

SUPREME COURT OF NORTH CAROLINA

In re Will of Allen, 371 N.C. 665

821 S.E.2d 396 (2018) · No. No. 227PA17 · Decided December 7, 2018

SUMMARY

The Supreme Court of North Carolina considered whether handwritten notations added to a typewritten will constituted a valid holographic codicil. The court held that the will and handwritten notation could together demonstrate testamentary intent despite referencing Article IV rather than restating it, but that ambiguity concerning the phrase “beginning 7-7-03” created a genuine issue of material fact for the jury. The court reversed the Court of Appeals and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of North Carolina
WRITING FOR THE COURT	Newby, Justice
JURISDICTION	North Carolina
DECIDED	December 7, 2018
DOCKET	No. 227PA17
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Discretionary review of a unanimous Court of Appeals decision reversing summary judgment for the propounder and directing entry of summary judgment for the caveators in a will caveat proceeding.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper only when the record, viewed in the light most favorable to the nonmoving party, shows no genuine issue of material fact and the movant is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of North Carolina
PARTIES	Melvin Ray Woolard v. Hope Robinson, Christian Robinson

TOPICS

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PRACTICE AREAS

Probate

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QUESTIONS PRESENTED

1. Whether a handwritten codicil may validly reference and amend a specific provision of a previously executed typewritten will without restating the entire provision.
2. Whether the phrase "begin[n]ing 7-7-03" created a genuine issue of material fact concerning whether Allen manifested present testamentary intent.
3. Whether summary judgment was appropriate in the will caveat proceeding.

HOLDINGS

1. A holographic codicil need not quote in its entirety the language of the will that it intends to alter. A testator may validly reference a specific provision of the will without restating the entire provision, and the will and codicil must be construed together to determine testamentary intent.
2. The phrase "begin[n]ing 7-7-03" is sufficiently ambiguous to create a genuine issue of material fact regarding whether the testator manifested present testamentary intent. That factual question must be resolved by a jury, making summary judgment inappropriate.
3. The Court of Appeals erred by directing entry of summary judgment for the caveators. The case must proceed because the ambiguity concerning present testamentary intent presents a question of fact rather than a basis for judgment as a matter of law.

KEY QUOTATIONS

"To be valid a codicil need not quote in its entirety any language of the will it intends to alter, and a court should not isolate the handwritten text from the will itself in construing the codicil." (at 8)

"A testator's reference to a specific provision of the will without restating the entire provision is not an impermissible reference to the will." (at 8)

"Thus, while the will and the codicil together clearly evince testamentary intent by simply referencing the applicable portion of the will to amend, a genuine issue of material fact exists whether the phrase 'begin[n]ing 7-7-03' indicates present testamentary intent." (at 12)

FACTUAL BACKGROUND

James Paul Allen executed a properly attested, self-proving typewritten will on 29 August 2002. The will gave property to Rena T. Robinson if she survived Allen and provided contingent benefits to Melvin Ray Woolard and Hope and Christian Robinson if she did not. Allen later added handwritten language within Article IV stating, "DO NOT HONOR ARTICLE IV VOID ARTICLE IV" and including the phrase "begin[n]ing 7-7-03." After Allen's death, Woolard offered the will and handwritten notation for probate, while the Robinsons contested the notation as an invalid holographic codicil.

PROCEDURAL HISTORY

The Superior Court of Beaufort County granted summary judgment for propounder Melvin Ray Woolard and ordered probate of James Paul Allen's will as modified by the handwritten codicil. The Robinsons appealed, and the Court of Appeals reversed and remanded for entry of summary judgment in their favor. The Supreme Court of North Carolina allowed discretionary review, reversed the Court of Appeals, and remanded for further proceedings because a genuine issue of material fact existed concerning testamentary intent.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Supreme Court remanded to the Court of Appeals for further remand to the trial court for further proceedings not inconsistent with the opinion. On remand, the trial court could determine whether to revisit whether the handwritten provision was entirely in Allen's handwriting and whether a genuine issue of material fact existed on that issue.

CASES CITED

- In re Will of Goodman, 229 N.C. 444, 50 S.E.2d 34 (1948)
- In re Will of Smith, 218 N.C. 161, 10 S.E.2d 676 (1940)
- Ussery v. Branch Banking & Trust Co., 368 N.C. 325, 777 S.E.2d 272 (2015)
- Dobson v. Harris, 352 N.C. 77, 530 S.E.2d 829 (2000)
- Thompson v. Wake Cty. Bd. of Educ., 292 N.C. 406, 233 S.E.2d 538 (1977)
- Moore v. Langston, 251 N.C. 439, 111 S.E.2d 627 (1959)
- Wachovia Bank & Tr. v. Schneider, 235 N.C. 446, 70 S.E.2d 578 (1952)
- In re Will of McCauley, 356 N.C. 91, 565 S.E.2d 88 (2002)
- In re Will of Jones, 362 N.C. 569, 669 S.E.2d 572 (2008)
- Smith v. Mears, 218 N.C. 193, 10 S.E.2d 659 (1940)
- Armstrong v. Armstrong, 235 N.C. 733, 71 S.E.2d 119 (1952)
- In re Will of Mucci, 287 N.C. 26, 213 S.E.2d 207 (1975)
- In re Will of Johnson, 181 N.C. 303, 106 S.E. 841 (1921)
- In re Will of Bennett, 180 N.C. 5, 103 S.E. 917 (1920)