

NEW YORK COURT OF APPEALS

Matter of the Estate of Robyn R. Lewis

25 N.Y.3d 456 (2015) · No. No. 64 · Decided June 4, 2015

SUMMARY

The New York Court of Appeals addressed whether a 1996 will should be admitted to probate after the decedent's divorce and death, where evidence suggested that multiple counterparts had been executed but only one was produced. The Court held that the evidence raised a presumption that the will had been revoked by destruction, but remanded for further proceedings to determine whether the documents were originals or copies and whether the presumption was rebutted.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Read; Judge Rivera; Judge Abdus-Salaam; Judge Stein; Judge Pigott; Judge Fahey
JURISDICTION	New York
DECIDED	June 4, 2015
DOCKET	No. 64
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Objectants appealed from an order of the Appellate Division affirming a Jefferson County Surrogate's Court decree that dismissed objections and admitted a 1996 will to probate. The New York Court of Appeals modified by remitting the matter for further proceedings.
PRECEDENTIAL VALUE	Published precedential opinion of the New York Court of Appeals
PARTIES	Meredith M. Stewart, Ronald L. Lewis, Ronald L. Lewis, II, Jonathan Lewis v. James Robert Simmons

TOPICS

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PRACTICE AREAS

[Probate](#) [Estate administration](#) [Will contests](#) [Estate planning](#)

QUESTIONS PRESENTED

1. Whether testimony concerning an allegedly lost 2007 will could establish revocation of the 1996 will without proof that the later will was duly executed.
2. Whether the evidence concerning multiple duplicate or counterpart copies of the 1996 will raised a presumption that Lewis revoked that will by destruction.
3. Whether the probate court could admit the 1996 will without requiring production or accounting for the alleged duplicate instruments and resolving the resulting revocation issues.

HOLDINGS

1. A subsequent will or other writing can revoke an earlier will only if the revoking instrument was executed with the formalities prescribed for execution and attestation of a will. Because the witness to the alleged 2007 will did not witness its execution, the claim that it revoked the 1996 will was properly rejected.
2. Evidence that the 1996 will was executed in multiple functional counterparts, that one counterpart was kept at the decedent's post-divorce residence, and that no will was found there after a thorough search was sufficient to raise the presumption that the decedent revoked the will by destruction.
3. The Surrogate should not have admitted the 1996 will to probate without resolving whether four original instruments or one original and three copies existed, requiring production or accounting for the duplicates, and determining whether the presumption of revocation was rebutted. The matter was remitted because the issues had not been properly framed and the proponent may not have had a fair opportunity to rebut the presumption.

KEY QUOTATIONS

“revocation of a will by a subsequent will or other writing may be accomplished only by executing the revoking instrument “with the formalities prescribed . . . for the execution and attestation of a will.”” (25 N.Y.3d at 461)

“The presumption, once raised, “stands in the place of positive proof”” (25 N.Y.3d at 462)

“We are left then with a will admitted to probate upon a record sufficient only to disprove it.” (25 N.Y.3d at 462)

“As soon as it is brought to the attention of the surrogate that there are duplicates of a will presented to him for probate, it is proper that he should require [the] duplicates to be presented, not for the purpose of admitting [them] as separate instruments to probate, but that he may be assured whether the will has been revoked, and whether each completely contains the will of the testator” (25 N.Y.3d at 463)

FACTUAL BACKGROUND

Robyn R. Lewis died in 2010 after a diligent search initially failed to locate a will. Her former husband later produced a 1996 Texas will that left her property to him, but because the couple had divorced, his father pursued probate as the alternate beneficiary and executor. Testimony indicated that the will and related instruments may have been executed in four sets intended for separate locations, including Lewis's New York residence, yet no

will was found at that residence after her death. A friend also testified that Lewis had discussed a later 2007 will revoking prior wills, but the friend had not witnessed its execution.

PROCEDURAL HISTORY

After Robyn R. Lewis died and no will was initially found, letters of administration issued to her parents. James Robert Simmons then petitioned to revoke the letters and probate a 1996 Texas will naming his son, the decedent's former husband, as beneficiary and executor, with Simmons as alternate beneficiary and executor. The Surrogate admitted the will to probate, concluding that an alleged lost 2007 will could not be used to revoke it because due execution was not proved. The Appellate Division affirmed, and the Court of Appeals granted leave to appeal, modified the order, and remitted for litigation and determination of whether duplicate instruments existed and whether the 1996 will had been revoked by destruction.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remit to Jefferson County Surrogate's Court for further proceedings to determine whether the 1996 will was executed as four original instruments or as one original and three copies, whether the evidence triggers the presumption of revocation by destruction, and whether the proponent can rebut that presumption. The duplicate instruments should be produced or otherwise accounted for.

CASES CITED

- Matter of Coffed, 46 N.Y.2d 514, 519 (1979)
- Crossman v. Crossman, 95 N.Y. 145, 152 (1884)
- Matter of Fox, 9 N.Y.2d 400, 407-408 (1961)
- Matter of Staiger, 243 N.Y. 468, 472 (1926)
- Matter of Kennedy, 167 N.Y. 163, 168-169 (1901)
- Matter of Robinson, 257 App. Div. 405, 407 (4th Dep't 1939)
- Matter of Blackstone, 172 Misc. 479, 484 (Sur. Ct., N.Y. County 1939)
- Roche v. Nason, 185 N.Y. 128 (1906)
- In re Andriola's Will, 160 Misc. 775 (Sur. Ct. 1936)