IN THE COURT OF APPEALS 12/03/96

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-01120 COA

IN THE MATTER OF THE ESTATE OF EVA KATHLEEN PHILLIPS RATLIFF, DECEASED: STACY MCMURTREY BUFKIN

APPELLANT

v.

WILLIAM D. RATLIFF III

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. WILLIAM JOSEPH LUTZ

COURT FROM WHICH APPEALED: MADISON COUNTY CHANCERY COURT

ATTORNEYS FOR APPELLANT:

LEE B. AGNEW, JR.

KATIE S. EIDT

ATTORNEY FOR APPELLEE:

CHARLES L. DUNN

NATURE OF THE CASE: CONTEST OF HOLOGRAPHIC WILL

TRIAL COURT DISPOSITION: CHANCELLOR FOUND HAND WRITTEN PORTION ON AN ENVELOPE CONTAINING A TYPEWRITTEN WILL DID NOT QUALIFY AS A HOLOGRAPHIC WILL.

BEFORE FRAISER, C.J., COLEMAN, AND MCMILLIN, JJ.

FRAISER, C.J., FOR THE COURT:

The sole question before this Court is whether the writing in question constitutes a valid holographic will. Because the writing fails to meet the basic statutory requirements of a holographic will, we affirm.

FACTS

On December 7, 1984, Eva Kathleen Philips Ratliff (Eva) executed a last will and testament devising her property to her two children, Kathy Ratliff Watson and William D. Ratliff III, except her personal jewelry, which she left to her granddaughter, Stacy McMurtrey Bufkin (Bufkin). Later, Eva made a handwritten note on the envelope of the December 7, 1984 will, which stated:

> This new will is in my own handwriting. Kathleen P. Ratliff or Mrs. W. D. Ratliff Jr. Enclosed will. This Will is null and void as of feb [sic] 14th, 1992.
>
> Instead, I leave everything that I own in property, cash, CDS, jewelry, car and so forth to my granddaughter Stacy McMurtrey [Bufkin].

Eva died on May 2, 1995. Bufkin offered the holographic will for probate. The only question before the chancery court was whether the writing on the envelope constituted a valid holographic will. The chancery court determined that writing on the envelope did not constitute a valid holographic will.

DISCUSSION

WHETHER THE NOTATION ON THE ENVELOPE OF THE

DECEMBER 7, 1984 WILL IS A VALID HOLOGRAPHIC WILL

Stacy argues that:

> The Appellant's position is that the Court should have found that the writting [sic] on the outside of the envelope constituted the decedent's holographic will regardless of whether or not it meet [sic] each and every statutory criterion. The testimony is replete with eye witness [sic] accounts to the decedent's deliberate intentions to change her previous will and, in effect, void same and to leave all to her granddaughter, the Appellant. Your Appellant would show that the intent of any laws governing wills should be that the wishes of the deceased with regard to the distribution of the assets of the estate be up held [sic] and if it is proven that there was no fraud or undue influence involved then the form of a holographic will should survive.

Stacy's argument ignores recent, controlling Mississippi Supreme Court precedent.

Holographic wills are creatures of statute recognized in section 95-5-1 of the Mississippi Code. This section provides:

> Every person eighteen (18) years of age or older, being of sound and disposing mind, shall have power, by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, or to lands, tenements, hereditaments, or annuities, or rents charged upon or issuing out of them, or goods and chattels, and personal estate of any description whatever, provided such last will and testament, or codicil, be signed by the testator or testatrix, or by some other person in his or her presence and by his or her express direction. Moreover, if not wholly written and subscribed by himself or herself, it shall be attested by two (2) or more credible witnesses in the presence of the testator or testatrix.

Miss. Code. Ann. § 95-5-1 (1972).

Section 95-5-1 and its predecessors have long been interpreted to require that a holographic will be signed at the bottom of the document in order to be valid. *Madden v. Rhodes,* 626 So. 2d 608, 626 (Miss. 1993); *Estate of Rowell v. Hollingsworth*, 585 So. 2d 731, 734 (Miss. 1991); *Wilson v. Polite*, 218 So. 2d 843, 854 (Miss. 1969); *Baker v. Baker's Estate*, 199 Miss. 388, 24 So. 2d 841 (1946).

Hollingsworth and *Wilson* present identical legal questions to the question in this case: Whether a handwritten will with the putative testator's name in the first sentence of the handwritten document, but no where else in the document, can qualify under Mississippi law as a valid holographic will. *Hollingsworth*, 585 So. 2d at 734; *Wilson*, 218 So. 2d at 854. The Mississippi Supreme Court answered this question with a resounding no. *Id.* The court noted that Mississippi abides by a bright-line rule that requires the testator's signature at the bottom of a holographic will. *Hollingsworth*, 585 So. 2d at 735.

As to Bufkin's broad assertions that we should ignore the statutory requirements for holographic wills, the Mississippi Supreme Court has made it abundantly clear that the formalities of section 95-5-1 cannot be ignored. In the recent case of *Madden v. Rhodes*, the Mississippi Supreme Court restated the applicable law:

> The argument has been made that requiring such proof amounts to requiring beneficiaries to "jump through hoops." However, *we do not hesitate to rule a holographic will invalid merely because the testator signed his name at the top of the page*; similarly, we require that wills not wholly handwritten by the testator be signed by two witnesses.

> *If a holographic will is not signed at the bottom, the will is invalid. See Baker v. Baker's Estate*, 199 Miss. 388, 24 So.2d 841 (1946).

. . .

> It matters not that the testator was of sound mind, was of appropriate age, had full knowledge of what properties he owned and of their value, or that he knew who his heirs-at-law were. If a holographic will is not subscribed at the bottom, or if an attested will is not signed by at least two witnesses, *it does not matter if witnesses come bearing mountains of affidavits stating that the document expresses the true intentions of the testator. The will is invalid.* Under such circumstances, it matters not if the witnesses include dozens of the most honest and clear-thinking men in the community. The wills are invalid.
>
> Some may think our requirement [that] a holographic will be subscribed at the bottom or that an attested will be signed by at least two credible witnesses [requires] some "hoop jumping," too.
>
> *Nonetheless, we have strictly enforced the statute, and, as a result, we are no longer faced with appeals on the issue. Attorneys throughout the state, and many lay persons, too, know that holographic wills must be signed at the bottom and attested wills must be signed by at least two credible witnesses.*

Madden v. Rhodes, 626 So. 2d at 626-27 (emphasis added).

The decision of the chancery court that the writing on the envelope of the 1984 will is not a valid holographic will is affirmed. Further, this decision does not consider and in no way affects the validity or invalidity of the 1984 will.

THE JUDGMENT OF THE MADISON COUNTY CHANCERY COURT IS AFFIRMED. COSTS ARE ASSESSED AGAINST THE APPELLANT.

BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.