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Wills - Execution

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WILLS—EXECUTION—Signature by testatrix in the attestation clause does not satisfy statutory requirement of signature at the end thereof.

Knupp Estate, — Pa. —, 235 A.2d 585 (1967).

Testatrix drafted her own will on legal paper, entirely in her own handwriting, and disposing of her entire estate. After completing the body of her will, she wrote out an attestation clause, leaving space for her own name but not immediately inserting it. She then acknowledged to two competent witnesses that this was her last will and requested their signatures as attestors. Testatrix then signed her name in the attestation clause after the subscribing witnesses. The signature of the testatrix appeared only in the very first line of the will and again in the attestation clause. Testatrix then placed her will in an envelope, sealed it and wrote her name on the envelope along with a statement that this was her last will. Proponents of the will argued that a holographic will signed only in the attestation clause is "signed at the end thereof" and that testatrix demonstrated sufficient testamentary intent when document was signed, while the opponents of the will contended that testatrix's signature was not at the "end" of the will.

Held: will was not signed by decedent at the end thereof *and was* not a valid will. The Pennsylvania Supreme Court in a 4-3 decision found this case factually distinguishable from its decision in *Miller Will*[1] where it held that testatrix's signature in the attestation clause of a printed form will followed by the statement in the same clause that this was "my" will was sufficient to satisfy Section 2 of the Wills Act of 1947[2] requiring wills to be signed at the end thereof.

Courts have long struggled with problems involving the interpretation of the legal requisites necessary for proper execution of a will. A will has been defined as "any instrument executed with the formalities of law, whereby a person makes a disposition of his property to take effect after his death."[3] The "formalities of law" referred to here were first set forth in the English Statute of Frauds in 1677[4] requiring a will to be written, signed by the testator and competently witnessed. After the Statute of Frauds the signature of testator was necessary but its position was immaterial.[5] It was not until the English Wills Act of 1837 that the proper location of the testator's authenticating signature was mandated to be "at the foot or end thereof. . . ."[6] Today while all American jurisdictions

1. 414 Pa. 385, 200 A.2d 284 (1964).
2. PA. STAT. ANN. tit. 20, § 180.2 (1947).
3. 28 RULING CASE LAW, 58 § 2.
4. 29 Chas. II, c. 3, V (1677).
5. Lemoyne v. Stanley, 3 Lev. 1 (C.P. 1681).
6. 7 Wm. IV & I Vict., c. 26 § 9 (1837).

require that a will be signed by testator or his proxy, only twelve require his signature to be at the end of the instrument.[7]

The pertinent statutory provision in Pennsylvania establishing the mandatory location for the testator's signature provides: "Every will . . . shall be in writing and shall be signed by the testator at the end thereof. . . ."[8] Although at first glance the language appears to be clear, its exact meaning has involved considerable litigation, contrary to the deceiving maxim cited by the majority in *Knupp:* "It [the statute] says a will must be signed at the end thereof and that's the end of it."[9] The "end" that the statute designates is not that point which is physically furthest removed from the beginning of the will, but rather the logical or sequential end of the instrument.[10]

The court in *Knupp* completely disregarded any consideration of whether the testatrix intended to formalize her will by signing her name in the attestation clause. "The question is not one of his intention, but of what he actually did or rather what he failed to do."[11] However, this statement is inconsistent with this same court's decision in *Miller* where testatrix also signed her name in the attestation clause and it was held that "The remaining inquiry is: Did she (testatrix) intend this as her testamentary signature or was she merely inserting her name for purposes of identification?"[12]

The disputed attestation clause in *Knupp* reads:

> Signed, sealed, published and declared by the above named Testatrix, Montana O. Knupp, as and for her Last Will and Testament, in the presence of us, who at her request, and in the presence of said Testatrix, and in the presence of each other, have hereunto subscribed our names as witnesses thereto.[13]

The approved attestation clause in *Miller* nearly duplicates that of *Knupp* above:

> Signed, sealed, published and declared by the above named *Clara Edna Miller* as and for *my* last Will and Testament, in

7. CAL. PROB. CODE § 50(1) (West, 1955); FLA. STAT. ANN. § 731.07(1) (1964); IDAHO CODE ANN. § 14-303(1) (1948); KAN. GEN. STAT. ANN. § 59-606 (1950); MONT. REV. CODES ANN. § 91.107(1) (1958); N.D. CENT. CODE § 56-03-02 (1960); OHIO REV. CODE ANN. § 2107.03 (Page, 1953); N.Y. DECED. EST. § 21(1) (1949); OKLA. STAT. ANN. tit. 84, § 55(1) (1952); PA. STAT. ANN. tit. 20, § 180.2 (1947); S.D. CODE § 56.0210 (1939); UTAH CODE ANN. § 74-1-5 (1953).

8. PA. STAT. ANN. tit. 20, § 180.2 (1947).

9. Wineland's Appeal, 118 Pa. 37, 41, 12 A. 301, 302 (1888). (Paxson, J.).

10. Kehr's Will, 373 Pa. 473, 479, 95 A.2d 647, 650 (1953).

11. Churchill's Estate, 260 Pa. 94, 101, 103 A. 533, 537 (1918).

12. 414 Pa. at 390, 200 A.2d at 286.

13. 235 A.2d at 586.

> the presence of us, who have hereunto subscribed our names at ...... request as witnesses thereto in the presence of said Testat.... and of each other (emphasis added).[14]

The entire will and attestation clause in *Knupp* were completely in the handwriting of the testatrix whereas in *Miller* the will was a standard printed form with a printed attestation clause at the bottom and the only parts written by the testatrix were her signature and the word "my" as above italicized.

In *Miller* the Pennsylvania Supreme Court held:

> the instrument, on its face, reveals that decedent did *intend* to affix and did affix her signature at the end of her testamentary disposition when she wrote her name into the attestation clause. Here the use of the pronoun "my" manifested a present *intention* that her signature serve as her testamentary signature. . . . (emphasis added).[15]

This is the very same intention of the testatrix that the instant court refused to consider, stating that "the question in this case as to *whether decedent signed the writing at the end thereof* is not one of decedent's intention. . . ." (emphasis added).[16] The court attempted to give some credence to their rationale by factually distinguishing *Miller* from *Knupp* by *Miller*'s use of the word "my" in the attestation clause rather than the word "her" used in *Knupp*. It is submitted that the employment of the correct pronoun in an attestation clause hardly forms an adequate basis for determination of whether an instrument is or is not a will.

The avowed purpose of the statutory necessity that a will be signed at the end thereof is to remove all possibility of fraud and prevent "fraudulent or unauthorized alterations or additions to wills."[17] The court sees the problem as one of balancing the soundness of the legislative mandate against the occasional thwarting of an expression of testamentary intent for want of statutory complicity. However, it is difficult to reconcile how the possibilities of fraud or a spurious will can be obviated by the use of a certain pronoun as the court seems to suggest by refusing probate in *Knupp* but not in *Miller*. Furthermore, if the reason for the statutory requirement that a will be signed at the end is to minimize the possibility of fraudulent alterations, there is no reason why blank space between the body of the will and the signature sufficient to permit a fraudulent addition should be regarded as immaterial to the validity of a will in Pennsylvania.[18] Finally, the possibilities of fraud would appear to be even

14. 414 Pa. at 387, 200 A.2d at 285.

15. *Id.* at 390, 200 A.2d at 286.

16. Re Brown's Estate, 347 Pa. 244, 246, 32 A.2d 22, 23 (1943).

17. *Id.*

18. In Re Morrow's Estate, 204 Pa. 479 (1903). Other states have similar puzzling results, *e.g.*, Mader v. Apple, 80 Ohio St. 691, 89 N.E. 37 (1909) where the court allowed

less in *Knupp* where the will was wholly holographic than in *Miller* where the instrument was executed on a commercially printed form.

The decision reached in *Knupp* is consistent with the results of all other cases in Pennsylvania involving wills in which the testator signed in the attestation clause,[19] except *Miller*. Thus, in affirming the invalidity of the *Knupp* will without definitely overruling *Miller* despite overwhelming similarities in the two cases with only dissimilar pronouns in the attestation clauses, the court's position on the interpretation of "signed at the end thereof" is untenable.

Justice Roberts, dissenting in *Knupp*, noted that the distinguishing pronouns in both *Knupp* and *Miller* appear after testator's signature and are therefore not considered part of the will so as to invalidate it.[20] Furthermore, he asserted that since there were no blank spaces between the body of the will and the attestation clause in the Knupp will, there was physically no room for any fraudulent additions prior to the signature, hence, the reason for the rule fails.[21] Justice Roberts advocated an examination of all the circumstances in each case to determine whether the testator *intended* his signature in the attestation clause to formally seal and end his testamentary dispositions, and would repeal both *Churchill's Estate*[22] and *Glace Will*[23] which held that signing in the attestation clause of a will does not meet the requirements of the Wills Act of 1947 because it is not a signature at the end of the will.[24]

A survey of the jurisdictions having similar statutes requiring testator's signature to be at the end of the will reveals that the statutes are usually very strictly construed so that both *Miller* and *Knupp* would have been denied probate.[25] However, the majority of states will admit extrinsic evidence of the testator's declarations and the circumstances surrounding the execution of the will to show testator's intent to sign when the signature is not the end of the will.[26] Also, the Model Probate Code[27] and the Universal Wills Act[28] provide no mandatory location for the testator's signature.

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probate of a will required to be signed at the end thereof notwithstanding a space of 23½ inches between the body of the will and testator's signature.

19. Churchill's Estate, 260 Pa. 94, 103 A. 533 (1918); Glace Will, 413 Pa. 91, 196 A.2d 297 (1964).

20. Griffith Will, 358 Pa. 474, 483 (1948); Beaumont's Estate, 216 Pa. 350 (1907).

21. 235 A.2d at 592.

22. 260 Pa. 94, 103 A. 533 (1918).

23. 413 Pa. 91, 196 A.2d 297 (1964).

24. 235 A.2d 585. Also, see supporting comment in 10 VILL. L. REV. 196 (1964).

25. In re Bond's Estate, 159 Kan. 249, 153 P.2d 912 (1944); In re Moore's Estate, 206 P.2d 413, 192 C.A.2d 120 (1949); In re Baur's Estate, 79 N.D. 113, 54 N.W.2d 891 (1952); In re Alexander's Estate, 104 Utah 286, 139 P.2d 432 (1943).

26. Meades v. Earle, 205 Mass. 553, 91 N.E. 916 (1910); Ex Parte Cardoza, 135 Md. 407, 109 A. 95 (1919); In re Norris Estate, 221 Mich. 430, 191 N.W. 238 (1922).

27. Simes and Basye, MODEL PROBATE CODE § 47-8 (1946).

28. 43 A.B.A.J. 139 (1957).

It is submitted that the most rational and enlightened solution for the problem in *Knupp* would be that where there is a clear showing of testamentary intent and absent any suggestion of fraud, a substantial compliance with the statute should be sufficient,[29] rather than a blind obliteration of an otherwise valid dispository scheme for failure to sign on the proper line or for the misfortune of using the incorrect pronoun. The decision in *Knupp* represents a recognition of the immateriality of testamentary intent to the Pennsylvania Supreme Court and a regression to honoring artificial barriers of form.

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29. Matter of Case, 126 Misc. 704, 214 N.Y.S. 678 (1926); In re Bragg's Estate, 76 P.2d 57 (1938); In re Free's Estate, 181 Okla. 564, 75 P.2d 476 (1938).