In re Udui, 6 ROP Intrm. 154 (1997)
IN THE MATTER OF ESTATE OF KALEB UDUI,
Decedent.

CIVIL APPEAL NO. 1-96
Civil Action No. 580-89

Supreme Court, Appellate Division
Republic of Palau

Opinion
Decided: April 17, 1997

Counsel for Appellant: Carlos H. Salii.

Counsel for Appellee: David F. Shadel

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice; LARRY W. MILLER, Associate Justice; and JANET HEALY WEEKS, Part-Time Associate Justice.

MILLER, Justice:

Before the Court on this appeal are questions concerning whether the trial court properly admitted into probate, and later entered judgment giving effect to, decedent's holographic will. Appellant Ann Udui Higgins, decedent's daughter, contends that the will was invalid from the start, became ineffective by its own terms, or was revoked by decedent, and that, for any or all of these reasons, should not have been given effect. We affirm.

Most of the facts are best discussed in the context of the legal questions in which they are implicated. By way of background, however, it is not seriously disputed that, in the evening of August 2, 1989, while waiting to leave for Guam on a medical referral, decedent Kaleb Udui drafted in his own handwriting and signed a document which he entitled "Holographic Will." The will was written at the insistence of decedent's half-brother, Moses Uludong, who feared that decedent might never return. That will named as executrix and principal beneficiary appellee Geggie Asanuma Udui, decedent's second wife. It made no provision whatsoever for appellant and her siblings, the children of his first marriage.

Decedent did return from Guam to Palau about two weeks later, but he died only a few days after, on August 20, 1989. This estate ⊥155 proceeding was commenced and decedent's widow presented to the trial court for probate a photocopy of the will written on August 2. It was that photocopy which the trial court admitted following a two-day trial.

It bears repeating the standard of review by which we determine whether a trial court's findings are clearly erroneous and therefore subject to reversal by this Court: "if the trial court's findings of fact are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, they will not be set aside unless this Court is left with a definite

and firm conviction that a mistake has been committed." *Umedib v. Smau* , 4 ROP Intrm. 257, 260 (1994). Viewed in light of that standard, few, if any, of the trial court's findings are subject to serious question.

To begin, there is no real question, and surely no clear error, in the finding that the photocopy admitted into evidence is a true and correct copy of the original document created on August 2, 1989.[1] Moses Uludong, who saw decedent draft the original, and had possession of it at least temporarily, testified that he himself made the copies.

Nor is there any real question -- given both the eyewitness testimony of Uludong and numerous witnesses familiar with decedent's handwriting -- that the original document was written by decedent. Although appellant and her two siblings were understandably upset by the contents of the document, and for that reason doubtful that their father could have written it, the trial court's finding that he did write it was not clear error.

Finally on the issue of validity, we find there was no clear error in the trial court's rejection of the suggestions that decedent was not competent or was subject to undue influence at the time he wrote the will. As to the first, the trial court was ⊥156 entitled to discount the possibility that decedent's medical condition might have affected his mental abilities in light of ample evidence that before, at the time of, and after the writing of the will, decedent's faculties were intact. As to the second, there is no factual basis for concluding that Mr. Uludong, who was neither a beneficiary nor acting on behalf of the principal beneficiary, exercised any -- much less undue -- influence over the contents of the will, and there is no legal basis for invalidating a will simply because a decedent has been influenced to write one.[2]

Appellant's next line of attack is to argue that even if the will was valid, *ab initio* , it expired by its own terms. We agree with the trial court, however, that such an argument fails on the plain language of the will:

> "In the event that I should survive in my trip to Guam for medical checkup and medication, this Will will be rendered void and of no force and effect six months from the date hereof."

Six months not having passed at the time of decedent's death, the will, at least according to its

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[1] Nor is there any serious legal question about the admissibility of the copy in lieu of the original. "The best evidence of the contents of a lost or destroyed will is a copy or draft of the will clearly and satisfactorily identified, if it can be obtained, and ordinarily this is sufficient." 80 Am. Jur. 2d *Wills* §1087 (1975 ed.). Appellant has no serious basis to contend that the copy is not identical to the original; rather, her best argument against admission of the copy is the argument that the absence of the original is a basis for concluding that the will was revoked. *See infra*.

[2] "[A]lmost all of the courts which have considered the matter have taken the position that the solicitation of a testator to make a will, without an attempt to influence him as to the specific provisions thereof, does not constitute undue influence." Annotation, Solicitation of testator to make a will or specified bequest as undue influence, 48 A.L.R.3d 961, 970 (1973).

own terms, was still effective.

The final, and most substantial, of appellant's contentions is that the trial court should have found that the will was revoked. Citing evidence that the original will was in the possession of decedent prior to his death, appellant contends that its apparent disappearance warrants a presumption that decedent destroyed it with the intention of revoking it. Appellant also cites testimony that decedent had asked, just prior to his death, to gather together close relatives and friends so that he might dictate his will to them.

There is substantial evidence to the contrary, however. Another witness who had visited with decedent just prior to his death testified that decedent told him that he had made a will for himself. Moreover, two witnesses testified that they had seen the ⊥157 original will on yellow legal paper after decedent's death.[3]

The general rule applicable to this situation is as follows:

> "When a will that was last in the possession or custody of the testator cannot be found after he or she dies, a presumption arises that the testator destroyed it with the intention of revoking it; this presumption, however, is never conclusive but may be overcome by proof that the will was not revoked by the testator. . ."

Annotation, Sufficiency of evidence of nonrevocation of lost will not shown to have been inaccessible to testator -- modern cases, 70 A.L.R.4th 323, 329 (1989); *see generally* 79 Am. Jur. 2d *Wills* § 606 (1975 ed.). Having seen and heard all of the witnesses, the trial court concluded that "the preponderance of the credible evidence is that Decedent did not revoke his holographic will." We believe that the trial court applied the appropriate legal standard, [4] and, in light of the conflicting evidence in the record, conclude that its factual determination was not clearly erroneous.

Finally, relying in part on Palau's intestate succession statutes, *see* 39 PNC §102(c), appellant argues that enforcement of decedent's will in these circumstances -- *i.e.*, where no

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[3] Although one of these witnesses later wavered as to the time he saw the will and its appearance, the second was firm in his recollection that he had seen an original, not a copy, after decedent had died.

[4] Although one case cited by appellant required an apparently higher burden of proof, *see Briscoe v. Schneider*, 775 P.2d 925, 927 (Or. App. 1989) (stating that presumption of revocation could only be overcome by "clear and satisfactory" evidence), we believe that such a rule is not reflective of the "common law . . . as generally understood and applied in the United States," 1 PNC § 303, and should not be adopted here. Indeed, it is not clear that such a rule is generally applicable even in Oregon. Only a few months later, the same panel of the Oregon Court of Appeals that decided *Briscoe* rejected the "clear and satisfactory" burden of proof as a general rule and stated that "the strength of the presumption of revocation varies with the facts." *First Interstate Bank of Oregon v. Henson-Hammer*, 779 P.2d 167, 168-69 (Or. App. 1989).

bequest ⊥158 has been made to his children -- is contrary to public policy. [5] We disagree. The public policy underlying Palau's wills statute is that if a will satisfies all legal requirements and is otherwise valid, a testator's wishes as to the disposition of his property should be honored. Decedent having clearly and unambiguously expressed his wishes in his will, and all of appellant's challenges to its validity having been rejected, the trial court had no choice but to give it effect. *See generally* 80 Am. Jur. 2d *Wills* § 1178 (1975 ed.) ("If the will of the testator is expressed in clear and unambiguous language, it must prevail, even though it disinherits the heirs.").

The judgment of the trial court is AFFIRMED.

[5] Many of the cases cited by appellants are from jurisdictions with pretermitted child statutes, of which there is none in Palau, and which generally protect only those children who were born *after* a will was executed.