

DISTRICT OF COLUMBIA COURT OF APPEALS

In re Estate of Anna Creech

989 A.2d 185 (D.C. 2010) · No. No. 08-PR-1246 · Decided February 18, 2010

SUMMARY

The District of Columbia Court of Appeals held that revocation of a later codicil did not revive portions of an earlier will that the codicil had revoked. The court also addressed the rebuttable presumption that a missing original will or codicil was destroyed by the testator with intent to revoke it. The court reversed and remanded for factual findings concerning the whereabouts and accessibility of the original 1995 codicil.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher, Associate Judge; Oberly, Associate Judge; Farrell, Senior Judge
JURISDICTION	District of Columbia
DECIDED	February 18, 2010
DOCKET	No. 08-PR-1246
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the Superior Court of the District of Columbia's order sustaining objections to probate of a copy of a 1995 codicil, denying the petition for standard probate, admitting the 1992 will to probate, and appointing Lettie Gaskins as personal representative.
STANDARD OF REVIEW	The opinion does not expressly identify a formal standard of review. It reviews the probate court's legal conclusions concerning revocation and revival and remands for resolution of unresolved factual questions.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Bobbie Jean Ward-Allen v. Lettie R. Gaskins, Jessie Marie Davis

TOPICS

- probate procedure
- lost will
- estate administration
- intestacy
- appellate procedure

PRACTICE AREAS

- probate
- estate administration
- estate litigation
- evidence
- appellate procedure

QUESTIONS PRESENTED

1. Whether revocation of the 1995 codicil, if proven, would revive the revoked provisions of Creech's 1992 will.
2. Whether the presumption that a missing will or codicil was destroyed by the testator with intent to revoke applies when the original may have been sent to another person before the testator's death.
3. Whether the Superior Court properly admitted the 1992 will in its entirety after sustaining objections to probate of the copy of the 1995 codicil.

HOLDINGS

1. Revocation of the 1995 codicil would not revive Items VI, XIII, and XIV of the 1992 will because those provisions were revoked upon execution of the properly executed codicil and could be revived only by re-execution of the earlier will or execution of a new codicil showing an intent to revive them.
2. When an original will or codicil known to have been in the testator's custody or readily accessible to the testator cannot be found at death, a rebuttable presumption arises that the testator destroyed it during life with intent to revoke it. The proponent of a copy must rebut that presumption by a preponderance of the evidence.
3. The 1992 will could not be admitted in its entirety because the provisions revoked by the 1995 codicil remained revoked. The matter had to be remanded for factual findings on whether Creech revoked the codicil; if she did, the affected property would pass under intestacy, and if she did not, the codicil should be admitted to probate.

KEY QUOTATIONS

"A will or codicil, or a part thereof, after it is revoked, may not be revived otherwise than by its re-execution, or by a codicil executed as provided in the case of wills, and then only to the extent to which an intention to revive is shown." (187)

"If a will or codicil, known to have been in existence during testator's lifetime, and in his custody, or where he had ready access to it, can not be found at his death, a presumption arises that such will was destroyed by testator in his lifetime with the intention of revoking it; and in the absence of rebutting evidence this presumption is sufficient to justify a finding that the will was revoked." (188)

"Once the presumption of revocation is triggered, the party seeking to probate a copy of the will or codicil must show, by a preponderance of evidence, that the testator did not destroy the lost will or codicil with the intent of revoking it." (188)

FACTUAL BACKGROUND

Anna Creech executed a 1992 will that devised her china closet, residue, and certain personal-representative rights, then executed a 1995 codicil expressly revoking and replacing those provisions. After Creech died, Ward-Allen sought standard probate using a copy of the codicil because the original had been sent or delivered to Cleveland Mitchell, whose receipt and custody were not established. The Superior Court found uncertainty about the original's whereabouts, sustained the objections to the copy, and admitted the 1992 will in its entirety.

PROCEDURAL HISTORY

Ward-Allen petitioned for standard probate and submitted the 1992 will and a copy of the 1995 codicil. Gaskins and Davis objected because the original codicil was not filed. After an evidentiary hearing, the Superior Court sustained the objections, denied Ward-Allen's petition, admitted the 1992 will in its entirety, and appointed Gaskins as personal representative. The Court of Appeals reversed and remanded for factual findings concerning whether Creech revoked the codicil and for probate proceedings consistent with the opinion.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Superior Court must determine when Ward-Allen sent the original codicil to Mitchell, whether Creech had possession or access to it after that time, and whether Creech revoked the 1995 codicil. The court must not probate the 1992 will in its entirety. If the codicil was revoked, the affected property passes under intestacy; if it was not revoked, the codicil should be admitted to probate.

CASES CITED

- In re Burleson, 738 A.2d 1199 (D.C. 1999)
- In re Smith, 77 F. Supp. 217 (D.D.C. 1948)
- Webb v. Lohnes, 69 App. D.C. 318, 101 F.2d 242 (1938)
- In re McKeever, 361 A.2d 166 (D.C. 1976)
- Gilbert v. Gaybrick, 195 Md. 297, 73 A.2d 482 (1950)
- In re Barfield, 736 A.2d 991 (D.C. 1999)
- Clark v. Turner, 87 U.S. App. D.C. 54, 183 F.2d 141 (1950)
- New York State Library School Ass'n v. Atwater, 227 Md. 155, 175 A.2d 592 (1961)
- Plummer v. Waskey, 34 Md. App. 470, 368 A.2d 478 (1977)
- Tilghman v. Bounds, 214 Md. 533, 136 A.2d 226 (1957)
- In re Reap, 727 A.2d 326 (D.C. 1999)
- Warner v. Warner, 99 U.S. App. D.C. 80, 237 F.2d 561 (1956)
- Howard v. Evans, 24 App. D.C. 127 (1904)
- O'Connell v. Riggs Nat'l Bank, 475 A.2d 405 (D.C. 1984)
- Washington Loan & Trust Co. v. Convention of Protestant Episcopal Church, 54 App. D.C. 14, 293 F. 833 (1923)
- In re Bians Estate, 162 Md. 208, 159 A. 596 (1932)