COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Estate of William O. Walden,
Appeal from the Register
O.C. No. 1390 AP of 2018
Control No. 195621

OPINION

This is an appeal from the decision of the Register of Wills not to admit to probate a photocopy of the will of William O. Walden ("Testator"). The Court is now asked whether the original will may be admitted to probate. For the reasons below, the Court finds the original will was validly executed and the Testator's signature proved by the testimony of two competent witnesses. Thus, the appeal is sustained, and the will shall be admitted to probate.

Background

The Testator died on June 10, 2016. Sometime before his death, the Testator executed a will at the Beneficial Mutual Savings Bank in Clifton Heights, Pennsylvania. The will is undated, but it is notarized. The notary's commission stamp states the commission expired on April 20, 2012. The will reads as follows:

LAST WILL AND TESTAMENT

> **I William O Walden 5257 Walton ave philadelphia pa. 19143 being of sound mind and memory make this my last will and testament.**
>
> **I appoint Elease Keith 4921 Sansom St.Phila Pa19139 Executor of this my last will and testament.**

BEQUESTS

> **I leave my entire estate and property at 5257 Walton ave 19143 to my longtime partner,friend,companion Elease Keith @ 4921 sansom st.Phila Pa. 19139**

Ex. P-1 (spacing and punctuation in original). The will is signed at the end by the Testator and features the signature of one subscribing witness, Karen E. Miller, an employee of the Beneficial Bank.

After proceedings before the Register of Wills, the Register issued a decree on that reads:

> AND NOW, this 17th day of Oct., 2018, upon consideration and review of the "petition for citation to show cause why a photocopy of the will of **William O. Walden** should not be admitted to probate", **citing Brandon K. Walden, Brian Walden, Robert Walden and William Walden, sons of the deceased**, the conference held on January 4, 2018 and the formal hearing held on **October 4, 2018**, it is hereby **ORDERED and DECREED** that the petitioner is **DENIED**. Letters of Administration previously issued to **Brandon K. Walden** shall remain in **FULL FORCE and EFFECT**.

Pet. for Citation, Ex. A.

Elease Keith ("Petitioner") appealed the Register of Wills decision not to probate a photocopy of the will by filing her notice of appeal on May 20, 2019. In her petition for citation, the Petitioner claimed to have the original will her possession. *Id.* ¶ 4 n.1.

On May 21, 2019, the Court awarded a citation directed to Brandon K. Walden ("Respondent"), Administrator of the Estate of William O. Walden, to show cause why a writing purported to be the Testator's will should not be admitted to probate. The Respondent filed an Answer on July 10, 2019, denying the will's validity and demanding strict proof at trial.

Based on the disputes in the pleadings, the Court scheduled a bench trial for January 29, 2020. At the trial, the Petitioner and Ms. Miller testified on the Petitioner's behalf, and the Respondent and his brother, William Walden, testified on the Respondent's behalf.

On direct examination, Ms. Miller testified it was her signature on the will. N.T. 01/29/2020, at 12. While she could not say she remembered the Testator, Ms. Miller testified it was standard business practice for the bank to request identification from all would-be testators. *Id.* at 13, 16. Ms. Miller stated the bank's standard practice was for testators to sign their wills in

front of witnesses. *Id.* at 17. Ms. Miller also said the bank never deviated from these procedures, that they were mandatory. *Id.* at 18. As a result, Ms. Miller could positively identify the Testator's signature. *Id.* When asked how she knew it was the Testator's signature, Ms. Miller replied: "Because I wouldn't have signed it—Mr. Walden had to be in front of me to sign this form and for me to sign it as a witness." *Id.* at 18–19.

The Petitioner testified next, stating she was the Testator's partner for twenty years and that they had lived together. *Id.* at 25. Asked whether she recognized the Testator's will, the Petitioner said she did and had found it at her home among the Testator's personal papers after his death. *Id.* at 26. The Petitioner then identified the Testator's signature on the will as the Testator's signature. *Id.* at 27–28. The Petitioner stated she had seen the Testator's signature on various documents over the course of their twenty-year relationship—on his driver's license, insurance papers, and Social Security card. *Id.* at 28, 29. Even on cross-examination, the Petitioner was emphatic: the signature on the will is the Testator's. *Id.* at 33.

Discussion

This Court has jurisdiction over appeals from the Register of Wills. 20 Pa. C.S. § 711(18). This appeal is timely as it was initiated within one year of the decree of the Register of Wills. *Id.* § 908(a). The Court's standard of review of a decision of the Register of Wills is *de novo*. *See* 20 Pa. C.S. § 776; *see also In re Estate of Luongo*, 823 A.2d 942, 960 (Pa. Super. Ct. 2003) ("[T]he hearing on appeal to the Orphans' court from a decision of the Register of Wills is *de novo*, unless the parties appearing in the proceeding have agreed otherwise."). Moreover, in a non-jury proceeding such as this, "the factfinder is free to believe all, part, or none of the evidence." *L. B. Foster Co. v. Charles Caracciolo Steel & Metal Yard*, 777 A.2d 1090, 1093 (Pa. Super. Ct. 2001). "Credibility determinations and consideration of conflicts in the evidence

are within the purview of the trial court." *John B. Conomos, Inc. v. Sun Co., Inc.*, 831 A.2d 696, 703 (Pa. Super. Ct. 2003).

The requirements for a validly executed will are twofold. First, the testator must be at least eighteen years old and of sound mind. 20 Pa. C.S. § 2501. Second, the testator's will must be in writing and signed at the end. *Id.* § 2502; *see also id.* § 2504.1 (stating a will is validly executed if it complies with Section 2502).

While these requirements are not particularly onerous, the Supreme Court of Pennsylvania recently discussed the importance of will formalities.

> [W]ills can transfer property using a variety of words and phrases, including informal or colloquial ones. By contrast, and for several reasons, formal testamentary procedures must be followed in the execution of a will. . . . [I]ndividuals are often careless in conversation and informal writings about the disposition of their property, and, as such, testamentary formalities serve a ritual function which precludes the possibility that the testator was acting in a casual or haphazard fashion. . . . [C]onformance with such formalities also serves a channeling function because courts are seldom left to puzzle whether the document was meant to be a will, and hence, they can more efficiently handle a large number of estates.

In re Estate of Wilner, 142 A.3d 796, 803 (Pa. 2016) (citations and quotations omitted). So long as a testator's will complies with the basic requirements outlined above, it is a valid testamentary instrument. But there remains an additional hurdle.

In order to admit a validly executed will to probate, the proponent of the will must prove its execution by the "oaths or affirmations of two competent witnesses." 20 Pa. C.S. § 3132. Where the will is signed by the testator, "proof by subscribing witnesses, if there are such, shall be preferred to the extent that they are readily available, and proof of the signature of the testator shall be preferred to proof of the signature of a subscribing witness." *Id.* § 3132(1); *see also In re Estate of Brantlinger*, 210 A.2d 246, 251 (Pa. 1965) ("We have held that when dealing with a will signed by a testator, it is not necessary that there be subscribing witnesses if the testator's

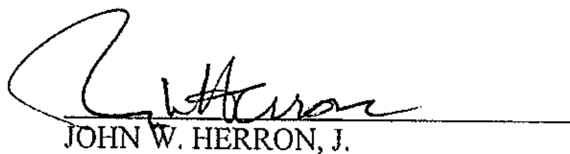
signature can be proved by two witnesses at probate."). "The requirement that two witnesses attest to the validity of the testator's signature arises from" the need to "verify that the writing in question is, in fact, a valid testamentary instrument." *Wilner*, 142 A.3d at 803. Thus, for purposes of probate, "proving" a will signed by the testator means proving only the validity of the testator's signature; there is no need to prove the will's terms. *Id.*

Here, the Petitioner met her burden as the proponent of the will. The will meets all the formal requirements of a validly executed will. The Testator was over the age of eighteen and of sound mind when he executed the will. The will is also in writing and signed at the end. Moreover, the Petitioner presented testimony from two competent witnesses attesting to the validity of the Testator's signature. The Court found this testimony credible in spite of the testimony presented by the Respondent. *See* N.T. 01/29/2020, at 39 (Respondent) (stating signature on the will not the Testator's signature); *id.* at 43 (William Walden) (same). While this contradictory evidence is relevant in a will contest to establish forgery, it does not negate the fact the Petitioner met her burden under the law for admitting a will to probate. Having crossed that threshold, the will must be probated. Whether the Respondent wants to challenge the will as a forgery—or on any other ground—is entirely up to him, but it is an issue for a later time.

Conclusion

Based on the foregoing discussion, the Court finds the Testator's will is a validly executed testamentary instrument proved by the testimony of two competent witnesses, and the Register of Wills shall admit the will to probate.

BY THE COURT:



JOHN W. HERRON, J.

Dated this 18th day of February 2020

Michael Coates, Esquire
Robert Bembrey, Esquire