

SUPREME COURT OF WASHINGTON

Carlton v. Black

153 Wn. 2d 152 (2004) · Decided December 9, 2004

SUMMARY

The Washington Supreme Court affirmed the reversal of summary judgment admitting Margaret Black's lost 1993 will to probate because genuine issues of material fact existed regarding its execution. The court held that execution and contents of a lost will must be proved by clear, cogent, and convincing evidence, and clarified the application of res judicata in probate proceedings. It also affirmed the instruction that all issues concerning the competing 1992 and 1993 wills be resolved in one proceeding.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                     |
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| COURT                 | Supreme Court of Washington                                                                                                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Owens, J.; Alexander, C.J.; Johnson, J.; Madsen, J.; Ireland, J.; Bridge, J.; Fairhurst, J.                                                                                                                                                                                                                                                                                                                         |
| JURISDICTION          | Washington                                                                                                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | December 9, 2004                                                                                                                                                                                                                                                                                                                                                                                                    |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                               |
| PROCEDURAL POSTURE    | The Washington Supreme Court granted review of the Court of Appeals' reversal of a superior court summary judgment admitting a lost will to probate and awarding attorney fees. The Supreme Court affirmed the reversal, clarified the governing burden of proof and res judicata principles, and remanded for one proceeding addressing all issues concerning both wills and for reconsideration of attorney fees. |
| STANDARD OF REVIEW    | Summary judgment is reviewed under the same inquiry used by the trial court; the court does not resolve factual issues and asks whether a genuine issue of material fact exists. In will-challenge proceedings, review is de novo on the entire record. The decision whether to hear issues during probate or reserve them for a later contest is reviewed for abuse of discretion.                                 |
| PRECEDENTIAL VALUE    | Published precedential opinion of the Supreme Court of Washington                                                                                                                                                                                                                                                                                                                                                   |

TOPICS

lost will

probate procedure

summary judgment

res judicata

attorney fees

## PRACTICE AREAS

Probate

Estate litigation

Civil procedure

Appellate procedure

Statutory interpretation

## QUESTIONS PRESENTED

1. What burden of proof applies to execution and contents of a lost will under RCW 11.20.070?
2. Whether summary judgment admitting the 1993 lost will was proper despite disputed evidence concerning its execution.
3. What role res judicata plays in probate proceedings and whether the limited summary judgment proceeding would preclude later challenges to the wills' validity.
4. Whether all issues concerning the 1992 and 1993 wills should be resolved in one proceeding.
5. Whether the trial court properly awarded attorney fees solely to the personal representative under the 1992 will.

## HOLDINGS

1. Under RCW 11.20.070, both the execution and the contents of a lost will must be proved by clear, cogent, and convincing evidence.
2. Summary judgment admitting the 1993 lost will was improper because genuine issues of material fact existed regarding whether the will was properly executed and whether Janet Taylor signed as an attesting witness.
3. Res judicata can apply to an unappealed summary judgment in a probate proceeding, but the summary judgment here would not bar later claims concerning competency or undue influence because the trial court expressly excluded those issues from the summary judgment proceeding.
4. The trial court abused its discretion by reserving issues concerning the validity of the wills for a later will contest; all issues concerning the 1992 and 1993 wills should be resolved in one proceeding on remand.
5. The trial court abused its discretion by awarding attorney fees only to Richard Burns; the attorney-fee issue must be reconsidered on remand under the court's discretion, including whether the litigation benefited the estate and whether a party acted in good faith.

## KEY QUOTATIONS

*“The current statute also states that the contents “must be proved by clear, cogent, and convincing evidence, consisting at least in part of a witness to either its contents or the authenticity of a copy of the will.”” (162)*

*“Therefore, the appropriate burden of proof pertaining to the execution of a lost will should be “clear, cogent, and convincing.”” (163)*

*“Therefore, summary judgment is not appropriate.” (169)*

*“We remand this case to be decided in one proceeding, with all issues regarding the 1992 and 1993 wills to be decided in that proceeding.” (175)*

## FACTUAL BACKGROUND

Margaret Black died in October 2000, leaving property subject to probate. A 1992 will was admitted to probate, but her daughter Myrna sought admission of a purported 1993 lost will that left the estate to Myrna and appointed her personal representative. The evidence included an unsigned copy of the alleged will, an affidavit from Robert Reiter claiming to have witnessed Margaret sign it, and evidence concerning Janet Taylor's possible presence and signature, but Taylor did not recall witnessing the will and the identity and role of the second witness remained disputed.

## PROCEDURAL HISTORY

The Columbia County Superior Court admitted Margaret Black's 1992 will to probate and later admitted a purported 1993 lost will on summary judgment. The Court of Appeals reversed the summary judgment and attorney-fee award and remanded with instructions to resolve all issues concerning the wills in one proceeding. The Supreme Court affirmed the Court of Appeals, but held that summary judgment was improper because genuine issues of material fact existed concerning execution of the lost will.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Resolve all issues regarding the validity of the 1992 and 1993 wills in one proceeding, including execution, competency, undue influence, authenticity, and which will is Margaret Black's last will and testament. Reconsider all attorney-fee issues under the applicable discretionary standards.

## CASES CITED

- Failor's Pharmacy v. Dep't of Soc. & Health Servs., 125 Wn. 2d 488, 493, 886 P.2d 147 (1994)
- Balise v. Underwood, 62 Wn. 2d 195, 199, 381 P.2d 966 (1963)
- La Plante v. State, 85 Wn. 2d 154, 158, 531 P.2d 299 (1975)
- Snohomish County v. Rugg, 115 Wn. App. 218, 224, 61 P.3d 1184 (2002)
- Barrie v. Hosts of Am., Inc., 94 Wn. 2d 640, 642, 618 P.2d 96 (1980)
- In re Estate of Ney, 183 Wash. 503, 505, 48 P.2d 924 (1935)
- State v. Mollichi, 132 Wn. 2d 80, 87-88, 936 P.2d 408 (1997)
- In re Estate of Nelson, 85 Wn. 2d 602, 605-08, 537 P.2d 765 (1975)
- In re Estate of Peters, 43 Wn. 2d 846, 860-61, 264 P.2d 1109 (1953)
- State v. Young, 125 Wn. 2d 688, 696, 888 P.2d 142 (1995)
- Addleman v. Bd. of Prison Terms & Paroles, 107 Wn. 2d 503, 509, 730 P.2d 1327 (1986)

- In re Last Will & Testament of Borrow, 123 Wash. 128, 130, 212 P. 149 (1923)
- In re Estate of Baird, 131 Wn. 2d 514, 518, 933 P.2d 1031 (1997)
- Hallauer v. Spectrum Props., Inc., 143 Wn. 2d 126, 146, 18 P.3d 540 (2001)
- State v. Wright, 84 Wn. 2d 645, 650, 529 P.2d 453 (1974)
- Waste Mgmt. of Seattle, Inc. v. Utils. & Transp. Comm'n, 123 Wn. 2d 621, 630, 869 P.2d 1034 (1994)
- In re Estate of Harris, 10 Wash. 555, 559, 39 P. 148 (1895)
- In re Estate of Campbell, 47 Wn. 2d 610, 615-16, 288 P.2d 852 (1955)
- In re Estate of Chafey, 167 Wash. 185, 189, 8 P.2d 959 (1932)
- In re Estate of Chambers, 187 Wash. 417, 427-28, 60 P.2d 41 (1936)
- In re Estate of Lindsay, 91 Wn. App. 944, 949, 957 P.2d 818 (1998)
- In re Estate of Price, 73 Wn. App. 745, 751-53, 871 P.2d 1079 (1994)
- State v. Contreras, 57 Wn. App. 471, 477, 788 P.2d 1114 (1990)
- Seattle-First Nat'l Bank v. Kawachi, 91 Wn. 2d 223, 225-26, 588 P.2d 725 (1978)
- DeYoung v. Cenex Ltd., 100 Wn. App. 885, 891-92, 1 P.3d 587 (2000)
- Lowe v. Double L Props., Inc., 105 Wn. App. 888, 896, 20 P.3d 500 (2001)
- In re Estate of Hall, 34 Wn. 2d 830, 833, 210 P.2d 406 (1949)
- In re Estate of Godfrey, 164 Wash. 269, 270-73, 2 P.2d 894 (1931)
- State v. Downing, 151 Wn. 2d 265, 272, 87 P.3d 1169 (2004)
- State ex rel. Carroll v. Junker, 79 Wn. 2d 12, 26, 482 P.2d 775 (1971)
- Gordon v. Seattle-First Nat'l Bank, 49 Wn. 2d 728, 736-37, 306 P.2d 739 (1957)
- Hadley v. Cowan, 60 Wn. App. 433, 442-43, 804 P.2d 1271 (1991)
- In re Estate of Larson, 187 Wash. 183, 188, 60 P.2d 19 (1936)
- In re Estate of Larson, 103 Wn. 2d 517, 521, 694 P.2d 1051 (1985)
- In re Estate of Jolly, 3 Wn. 2d 615, 626-27, 101 P.2d 995 (1940)
- In re Estate of Watlack, 88 Wn. App. 603, 612-13, 945 P.2d 1154 (1997)
- In re Estate of Niehenke, 117 Wn. 2d 631, 647-48, 818 P.2d 1324 (1991)
- In re Estate of Shaughnessy, 97 Wn. 2d 652, 648 P.2d 427 (1982), aff'd, 104 Wn. 2d 89, 702 P.2d 132 (1985)