

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF IDA WEITZ

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: ESTATE OF GEORGE H.
WEITZ (DECEASED) AND EDWARD
WEITZ

No. 913 MDA 2013

Appeal from the Order February 5, 2013
In the Court of Common Pleas of Luzerne County
Orphans' Court at No(s): 4011-1053

BEFORE: DONOHUE, J., ALLEN, J., and MUNDY, J.

MEMORANDUM BY MUNDY, J.:

FILED APRIL 11, 2014

Appellants, Estate of George H. Weitz (deceased) and Edward Weitz, appeal from the February 5, 2013 order denying their Petition to Strike Codicil to Will¹ of Ida Weitz, which excluded them from inheriting under her will, and as a result, Ida Weitz's estate was left in its entirety to her daughter, Appellee, Jennifer Weitz Mayhue.² After careful review, we affirm.

¹ All parties stipulated that the Petition to Strike Codicil to Will is in actuality an appeal from the Register's order probating Ida Weitz's estate. N.T., 12/4/12, at 6-7.

² Ida Weitz had three children. George H. Weitz and Edward Weitz are Ida Weitz's biological sons, and Appellee, Jennifer Weitz Mayhue, is Ida Weitz's biological daughter.

The orphans' court has set forth a summary of the pertinent facts of this case as follows.

1. Ida Weitz died on April 27, 2011.
2. Ida Weitz died testate having signed her Last Will and Testament dated on April 13, 1995 and codicil thereto on April 12, 2011.
3. Ida Weitz, at the time of her death, had three (3) living children: George H. Weitz, Jennifer Weitz Mayhue and Edward William Weitz, Sr.
4. Ida Weitz's son, George H. Weitz, died on November 23, 2012.
5. George H. Weitz, at the time of his death, was married to Sherry L. Weitz. Sherry L. Weitz was duly appointed executrix of the estate of her late husband, George H. Weitz.
6. Ida Weitz, deceased, was the sole owner of Weitz Personal Care Home located in Bear Creek Township, Pennsylvania.
7. Jennifer Weitz Mayhue assisted her mother, Ida Weitz, in the operation of the Weitz Personal Care Home.
8. Francis J. Hoegen, Esquire is an attorney licensed to practice in the Commonwealth of Pennsylvania who has practiced law for approximately twenty-five (25) years.
9. Ida Weitz was a client of Francis J. Hoegen, Esquire, having been one of his very first clients.
10. Francis J. Hoegen, Esquire knew Ida Weitz very well.
11. At least once prior to April 12, 2011, Ida Weitz had a discussion with Francis J. Hoegen,

Esquire expressing her desire to change her Will and leave all of her assets to her daughter, Jennifer Weitz Mayhue.

12. On April 12, 2011, Ida Weitz contacted Francis J. Hoegen, Esquire and requested that he come to her house. Francis J. Hoegen, Esquire met with Ida Weitz in a room where they usually met to discuss legal matters.
13. Mary Lynn Mayhue, daughter of Jennifer Weitz Mayhue and granddaughter of Ida Weitz, was present during the meeting.
14. At the meeting on April 12, 2011, Ida Weitz again expressed her desire to change her Will to leave all of her assets to her daughter, Jennifer Weitz Mayhue and to exclude her sons.
15. Francis J. Hoegen, Esquire tried to convince Ida Weitz not to change her Will in this fashion.
16. Ida Weitz insisted that Francis J. Hoegen, Esquire draft a codicil to her Will.
17. Francis J. Hoegen, Esquire hand wrote the codicil to Ida Weitz's Will from a side chair as she directed on April 12, 2011.
18. Ida Weitz and Francis J. Hoegen, Esquire then read the hand written codicil together.
19. Mary Lynn Mahue [sic] was present in the room when Ida Weitz signed the codicil.
20. Francis J. Hoegen, Esquire was present in the room when Ida Weitz signed the codicil.
21. Francis J. Hoegen, Esquire witnessed the codicil.
22. Mary Lynn Mayhue witnessed the codicil.

23. The handwritten codicil identifies the document as codicil to Will dated April 13, 1995.
24. At the time Mary Lynn Mayhue witnessed the codicil, she was seventeen (17) years of age.
25. Francis J. Hoegen, Esquire took the original signed codicil back to his office and kept it with the original Will of Ida Weitz.
26. Under the terms of the Last Will and Testament of Ida Weitz, Jennifer Weitz Mayhue is appointed to serve as executrix of the estate.
27. Under the terms of the codicil to Will dated April 13, 1995 signed by Ida Weitz, Jennifer Weitz Mayhue is to inherit all of the assets of Ida Weitz.
28. On June 13, 2011, the Last Will and Testament of Ida Weitz dated April 13, 1995 and the codicil thereto were presented for probate to the Register of Wills of Luzerne County, Pennsylvania.
29. Francis J. Hoegen, Esquire thereafter received a phone call from a representative of the Register of Wills indicating that the codicil of Ida Weitz was undated.
30. Francis J. Hoegen, Esquire took the original documents from the Register of Wills back to his office.
31. Francis J. Hoegen, Esquire looked at his office calendar to determine the date on which he had met Ida Weitz at her home concerning the preparation of the codicil.
32. Francis J. Hoegen, Esquire determined that he had met with Ida Weitz on April 12, 2011 and that it was on the date he wrote the codicil.

33. Ida Weitz signed the codicil to her Will on April 12, 2011.
34. Francis J. Hoegen, Esquire witnessed the codicil on April 12, 2011.
35. Mary Lynn Mayhue witnessed the codicil on April 12, 2011.
36. Subsequently on June 1[3], 2011, Francis J. Hoegen, Esquire added the date of April 12, 2011 in handwriting to the codicil.
37. [On June 13, 2011, t]he Last Will and Testament of Ida Weitz and the codicil to the Last Will and Testament of Ida Weitz were returned to the Office of the Register of Wills of Luzerne County where they were accepted, filed and probated.

Orphans' Court Findings of Fact, 2/5/13, at 1-4 ¶¶ 1-37.³

On June 5, 2012, George H. Weitz, who was still alive at the time, filed the Petition to Strike Codicil to Will. On August 9, 2012, Appellee, Jennifer Mayhue subsequently filed an answer and new matter, and on September 4, 2012, George H. Weitz filed a response. The orphans' court scheduled a trial for November 6, 2012. Prior to trial, on October 26, 2012, counsel for Edward Weitz entered his appearance, and Edward Weitz joined George H. Weitz's Petition to Strike Codicil to Will.

³ The individual pages of the orphans' court's Findings of Fact are not numbered. For ease of review, we have assigned each page a corresponding page number.

On December 4, 2012, a hearing was held. Following said hearing, the orphans' court granted the parties ten days to submit briefs "addressing the issue of the effect of the rejection by the Register of Wills of the original undated [c]odicil[.]" Orphans' Court Order, 12/7/12, at ¶¶ 1-2. The parties timely submitted their briefs.

On February 5, 2013, the orphans' court entered an order denying Appellants' Petition to Strike Codicil to Will. Accompanying said order, the orphans' court also issued its Findings of Fact, Conclusions of Law, and an Opinion in support of said conclusions. Specifically, the orphans' court concluded that "[t]he hand written codicil to the Last Will and Testament of Ida Weitz dated April 12, 2011 is a valid codicil." Conclusions of Law, 2/5/13, at ¶ 2.

On February 25, 2013, Appellants' timely filed Exceptions to the Decision and Opinion Dated February 5, 2013. **See** Pa.O.C.R. 7.1. Appellee, Jennifer Mayhue filed a response, and on April 24, 2013 the orphans' court denied Appellants' exceptions. Thereafter, on May 2, 2013, Appellants' filed a timely notice of appeal.⁴

On appeal, Appellants' raise the following issues for our review.

⁴ The orphans' court did not order Appellants' to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b), nor did the orphans' court file a Rule 1925(a) opinion. As the orphans' court's February 5, 2013 order and opinion address the same issues Appellants raise on appeal, we are not precluded from reviewing said claims.

1. Whether the trial court abused its discretion and committed an error of law in not requiring that a petition to admit the codicil to probate be immediately filed and/or to require that the shift of the burden of proof be to the respondent/Appellee, Jennifer M Mayhew [sic]?
2. Whether the trial court abused its discretion and/or committed an error of law in denying the petition to strike codicil in light of the fact that the codicil was executed by a minor and was undated at the time of the presentation of the codicil to the register of wills, together with all other relevant factors outlined at trial?

Appellants' Brief at 3.⁵

We begin by setting forth the standard of review that guides us in this appeal.

Our standard of review of an Orphans' Court's decision is deferential. When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion.

However, we are not constrained to give the same deference to any resulting legal conclusions. Where the rules of law on which the court relied are palpably wrong or clearly inapplicable, we will reverse the court's decree.

⁵ We note that Appellants' brief discusses issues one and two in reverse order. However, for purposes of our review we elect to address Appellants' issues in the same order as set forth in the statement of questions in Appellants' brief. **See** Appellants' Brief at 3.

In re Smith, 890 A.2d 1082, 1086 (Pa. Super. 2006) (citations and internal quotation marks omitted).

An abuse of discretion is not merely an error of judgment; if, in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be ... manifestly unreasonable or the product of partiality, prejudice, bias or ill will, discretion has been abused.

In re Estate of Cella, 12 A.3d 374, 378 (Pa. Super. 2010) (internal citations and quotations omitted).

In re Estate of Strahsmeier, 54 A.3d 359, 363 (Pa. Super. 2012); ***accord***

In Re Estate of Whitley, 50 A.3d 203, 206-207 (Pa. Super. 2012), *appeal denied*, 69 A.3d 603 (Pa. 2013).

Appellants first argue the trial court erred in failing to conclude that the Register of Wills notice to Attorney Hoegen that it could not accept the undated codicil amounted to a rejection of the codicil by the Register. Appellants' Brief at 9-10. Further, Appellants argue that "upon rejection of the [c]odicil by the Register of Wills, [] Appellee was required to petition the [Orphans'] Court to admit the [c]odicil to probate." ***Id.*** at 10. Therefore, Appellants assert that "upon the Register returning the [c]odicil to the Appellee, since it was undated, meant that [] Appellee, Jennifer Mayhue, then had the burden of proof to establish that the [c]odicil was drafted by Ida Weitz, and on the date set forth[.]" ***Id.***

In Pennsylvania, the Register's jurisdiction and authority has been codified as follows.

§ 901. Register's jurisdiction

Within the county for which he has been elected or appointed, the register shall have jurisdiction of the probate of wills, the grant of letters to a personal representative, and any other matter as provided by law.

20 Pa.C.S.A. § 901.

Further, a party may challenge a decree of the Register by filing an appeal pursuant to the following statute.

§ 908. Appeals

(a) When allowed.--Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

...

Id. § 908(a).

"The probate of the will and codicils by the Register of Wills constitute[s] a judicial decree." **Mangold v. Neuman**, 91 A.2d 904, 905 (Pa. 1952). "When a will has been admitted to probate, its validity has been judicially decided, and it can be set aside only by an appeal, being

unimpeachable in any other proceeding.” *In re Hickman’s Estate*, 162 A. 168, 170 (Pa. 1932).⁶

Instantly, the orphans’ court concluded the codicil was never rejected by the Register.

On June 13, 2011, Francis J. Hoegen, Esquire presented the Last Will and Testament of Ida Weitz dated April 13, 1995 and a codicil entitled “Codicil to Will dated 4/13/95” to the Register of Wills of Luzerne County for Probate.

On that same day a representative of the Register of Wills office contacted Attorney Hoegen to advise him that the codicil as presented was undated. Attorney Hoegen testified that he thereafter picked up the Will and codicil and returned to his law office. He checked the date on his calendar as to when he had met with Ida Weitz to have her sign the codicil to her Will. Attorney Hoegen further testified he determined that on April 12, 2011 at the request of Ida Weitz he had met her at her home. Attorney Hoegen hand wrote a codicil which clearly identified that it was a codicil to the Last Will and Testament of Ida Weitz dated April 13, 1995. He and the granddaughter of Ida Weitz witnessed Mrs. Weitz’s signature on the codicil.

Having confirmed the date on which Ida Weitz had signed her codicil [Attorney] Hoegen added that date to the codicil after the fact and returned both the Will and the codicil to the Office of the Register of Wills for probate. The Register of Wills accepted the Last Will and Testament of Ida Weitz dated April 13, 1995 and the codicil to the Last Will and

⁶ We note that Appellants’ concede this legal conclusion. Appellants’ Brief at 12-13. The crux of Appellants’ claim, however, is that the Register effectively rejected the will and codicil when it was returned to Attorney Hoegen.

Testament dated April 12, 2011 for probate on June 13, 2011.

Orphans' Court Opinion, 2/5/13, at 1-2.

The record supports the orphans' court's conclusion that Ida Weitz's will and codicil were never rejected by the Register. Particularly, the record is devoid of any such decree specifically rejecting the document, rather as evidenced by the record, the will and codicil were admitted to probate on June 13, 2011.

Appellants, nevertheless argue that "once the Register of Wills rejected the [c]odicil, [] Appellee, Jennifer Mayhue, had the legal obligation to petition the Orphan[s'] Court of Luzerne County to admit the [c]odicil to probate." Appellants' Brief at 11. In support of this position Appellants rely on ***In re Geho's Estate***, 17 A.2d 342 (Pa. 1941), which involved the daughter of a decedent who argued that the orphans' court erred in giving evidential weight to the probate record. ***Id.*** at 343.

Upon review, we conclude that ***In re Geho's Estate*** provides no support for Appellants' claim. Our Supreme Court held that "[p]roof of the fact of the probate of a will does not upon an appeal from the probate have any evidential value, except it must be decided in a particular way. [It] does have procedural value, for it raises a presumption of the will's validity and this presumption becomes a challenge for proof addressed to the challenger of the will." ***Id.*** at 344. Appellants argue this supports their argument that a burden shift should have occurred when the Register did not first accept

the codicil. However, as previously noted, the will and codicil were never formally rejected, rather they were accepted and probated. The Supreme Court further extrapolated upon the burden shift as follows.

The proper practice upon appeals from the probate of a will is to offer the register's record of probate, including the will. Then the burden of coming forward with proof shifts to the contestants. This burden of proof does not shift back to the proponents of the will until the contestants have offered evidence of such probative value in support of their allegations against the will, that if it stood uncontradicted it would upon an issue being awarded support a verdict against the will.

Id. (citation and footnote omitted).

Instantly, despite Appellants' claim, the Register ultimately accepted Ida Weitz's will and codicil for probate. Relying on ***In re Geho's Estate***, the burden actually rested on Appellants to offer proof challenging the validity of the will and codicil. Appellants were given such opportunity at the December 4, 2012 hearing. Therefore, we disagree with Appellants' contention that the Register effectively rejected the codicil and therefore the burden of proof shifted to Appellee. Rather, upon the Register's acceptance of the will and codicil into probate, in accordance with its jurisdiction, Appellants had the burden of proof to challenge the will and codicil's validity. Therefore, Appellants' first issue must fail.⁷

⁷ We note that Appellants have failed to set forth any argument in support of their claim that the Register effectively rejected the will or to support its
(Footnote Continued Next Page)

Turning to Appellants' remaining claims we note that our Supreme Court has held that "[i]n this Commonwealth the line of demarcation between matters of probate and of distribution or construction is distinct and definite." ***In re Rockett's Estate***, 35 A.2d 303, 304 (Pa. 1944). Our Supreme Court quoting its holding in ***Carson's Estate***, 88 A. 311 (Pa. 1913), held that "[t]he probate of a will without regard to its provisions is one thing; distribution of the estate of the testator in accordance with its terms is another. The former is for the register; the latter is none of his concern." ***In re Rockett's Estate, supra***. As we have established the will and codicil were properly probated by the Register, we now review the orphans' court's determinations regarding the validity of said documents.

Appellants argue the undated codicil remains invalid.⁸ Appellants' Brief at 8. Specifically, Appellants' argue that "a [w]ill or [c]odicil that is executed

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argument that the codicil must be stricken and removed from probate. **See** Appellants' Brief at 10-11. Appellants continually assert the act of returning the documents to Attorney Hoegen amounted to a rejection, but absent evidence of a rejection, or authority to support their contention, we are constrained to conclude the documents were not rejected, and, as the record provides, were duly admitted to probate.

⁸ We note that Appellants' brief fails to develop the argument regarding the validity of Mary Lynn Mayhue, a minor, in witnessing the execution of the codicil. Appellants mention said argument in one sentence stating that the Orphans' Court rejected "Appellant[s'] argument that because Mary Lynn Mayhue was seventeen (17) years old at the time she witnessed the [c]odicil, that it has no effect on the validity of the said [c]odicil." Appellants' Brief at 8. The remainder of Appellants' argument is dedicated to their claim that a failure to date the codicil renders it invalid. Accordingly, *(Footnote Continued Next Page)*

without a date leaves the unending possibility that the execution was not during a period of lucidity[.]” *Id.* at 9. Appellants argue the orphans’ court’s reliance on ***In re Zell’s Estate***, 198 A. 76 (Pa. 1938) for the proposition “that if the instrument is in writing signed by the decedent at the end of said instrument and is otherwise a legal declaration of her intention, that it must be given effect as a [w]ill or [c]odicil[.]” is misplaced. Appellants’ Brief at 9. Additionally, Appellants’ also argue the orphans’ court’s reliance on ***Grubbs v. McDonald***, 91 Pa. 236 (1879), is equally unpersuasive. Specifically, the orphans’ court reasoned as follows.

A writing need not assume any particular form or be couched in language technically appropriate to its testamentary character to take effect as a Will or codicil. If the instrument is in writing and signed by the decedent at the end thereof and is otherwise a legal declaration of her intention which she wills to be performed after her death it must be given effect as a Will or codicil, as the case may be. ***See Zell’s Estate***, 329 Pa. 312 at page 314, 198 A.[] 76. The codicil of Ida Weitz was clearly written on April 12, 2011, properly referencing that it is a codicil to her Will dated April 13, 1995. It represents a clear legal declaration of her intention and is signed by the decedent at the end thereof. Accordingly, it is a valid codicil.

Petitioners next argue that the fact that Attorney Francis J. Hoegen added the date on which

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Appellants’ claim regarding the age of Mary Lynn Mayhue in witnessing the codicil is waived as this Court will not consider issues where Appellant fails to cite to any legal authority or otherwise develop the issue. ***Commonwealth v. McLaurin***, 45 A.3d 1131, 1139 (Pa. Super. 2012), *appeal denied*, 65 A.3d 413 (Pa. 2013).

the codicil was signed by Ida Weitz to the codicil the document should therefore be invalidated as an altered document. This issue was similarly addressed by our Supreme Court in the case of ***Grubbs v. McDonald***, 91 Pa. 236 (1879). In that case after the Will was executed by John Grubbs with his mark as his Last Will and Testament the words "his mark" and the seal were added by an individual after the fact. The Court in determining that these alterations did not invalidate the Will held that the additions were wholly immaterial. The Court noted that the Will without them was well executed under the act of assembly and they certainly did not obscure the intent of the testator or render doubtful the intended disposition of his property. In the case at hand, the addition of that date after the fact by Attorney Hoegen has no effect on the validity of the testamentary paper. The codicil is clearly identified and was written subsequent to the Last Will and Testament of Ida Weitz. The addition of the date does not obscure the intent of Ida Weitz or render doubtful the intended disposition of her property.

Orphans' Court Opinion, 2/5/13, at 2-3.

Nevertheless, Appellants maintain that "the failure of Ida Weitz to date the [c]odicil, in and of itself, renders doubtful the intended disposition of her property." Appellants' Brief at 9. "Consequently, it is clear that the lack of a date on the instant [c]odicil, under the circumstances, requires that the [c]odicil be stricken." ***Id.***

We would be remiss if we failed to note that Appellants have provided no support for the argument that the undated codicil was invalid. Appellants have merely questioned the authority relied on by the orphans' court and restated the conclusion that the failure to date the codicil was fatal. As previously noted, failure to develop an argument or cite relevant legal

authority results in waiver. Pennsylvania Rule of Appellate Procedure 2119(a) requires that the argument section of an appellate brief include “citation of authorities as are deemed pertinent.” Pa.R.A.P. 2119(a). This Court will not consider an argument where an appellant fails to cite to any legal authority or otherwise develop the issue. ***Commonwealth v. Johnson***, 985 A.2d 915, 924 (Pa. 2009), *cert. denied*, ***Johnson v. Pennsylvania***, 131 S. Ct. 250 (2010); ***see also In re Estate of Whitley, supra*** at 209 (stating, “[f]ailure to cite relevant legal authority constitutes waiver of the claim on appeal[.]”) (citation omitted), *appeal denied*, 69 A.3d 603 (Pa. 2013).

Furthermore, even if Appellants’ had not waived the issue, the failure to date the codicil was not fatal. Our Supreme Court dealt with an undated instrument, albeit it was disputed whether the instrument was a will or a codicil, in ***In re Crooks’ Estate***, 130 A.2d 185 (Pa. 1957). Therein, the decedent died leaving a dated will which left the entirety of her estate to her husband, and an undated subsequent document leaving the entirety of her estate to her infant daughter. ***Id.*** at 186-187. Our Supreme Court held that the subsequent document was clearly executed after the original will and therefore was the controlling document.⁹ ***Id.*** at 187-188.

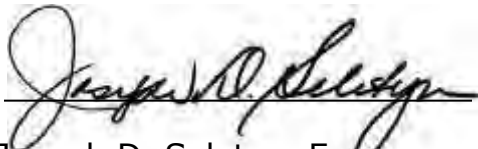
⁹ The Supreme Court ultimately determined the document was a subsequent will and not a codicil as it wholly revoked the original will. ***Id.*** at 188. (*Footnote Continued Next Page*)

Instantly, as in ***In re Crooks' Estate***, it is clear that Ida Weitz executed the codicil subsequent to her will as it explicitly stated it was a "codicil [sic] to will dated 4-13-1995" and stated her testamentary intent to "amend my last will and testament to change beneficiaries from my children to Jennifer Weitz Mayhue." Codicil to Will, 4/12/11, at 1. Accordingly, her testamentary intent was clear and enforceable.

Based on the foregoing, we conclude that Appellants' claims are either waived or devoid of merit. Therefore, we conclude the orphans' court did not abuse its discretion in denying Appellants' Petition to Strike Codicil to Will. Accordingly, we affirm the orphans' court's February 5, 2013 order.

Order affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 4/11/2014

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Nevertheless, the fact that the instrument was undated did not prevent it from being probated as it was clearly executed **after** the will. ***Id.***