, supra, permitting proof of a lost will through testimony regarding an attorney's custom, habit and practice.

See also *Stewart v. Johnson*, supra, where a copy of the 'Will' does not have to be conformed. Argument is made that since the decedent was in possession of the Will, and since it was missing, then he 'must' have revoked it through destruction.

However, the presumption of destruction must be based upon the 'intent' to revoke. See *In Re Washington's Estate*, supra, where 'other evidence' existed to support the conclusion that persons other than the decedent could have destroyed the Will. Sub judice, the original Will was prepared many years prior to decedent's death. His valuables were by custom kept and maintained in an old safe in his home which when opened after his death was waterlogged and contained 'mush' (obviously the deluge of papers and documents).

Clearly, the decedent was eccentric. However, equally clear was his stated desire on numerous occasions to leave his estate to the petitioner. Prior to his death, decedent even exhibited a purported holographic Will leaving his estate to the petitioner. Such conduct would not be repugnant to the inference that if and when the decedent opened his 'safe' and discovered [*834] the original 'Will' destroyed through emulsion, he then proceeded to prepare his own Last Will and Testament.

Certainly, by any standards of statutes, case law and rationale, reasonable inferences to be drawn from the evidence, and by logic and reason, a prima facie case was established by petitioner, sufficient to withstand the assault at the close of his case, and to require respondents to come forward with their evidence. Upon the ultimate close of the evidence and the case, naturally, then the trial judge must weigh and consider the evidence, placing the weight and value where appropriate, consistent with reason, logic and law.

This right has been thwarted, and accordingly, the petition for writ of certiorari is granted, the decision of the District Court of Appeal is quashed and this cause is reversed and remanded for further proceedings consistent herewith. It is so ordered. ADKINS, Acting C.J., BOYD, McCAIN and DEKLE, JJ., and SPECTOR, District Court Judge, concur.