IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF SCOTT ALLAN MALLAS.

NICK MALLAS,
Appellant,
vs.
BRIAN MALLAS; AND RANDALL MALLAS,
Respondents.

No. 58395

FILED

OCT 31 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Mata
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a will contest. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

Respondents Brian and Randall Mallas filed a petition with the district court, seeking to probate a handwritten suicide note (the Note) written by their brother, Scott, as a holographic will.[1] Their father, appellant Nick Mallas, opposed the petition.

Respondents moved for summary judgment, and upon receiving a written recommendation from a probate commissioner, the district court granted respondents' motion.

This appeal followed. On appeal, appellant contends that summary judgment was improper because (1) the Note did not satisfy the

[1]As the parties are familiar with the facts, we do not recount them further except as necessary to our disposition.

requirements for a valid will; and (2) even if the requirements were satisfied, Scott lacked testamentary capacity. We affirm.[2]

Standard of review

We review an appeal from an order granting summary judgment de novo. Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is appropriate "when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Id. (alteration in original) (quoting NRCP 56(c)). When deciding a motion for summary judgment, "the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Id.

The Note satisfied the requirements for a valid will

"Whether a handwritten document is a valid will is a question of law reviewed de novo." In re Estate of Melton, 128 Nev. ___, ___, 272 P.3d 668, 673 (2012). A valid holographic will contains the signature, date, and material provisions written by the hand of the testator. NRS 133.090(1). Because Scott did not expressly designate a beneficiary of his estate in the Note, appellant contends that the Note lacks the material provisions necessary for a valid will. We disagree.

In relevant part, the Note's purported dispositional clause provides:

---

[2]Appellant also challenges the district court's denial of his countermotion for summary judgment. Because summary judgment was proper in favor of respondents, we necessarily affirm the district court's denial of appellant's countermotion.

> You Guy Randy & Brian are on all Bank accounts I give all cars trucks Boat and all I own Naple Estate – Hilltop C. my Home and all of my stuff & etc.

As appellant points out, when this clause is read literally and in isolation from the rest of the document, it does not identify any intended beneficiaries. Nonetheless, the testator's intention "'need not have been expressed by specific words, but may be derived from the entire instrument as a whole, from its general scheme, . . . from informal language used, [or] by necessary implication . . . .'" Sharp v. First Nat. Bk., 75 Nev. 355, 360, 343 P.2d 572, 574 (1959) (quoting Brock v. Hall, 198 P.2d 69, 72 (Cal. Ct. App. 1948)).

Here, taking the Note as a whole and considering the necessary implications, it is apparent that Scott intended to name respondents as the beneficiaries of his estate. Scott addressed the entire Note to respondents and even charged one respondent (Brian) with satisfying Scott's outstanding obligations. Furthermore, the sentence, "You Guy Randy & Brian are on all Bank accounts," directly precedes the description of Scott's estate and is clearly intended to give it context.

Consequently, the signed and dated Note satisfies the requirements of NRS 133.090(1) and is a valid holographic will.

Appellant failed to present evidence to rebut the presumption that Scott had testamentary capacity

Even if the Note satisfies the statutory requirements, appellant nonetheless contends that summary judgment was improper because Scott lacked testamentary capacity. We disagree.

Every person of "sound mind [and] over the age of 18" may create a valid holographic will. NRS 133.090(2). Although this court has yet to directly consider the meaning of "sound mind" as it relates to

testamentary capacity, California courts provide guidance. Namely, testamentary capacity exists when the testator (1) comprehends the nature of the act he is doing, (2) recollects and understands the nature of his property, and (3) recognizes his relations to the persons who would inherit via intestacy. In re Lingenfelter's Estate, 241 P.2d 990, 997 (Cal. 1952).

In California and elsewhere, "[t]estamentary capacity is always presumed to exist unless the contrary is established." Moore v. Anderson Zeigler, 135 Cal. Rptr. 2d 888, 900 (Ct. App. 2003); see also 79 Am. Jur. 2d Wills § 93 (2002) ("The requisite mental capacity to execute a will is presumed by law . . . .").

Thus, to rebut the presumption of capacity and to survive summary judgment, appellant needed to present evidence that called into question at least one of the three testamentary-capacity elements. See generally Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) (indicating that summary judgment is proper when the party with the burden of persuasion fails to produce evidence to support his or her case).

As for the first element, appellant points to Scott's suicide and emotional instability as evidence of Scott's inability to comprehend that he was creating a will.[3] While such evidence may be relevant, "standing

[3]Appellant also points to the Note's grammatical, punctuation, and spelling errors as evidence that Scott lacked capacity. However, appellant conceded in his deposition that the Note was indicative of Scott's writing style. Thus, the Note's poor writing quality is not probative on the issue of Scott's capacity.

alone[,] it is insufficient to show an insanity so complete as to destroy testamentary capacity." Lingenfelter, 241 P.2d at 997.

As for the second capacity element, appellant relies solely on Scott's failure to mention a mobile home that he evidently kept on leased land in Mexico. However, a testator's failure to reference every portion of his estate does not equate to an inability to understand the nature of his property. Lingenfelter, 241 P.2d at 998 (indicating that the testatrix did not need to have a perfect recollection of her property in order to possess the necessary capacity); see also 1 William J. Bowe & Douglas H. Parker, Page on the Law of Wills § 12.22, at 701 (rev. ed. 2003) ("It is generally said that it is not necessary that [the] testator should be able to keep in mind at one time the whole of his estate . . . .").

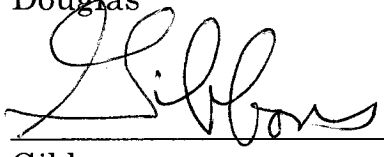
In the Note, Scott recited a large portion of his estate: "I give all cars trucks Boat and all I own Naple Estate – Hilltop C. my home and all of my stuff & etc." Thus, Scott's failure to explicitly mention his mobile home is insufficient to create a question of fact to as to whether he understood the nature of his property.

Finally, appellant relies on an expletive directed at him in the last sentence of the Note to establish that Scott could not rationally appreciate his family affiliation. However, the Note references all of Scott's heirs, and the record on appeal demonstrates that appellant's relationship with Scott had deteriorated significantly in the decade leading up to Scott's death. Given this deterioration, the Note's expletive directed at appellant in no way suggests that Scott misunderstood the extent of his familial relations. Appellant failed to present evidence sufficient to rebut the presumption of Scott's testamentary capacity.

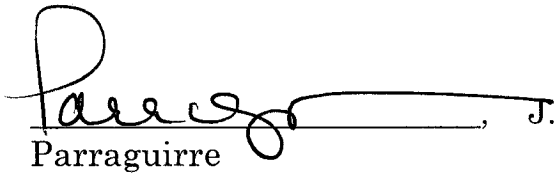
Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Douglas



_____, J.
Gibbons



_____, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
E. Paul Richitt, Jr., Settlement Judge
Glade L. Hall
Solomon Dwiggins & Freer
Eighth District Court Clerk