

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

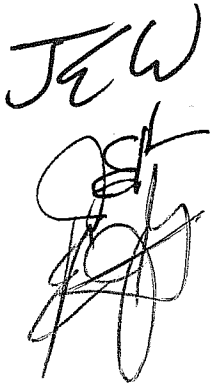
FIRST CIRCUIT

NUMBER 2006 CA 1667

SUCCESSION

OF

DONALD LUKE LEDOUX



Judgment Rendered: June 8, 2007

Appealed from the
Eighteenth Judicial District Court
In and for the Parish of Iberville, Louisiana
Trial Court Number 9135

Honorable James J. Best, Judge

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BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

WELCH, J.

This is an appeal by Kelly LeDoux Bourgeois and Verna LeDoux Fusilier from a trial court judgment declaring that an olographic testament, in which Paulette Guzzetta Arceneaux is named as universal legatee, was the final testament of Donald Luke LeDoux. Finding no manifest error in the judgment of the trial court, we affirm.

I. FACTUAL AND PROCEDURAL HISTORY

Donald LeDoux died on February 18, 2005, survived by his daughter, Kelly Bourgeois, and his sister, Verna Fusilier. On July 14, 2005, Kelly Bourgeois and Verna Fusilier filed a Petition for Possession and Petition for Declaratory Judgment, alleging that Donald LeDoux died intestate, that Kelly Bourgeois was Donald LeDoux's sole heir, and therefore, she was entitled to ownership of the property formerly belonging to him. Kelly Bourgeois and Verna Fusilier also acknowledged the existence of a "purported testament in olographic form, dated September 13, 1991" but sought that it be declared invalid because it could not be proven to have been "entirely written, dated, and signed by the Decedent."

Approximately twelve years prior to Donald LeDoux's death, on June 3, 1993, he and Paulette Arceneaux, his girlfriend of twelve years with whom he resided,¹ were involved in an automobile collision with a train, resulting in serious head injuries to both Paulette Arceneaux and Donald LeDoux. Due to the severity of Donald LeDoux's injuries, he was interdicted and Verna Fusilier was appointed as his curatrix. A lawsuit against the railroad ensued, and eventually, a settlement was reached which awarded both Donald LeDoux and Paulette Arceneaux substantial sums of money for their damages.

¹ According to the testimony adduced at the hearing in this matter, Donald LeDoux and Paulette Arceneaux held themselves out in the community and to their family as husband and wife. They wore wedding rings, had a joint checking account in the name of "Mr. or Mrs. Donald L. LeDoux," and filed joint federal income tax returns. It was not until after the June 3, 1993 accident that their families discovered that they were not married to one another.

In October 1994, during the course of the railroad litigation (and while Donald LeDoux was still alive), Paulette Arceneaux provided her and Donald LeDoux's attorney with a copy of a handwritten, dated, and signed document purporting to be Donald LeDoux's olographic testament. It is the validity of this purported olographic testament that forms the basis of this dispute between Paulette Arceneaux and Kelly Bourgeois and Verna Fusilier. The handwritten document provides as follows:

Thibodaux, Louisiana

September 13, 1991

I, Donald L. LeDoux, a resident of full age of the City of Thibodaux, Parish of Lafourche, State of Louisiana, do make this my last will and testament revoking all others:

I leave and bequeath to Paulette Guzzetta Arceneaux all of my property of whatever nature. [*sic*] that I may die possessed of.

Done and signed in my own handwriting at Thibodaux, Louisiana.

/s/ Donald L LeDoux

On December 8, 2005, a trial limited to the issue of the validity of this olographic testament was held, and on March 20, 2006, the trial court rendered judgment finding "that the purported olographic testament of Donald Luke LeDoux is in fact the final testament of Donald Luke LeDoux, written and signed entirely in his own hand." A written judgment in conformity with the trial court's ruling was signed on April 4, 2006. It is from this judgment that Kelly Bourgeois and Verna Fusilier have appealed,² assigning as error the underlying factual

² Pursuant to La. C.C.P. art. 1915(B)(1), the trial court certified the judgment as a final judgment, after an express determination that there was no just reason to delay an appeal of this ruling. In doing so, the trial court noted that a final adjudication as to the testament of Donald LeDoux should be obtained before further succession proceedings were conducted by the court. We note that in this case, the validity of the olographic testament directly affects: (1) the manner in which the remainder of Donald LeDoux's succession proceedings will be conducted (*i.e.*, whether the succession proceeds according to the laws of testate or intestate succession) and (2) what heirs will be placed in possession of the assets of the estate. Thus, due to the possibility of irreparable harm or injury, judicial inefficiency and prejudice that may be caused by not having a final adjudication as to the validity of the olographic testament, we find no abuse of the trial court's discretion in certifying this judgment as final for purposes of an immediate appeal. See **R.J. Messinger, Inc. v. Rosenblum**, 2004-1664, pp. 13-14 (La. 3/2/05), 894 So.2d 1113, 1122-23.

findings made by the trial court in determining that the olographic testament of Donald LeDoux was valid.

II. LAW AND DISCUSSION

“An olographic testament is one entirely written, dated, and signed in the handwriting of the testator.” La. C.C. art. 1575(A). “The olographic testament is subject to no other requirement as to form.” *Id.* In a contest over the probate of any testament, the proponent of the will “bears the burden of proving the authenticity of the testament, and its compliance with all of the formal requirements of law.” La. C.C.P. art. 2903. In the case of an olographic testament, “two credible witnesses [must testify] that the testament was entirely written, dated, and signed in the testator’s handwriting” and the court must be satisfied that the handwriting and signature are those of the testator. La. C.C.P. art. 2883; see Succession of Lyons, 452 So.2d 1161, 1163 (La. 1984). The testimony of handwriting experts has been deemed credible and sufficient to help prove the validity of olographic testaments. Succession of Calhoun, 28,233, p. 2 (La. App. 2nd Cir. 4/3/96), 674 So.2d 989, 990. Thus, a handwriting expert qualifies as a “credible” witness under La. C.C. P. art. 2883. *Id.*

Paulette Arceneaux, her daughter Nicole Arceneaux, and her son Jamie Arceneaux testified that they lived with Donald LeDoux for approximately twelve years prior to the June 1993 accident, and that during that time period, they had seen Donald LeDoux’s handwriting on numerous occasions, were familiar with his handwriting, and could recognize his handwriting. All three of these witnesses identified the handwriting and signature on the olographic testament as that of Donald LeDoux. Paulette Arceneaux further testified that Donald LeDoux wrote the testament after she gave Donald LeDoux a “legal form” for an olographic testament at his request. Paulette Arceneaux explained that she obtained the form

from the law office of her brother, attorney Thomas Guzzetta,³ for whom she worked part-time.

Cynthia Rogers, an expert in document examination and handwriting comparison, also testified on behalf of Paulette Arceneaux. Ms. Rogers compared the olographic testament to approximately twenty-eight known samples⁴ of Donald LeDoux' handwritings or signatures. Ms. Rogers explained in her testimony and in her report that her microscopic comparative examination of the known samples and the olographic testament, indicated a consistency in the baseline, slants, spacing, ligatures, form, size, angle, beginnings, endings, alignment, and idiosyncrasies. Ms. Rogers explained that such consistency supports a finding that the same individual that wrote or signed the known samples also wrote and signed the olographic testament.

Additionally, Ms. Rogers testified that she compared several samples of Paulette Arceneaux's handwriting to the olographic testament and found "no similarities at all" and stated that Paulette Arceneaux had a "completely different style of handwriting." Ms. Rogers also explained that when a person attempts to forge another person's handwriting, there will usually be "bleeding" or a "corrugation" of the pen or pencil mark (*i.e.*, a "puddle" of ink) due to the forger's hesitation in attempting to duplicate the handwriting of the other person. Ms. Rogers testified that her microscopic examination of the testament revealed "no indication" of such bleeding or ink puddles. Based on all of her findings, Ms. Rogers opined that the olographic testament was authentic and was entirely handwritten, dated, and signed by Donald LeDoux.

On the other hand, Kelly Bourgeois, who by operation of law would succeed

³ Thomas Guzzetta is now deceased.

⁴ The parties stipulated that the known samples had been written or signed by Donald LeDoux.

to all of Donald LeDoux's property in the absence of a valid testamentary disposition,⁵ testified that she believed that she was familiar with her father's handwriting and signature, and that she "personally [did] not feel that [the olographic testament was her] father's handwriting." Kelly Bourgeois explained that her opinion was based on her "memories from growing up and cards [she had] received." However, Kelly Bourgeois admitted that her father and mother were divorced when she was approximately eight years old, and thereafter, she resided with her mother and her father moved to Thibodaux. Kelly Bourgeois admitted that after her father moved to Thibodaux, he did not write to her very often.

Verna Fusilier testified that the testament was not Donald LeDoux's handwriting because "[i]n [her] eyes" the handwriting was "too neat and precise ... to be Donald [LeDoux's] writing." She also testified that some of the words and language used in the testament itself, such as "bequest," "testament revoking all others," and "all of my property that I may die possessed of," were not words or language that Donald LeDoux would utilize had he written the testament. However, she acknowledged that if Donald LeDoux was presented a "form" for an olographic testament, he would have used such words and language.

Robert G. Foley, an expert in forensic document examination, testified by deposition on behalf of Kelly Bourgeois and Verna Fusilier. Mr. Foley compared the olographic testament to the same known samples of Donald LeDoux's handwriting or signature that Ms. Rogers did. After conducting a "signature examination," Mr. Foley noted "numerous significant dissimilarities" in the "individual handwriting characteristics," such as letter designs, height ratios, alignment, and line quality. Accordingly, Mr. Foley opined that it was "probable"

⁵ An interest in the estate of the decedent is a factor affecting the credibility a legatee's testimony. See **Calhoun**, 28,233 at p. 3, 674 So.2d at 991.

that the writer/signer of the known samples “did not sign”⁶ “Donald LeDoux” on the olographic testament or write the handwriting in the testament. Further, Mr. Foley reached “no conclusion”⁷ as to whether Paulette Arceneaux signed or wrote the will.

In this case, Paulette Arceneaux, the proponent of the olographic testament of Donald LeDoux, had the burden of proving that it was entirely written, dated, and signed by Donald LeDoux. **Succession of Caillouet**, 2005-0957, p. 3 (La. App. 4th Cir. 6/14/06), 935 So.2d 713, 715, writ denied, 2006-1732 (La. 10/6/06), 938 So.2d 85. After hearing all of the evidence, the trial court was “convince[d] by a preponderance of the evidence that the [olographic] testament was not a forgery” and determined that the olographic testament was “in fact the final testament of Donald LeDoux, written, [dated,] and signed entirely in his own hand[writing].”

In a case contesting a will or testament, the factual findings of the trial court are accorded great weight and will not be disturbed on appeal absent a finding of manifest error. **Caillouet**, 2005-0957 at p. 4, 935 So.2d at 715. Considering the applicable law along with the evidence presented at the trial, we find no manifest error in the trial court’s ultimate determination that Paulette Arceneaux met her burden of proving that the olographic testament was authentic and met the formal requirements of law.

An examination of the olographic testament in this record demonstrates that it is entirely handwritten, it is dated September 13, 1991, and it is signed “Donald

⁶ According to the “Standard Terminology for Expressing Conclusions of Forensic Document Examiners” attached to Mr. Foley’s deposition, in expressing opinions resulting from handwriting examinations, the term “probably did not” means “[t]he evidence points rather strongly against the questioned and known writings having been written by the same individual; but ... the evidence is not quite up to the ‘virtual certain’ range.”

⁷ According to the “Standard Terminology for Expressing Conclusions of Forensic Document Examiners,” the term “no conclusion” means “totally inconclusive, indeterminable;” it is “the zero point of the confidence scale.” The term is “used when there are significantly limiting factors ... and the examiner does not have even a leaning one way or another.”

L. LeDoux.” The testimony of Paulette Arceneaux, Nicole Arceneaux, and Jamie Arceneaux, all of whom were familiar with Donald LeDoux’s handwriting and signature, as well as the expert opinion testimony of Cynthia Rogers, establish that the handwriting and signature in the olographic testament is that of Donald LeDoux. Although, the evidence presented on behalf of Kelly Bourgeois and Verna Fusilier suggests that the handwriting and signature in the testament may not be that of Donald LeDoux, where there are two permissible views of the evidence, the fact finder’s choice between them cannot be manifestly erroneous. See Rosell v. ESCO, 549 So.2d 840, 844 (La. 1989). Because the record supports the conclusion that the olographic testament was entirely written, dated, and signed by the testator, Donald LeDoux, the judgment of the trial court is affirmed.

III. CONCLUSION

For the above and foregoing reasons, the April 4, 2006 judgment of the trial court is hereby affirmed.

All costs of this appeal are assessed to the plaintiffs/appellants, Kelly LeDoux Bourgeois and Verna LeDoux Fusilier.

AFFIRMED.