

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

Balboni v. LaRocque

Balboni v. LaRocque, 991 So. 2d 993, 2008 · No. 4D07-3991

SUMMARY

In Florida, when a testator's will was in their possession and cannot be found after death, a rebuttable presumption of intentional revocation arises. To overcome this presumption, the will's proponent must present competent substantial evidence that the will was accidentally lost or destroyed, or willfully and fraudulently destroyed by an adverse party; evidence of mere opportunity for accidental destruction by uninterested third parties or of the testator's feelings toward beneficiaries is legally insufficient. The court reversed the probate court's admission of a lost will because the proponents' evidence amounted only to speculation and conjecture.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Stevenson, J.; May, J.; Labarga, Jorge, Associate Judge
JURISDICTION	Florida
DOCKET	4D07-3991
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from probate court's final judgment admitting lost will to probate.
STANDARD OF REVIEW	Reversal is warranted if the findings of the probate judge are not supported by competent substantial evidence or the reviewing court finds that the probate judge misinterpreted the legal effect of the evidence as a whole.
PRECEDENTIAL VALUE	Published
PARTIES	Kim M. Balboni, Richard W. LaRocque v. William Ronald LaRocque, Carole Torrance

TOPICS

[probate](#)[will contests](#)[probate procedure](#)[evidence](#)[appellate procedure](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence presented was legally sufficient to rebut the presumption of intentional revocation of a lost will.

HOLDINGS

1. Evidence that the testator's will was in his possession prior to death and cannot be located after death gives rise to a rebuttable presumption of intentional revocation. To rebut this presumption, the proponent must present competent substantial evidence that the will was accidentally lost or destroyed, or willfully and fraudulently destroyed by an adverse party. Evidence of mere opportunity for accidental destruction by uninterested third parties, or evidence of the testator's feelings toward beneficiaries, is insufficient as a matter of law to rebut the presumption.

KEY QUOTATIONS

“Revocation may be accomplished by the simple, quiet and unpublished act of throwing a will in the trash with the intention of revoking it.” (994)

“presented no more than the fabled twins of speculation and conjecture to establish that [the decedent] might not have revoked his will.” (996)

“the evidence presented was legally insufficient to rebut the presumption of intentional revocation” (994)

FACTUAL BACKGROUND

Bill LaRocque died in 2006 at age 95, survived by two children and two grandchildren from a predeceased son. He executed a will in 2002 that left specific bequests to certain grandchildren (excluding one granddaughter, Kim) and the residue to his two children. The will was in his possession before death but could not be found afterward; his wife's will was found. His children sought to probate a copy of the lost will, arguing it was accidentally lost. The grandchildren opposed, invoking the presumption of intentional revocation. The probate court admitted the will, finding the presumption rebutted based on the testator's long-standing testamentary scheme, discord with Kim, and the presence of nurses and visitors in the home.

PROCEDURAL HISTORY

After the decedent's death, his will could not be found. The appellees, as proponents of the lost will, petitioned for establishment and probate of a copy. The probate court admitted the will to probate, finding the presumption of intentional revocation rebutted. Appellants, who are heirs at law that would take under intestacy, appealed.

DISPOSITION

reversed

CASES CITED

- Carlton v. Sims, In re Estate of Carlton, 276 So. 2d 832 (Fla. 1973)
- Estate of Parson v. Hendley, In re Estate of Parson, 416 So. 2d 513 (Fla. 4th DCA 1982)
- In re Estate of Baird, In re Estate of Baird, 343 So. 2d 41 (Fla. 4th DCA 1977)
- In re Washington's Estate, In re Estate of Washington, 56 So. 2d 545 (Fla. 1952)
- In re Estate of Evers, 160 Fla. 225, 34 So. 2d 561 (1948)
- Lonergan v. Estate of Budahazi, Lonergan v. Estate of Budahazi, 669 So. 2d 1062 (Fla. 5th DCA 1996)
- Upson v. Estate of Carville, 369 So. 2d 113 (Fla. 1st DCA 1979)
- Silvers v. Estate of Silvers, Silvers v. Estate of Silvers, 274 So. 2d 20 (Fla. 3d DCA 1973)
- In re Estate of Niernsee, 147 Fla. 388, 2 So. 2d 737 (1941)

CITED IN

- Balboni v. LaRocque, Balboni v. LaRocque, 991 So.2d 993 (Fla. 4th DCA 2008)
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