

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Jane Manson v. Fremont B. Hayes

Jane Manson v. Fremont B. Hayes, 539 So. 2d 27 (Fla. Dist. Ct. App. 1989) · No. No. 88-2017 · Decided March 7, 1989

SUMMARY

The Florida Third District Court of Appeal affirmed an order refusing to admit Raymond M. Hayes's will to probate. The court held that competent substantial evidence supported the trial court's resolution of conflicting witness testimony concerning compliance with statutory will-execution formalities. Because the required formalities were not established, the statutory assurance regarding the validity and circumstances of the signature was lacking.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Nesbitt; Baskin; Cope
JURISDICTION	Florida
DECIDED	March 7, 1989
DOCKET	No. 88-2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order refusing to admit Raymond M. Hayes's will to probate.
STANDARD OF REVIEW	Whether competent substantial evidence supports the trial court's factual findings after the trial judge assessed witness credibility and resolved conflicting testimony.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Jane Manson v. Fremont B. Hayes

TOPICS

- will contests
- probate
- estate litigation
- evidence
- authentication

PRACTICE AREAS

- Probate
- Estate planning
- Evidence

QUESTIONS PRESENTED

1. Whether the trial court properly refused to admit the will to probate when the attesting witnesses gave conflicting testimony concerning compliance with the statutory execution formalities.
2. Whether competent substantial evidence supported the trial court's resolution of the witness credibility conflict and its conclusion that the will was not properly executed.

HOLDINGS

1. The trial court's refusal to admit the will to probate was supported by competent substantial evidence and was affirmed.
2. The order refusing probate was properly affirmed because the evidence supported the finding that the statutory execution formalities had not been complied with.

KEY QUOTATIONS

“It was the province of the trial judge to hear the evidence, assess the credibility of the witnesses, and resolve the conflict in testimony.” (539 So. 2d at 28)

“There is competent substantial evidence to support the conclusion reached.” (539 So. 2d at 28)

FACTUAL BACKGROUND

After Raymond M. Hayes's death, a purported will was found among his papers. At the evidentiary hearing, one attesting witness testified that Hayes was present when the will was signed and acknowledged it, while two other witnesses testified that Hayes was absent and never acknowledged the signature or indicated that he had directed someone to sign. The trial court resolved the irreconcilable conflict against admission of the will to probate.

PROCEDURAL HISTORY

After Raymond M. Hayes died, a purported last will and testament was found among his papers. A petition was filed to determine the will's validity, alleging that it had not been executed in accordance with Florida's statutory requirements. Following an evidentiary hearing at which the attesting witnesses gave conflicting testimony, the trial court refused to admit the will to probate. The District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Richmond, 298 So. 2d 549, 550 (Fla. 2d DCA 1974)
- In re Estate of Olson, 181 So. 2d 642, 643 (Fla. 1966)

CITED IN

- Jane Manson v. Fremont B. Hayes, Manson v. Hayes, 539 So.2d 27 (Fla. 3d DCA 1989)

- Jane Manson v. Fremont B. Hayes, Manson v. Hayes, 539 So. 2d 27, 28 n. 2 (Fla. 3d DCA 1989)

OPINION

PER CURIAM.

539 So. 2d 27 (1989) Jane MANSON, Appellant, v. Fremont B. HAYES, Appellee. No. 88-2017. District Court of Appeal of Florida, Third District. March 7, 1989. Lamont, Neiman & Feuerman and Jonathan Feuerman, Miami, for appellant. Corlett, Killian, Hardeman, McIntosh & Levi and Donna G. Levi and Love Phipps, Miami, for appellee.

Before NESBITT, BASKIN and COPE, JJ. PER CURIAM. This is an appeal from an order refusing to admit the will of Raymond M. Hayes to probate. We affirm. After Raymond Hayes' demise, a last will and testament was found among his papers. A petition to determine the validity of the will was filed, alleging that the will had not been executed in accordance with the statutory requirements.

The 1971 version of the Florida probate law, which was in effect at the time of execution, provided in part: 731.07 Execution of wills. Every will, other than a nuncupative will, must be in writing and must be executed as follows: (1) The testator must sign his will at the end thereof, or some other person in his presence and by his direction must subscribe the name of the testator thereto.

(2) The testator, in the presence of at least two attesting witnesses present at the same time, must sign his will or cause his name to be signed as aforesaid or acknowledge his signature thereto. *28 § 731.07(1) & (2), Fla. Stat. (1971) (present version § 732.502, Fla. Stat. (1987)).

The trial court conducted an evidentiary hearing at which the testimony of the attesting witnesses was in direct and irreconcilable conflict.[1] It was the province of the trial judge to hear the evidence, assess the credibility of the witnesses, and resolve the conflict in testimony.

In re Estate of Richmond, 298 So. 2d 549, 550 (Fla. 2d DCA 1974). He did so. There is competent substantial evidence to support the conclusion reached. The order under review is affirmed.[2]

NOTES [1] One of the witnesses testified that the testator was present at the signing, signed in the presence of the other subscribing witnesses, and acknowledged that the document was his will.

The other two attesting witnesses who were in attendance testified that the testator was not present, did not discuss the will with them, and did not at that time, or on any other occasion, acknowledge his signature or indicate that he had caused his name to be signed to the will.

[2] The purpose of the statute is to assure not only that the signature on the will is that of the testator, but to provide reasonable assurance of the circumstances under which the signature was affixed to the document. See generally In re Estate of Olson, 181 So. 2d 642, 643 (Fla. 1966). Where, as the court found here, the statutory formalities are not complied with, that assurance is missing.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/florida-district-court-of-appeal-of-florida-third-district/1989/jane-manson-v-fremont-b-hayes-hk81a780>