PUBLIC CHAPTER 332 (2019)

2019 Tennessee Laws Pub. Ch. 332 (H.B. 190)

TENNESSEE 2019 SESSION LAWS

2019 SESSION OF THE 111th GENERAL ASSEMBLY

Additions and deletions are not identified in this document.
Vetoes are indicated by ~~Text~~ ;
stricken material by ~~**Text**~~ .

Pub. Ch. 332
H.B. No. 190

PROBATE PROCEEDINGS—PERSONAL REPRESENTATIVES —CRIMINAL HISTORY RECORD INFORMATION

By Representative Carter

Substituted for: Senate Bill No. 174

By Senator Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 30 and Title 40, relative to administration of estates.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 30–1–117, is amended by adding the following new subdivision (a)(10):

<< TN ST § 30–1–117 >>

(10) The name, age, mailing address, relationship of the proposed personal representative to the decedent, a statement of any felony or misdemeanor convictions, and a statement of any sentence of imprisonment in a penitentiary.

SECTION 2. Tennessee Code Annotated, Section 30–1–111, is amended by deleting the section and substituting instead the following:

as of MAY 10, 2019:

<< TN ST § 30–1–111 >>

NEW OATH

The clerk shall, before delivering the letters of administration or letters testamentary to the personal representative, administer to the representative, if an executor, an oath for performing the will of the deceased; and, if an administrator, an oath for the faithful performance of the administrator's duty; and, as to both, an oath that all statements in the petition about the representative are true and accurate and the representative is not disqualified from serving because of having been sentenced to imprisonment in a penitentiary as set forth in § 40–20–115 or otherwise. In the alternative, the oaths of the administrator or executor may be sworn or affirmed in the presence of a notary public and the acknowledgment of the representative's oaths, when certified by the notary public, shall be presented to the appropriate clerk.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

Approved this 10th day of May, 2019

West's Tennessee Code Annotated
Title 30. Administration of Estates
Chapter 1. Executors and Administrators
Part 1. General Provisions (Refs & Annos)

T. C. A. § 30-1-117

§ 30-1-117. Application for letters of administration or letters testamentary; verified petition, information

Effective: May 10, 2019
Currentness

(a) To apply for letters of administration or letters testamentary to administer the estate of a decedent, a verified petition containing the following information and documents shall be filed with the court:

See #10 for NEW requirement, as of May 10, 2019.

(1) The identity of the petitioner;

(2) The decedent's name, age, if known, date and place of death, and residence at time of death;

(3) In case of intestacy, the name, age, if known, mailing address and relationship of each heir at law of the decedent;

(4) A statement that the decedent died intestate or the date of execution, if known, and the names of all attesting witnesses of the document or documents offered for probate;

(5) The document or documents offered for probate, or a copy thereof, as an exhibit to the petition;

(6) The names and relationships of the devisees and legatees and the city of residence of each if known, similar information for those who otherwise would be entitled to the decedent's property under the statutes of intestate succession, and the identification of any minor or other person under disability;

(7) An estimate of the fair market value of the estate to be administered, unless bond is waived by the document offered for probate or is waived as authorized by statute;

(8) If there is a document, whether the document offered for probate waives the filing of any inventory and accounting or whether such is not otherwise required by law;

(9) If there is a document, a statement that the petitioner is not aware of any instrument revoking the document being offered for probate, if that is the case, and that the petitioner believes that the document being offered for probate is the decedent's last will; and

(10) The name, age, mailing address, relationship of the proposed personal representative to the decedent, a statement of any felony or misdemeanor convictions, and a statement of any sentence of imprisonment in a penitentiary.

(b) No notice of the probate proceeding shall be required except for probate in solemn form, which shall require due notice in the manner provided by law to all persons interested.

Credits

1997 Pub.Acts, c. 426, § 1, eff. Jan. 1, 1998; 2019 Pub.Acts, c. 332, § 1, eff. May 10, 2019.

T. C. A. § 30-1-117, TN ST § 30-1-117

Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through July 1, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

West's Tennessee Code Annotated
Title 30. Administration of Estates
Chapter 1. Executors and Administrators
Part 1. General Provisions (Refs & Annos)

NEW OATH, as of MAY 10, 2019

T. C. A. § 30-1-111

§ 30-1-111. Oaths of representatives and administrators

Effective: May 10, 2019
Currentness

The clerk shall, before delivering the letters of administration or letters testamentary to the personal representative, administer to the representative, if an executor, an oath for performing the will of the deceased; and, if an administrator, an oath for the faithful performance of the administrator's duty; and, as to both, an oath that all statements in the petition about the representative are true and accurate and the representative is not disqualified from serving because of having been sentenced to imprisonment in a penitentiary as set forth in § 40-20-115 or otherwise. In the alternative, the oaths of the administrator or executor may be sworn or affirmed in the presence of a notary public and the acknowledgment of the representative's oaths, when certified by the notary public, shall be presented to the appropriate clerk.

Credits
1715 Acts, c. 48, § 5; 1983 Pub.Acts, c. 55, § 1; 2019 Pub.Acts, c. 332, § 2, eff. May 10, 2019.

Formerly 1858 Code, § 2221; Shannon's Code, § 3956; 1932 Code, § 8168; § 30-114.

T. C. A. § 30-1-111, TN ST § 30-1-111
Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through July 1, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

West's Tennessee Code Annotated
Title 40. Criminal Procedure
Chapter 20. Judgment and Sentence
Part 1. General Provisions

T. C. A. § 40-20-115

§ 40-20-115. Fiduciaries; disqualification

Effective: July 1, 2013
Currentness

The effect of a sentence of imprisonment in the penitentiary is to put an end to the right of the inmate to execute the office of executor, administrator or guardian, fiduciary or conservator, and operates as a removal from office.

Credits
2013 Pub.Acts, c. 435, § 33, eff. July 1, 2013.

Formerly 1858 Code, § 5230; Shannon's Code, § 7203; 1932 Code, § 11789; § 40-2715.

T. C. A. § 40-20-115, TN ST § 40-20-115
Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through July 1, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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West's Tennessee Code Annotated
Title 30. Administration of Estates
Chapter 1. Executors and Administrators
Part 1. General Provisions (Refs & Annos)

RE: AAL
" FOR CAUSE OF ACTION ONLY "

T. C. A. § 30-1-109

§ 30-1-109. Administrator ad litem

Effective: October 1, 2007
Currentness

(a) In all proceedings in the probate or chancery courts, or any other court having chancery jurisdiction, where the estate of a deceased person must be represented, and there is no executor or administrator of the estate, or the executor or administrator of the estate is interested adversely to the estate, it shall be the duty of the judge or chancellor of the court, in which the proceeding is had, to appoint an administrator ad litem of the estate for the particular proceeding, and without requiring a bond of the administrator ad litem, except in a case where it becomes necessary for the administrator ad litem to take control and custody of property or assets of the intestate's estate, when the administrator ad litem shall execute a bond, with good security, as other administrators are required to give, in such amounts as the chancellor or judge may order, before taking control and custody of the property or assets.

(b) This appointment shall be made whenever the facts rendering it necessary appear in the record of such a case, or shall be made known to the court by the affidavit of any person interested in the case; and, in such proceedings in the chancery court, the chancellor at chambers or clerk and master of the court on a rule day shall have authority to make an appointment in vacation.

Credits
1889 Acts, c. 137, § 1.

Formerly Shannon's Code, § 3954; mod. 1932 Code, § 8166; § 30-312.

T. C. A. § 30-1-109, TN ST § 30-1-109
Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through July 1, 2021. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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EXAMPLE

IN THE PROBATE COURT FOR GREENE COUNTY, TENNESSEE

IN THE MATTER OF: RE: TCA 30-1-109

THE ESTATE OF
Deceased

No. 2021-PR-195

, Petitioner

VERIFIED PETITION TO APPOINT AN ADIMINISTATOR AD LITEM FOR CAUSE OF ACTION ONLY

Comes now your Petitioner, , by and through counsel and pursuant to Tennessee Annotated Sections 30-1-109 and 20-5-101 et seq. requests this Honorable Court to appoint her as Administrator Ad Litem for Cause of Action Only for the above estate. In support of this Petition, Petitioner would show unto this Court as follows:

1. On July 26, 2020, Decedent was a driver in a motor vehicle accident in Greene County, Tennessee where Decedent died on April 10, 2021. (Copy of Obituary attached hereto).
2. Decedent's residence at the time of his death was 1508 Daisy Street Greeneville, Greene County, Tennessee 37745. Decedent's date of birth is May 3, 1952.
3. Petitioner is Decedent's spouse. Decedent was married and had three children.
4. Pursuant to Tenn. Code. Ann. § 20-5-106, Petitioner is seeking damages for personal injuries sustained by Decedent in the above referenced motor vehicle accident.
5. Petitioner is able and willing to serve as Administrator to pursue this cause of action.
6. Petitioner avers that she is an appropriate person to be appointed as administrator as she is Decedent's spouse.

FILED PROBATE
AT 11:00 O'CLOCK A M
JUL 16 2021
Kay Armstrong BL
CLERK & MASTER

7. Pursuant to Tennessee Code Annotated Section 30-1-109, Petitioner is requesting that she be appointed as Administrator Ad Litem for the purpose of serving as Plaintiff in this wrongful death claim.

WHEREFORE, PREMISES CONSIDERED, PETITIONER PRAYS:

1. That Carrie Ann Harmon be appointed Administrator ad Litem for Cause of Action only for the Estate of , for the purpose of serving as Plaintiff for a personal injury claim for the benefit of Decedent's next of kin.
2. That Letters of Limited Administration for Cause of Action Only be issued to Carrie Ann Harmon.
3. That Petitioner be granted such other, further and general relief as the Court may deem proper under the circumstances.

Attorney for the Petitioner

STATE OF TENNESSEE)

) ss.

COUNTY OF)

Petitioner, , after first being duly sworn, makes oath that the facts stated in the foregoing Petition are true to the best of her knowledge, information and belief.

Sworn to and subscribed before me on this the

14th day of July, 2021.

NOTARY PUBLIC

My Commission Expires:

STATE OF TENNESSEE NOTARY PUBLIC WASHINGTON COUNTY

EXAMPLE (RE: TCA 30-1-109)

IN THE CHANCERY COURT OF GREENE COUNTY, TENNESSEE	APPLICATION FOR APPOINTMENT OF ADMINISTRATOR AD LITEM FOR CAUSE OF ACTION ONLY T.C.A. § 30-1-109	CHANCERY COURT PROBATE DIVISION CASE NO. 2021-PR-89

IN THE MATTER OF THE ESTATE OF

DECEDENT

APPLICANT.

(MOTHER OF DECEDENT)

Comes Now, M , Mother of the Decedent and respectfully requests the Court to appoint Applicant as Administrator *ad litem* of this estate for the limited purpose of a cause of action.

ITEM 2. AVERMENTS.

Applicant would show that Decedent died on September 1 , 2020 at the age of 39 at Greeneville, TN.

FILED PROBATE
AT 2:50 O'CLOCK P M
MAR 23 2021
MAR 23 2021
Kay Armstrong DA
CLERK & MASTER

Decedent's residence at time of death was:

Applicant's relationship to Decedent is Mother.

For Legal Action Against:

GREENE COUNTY, TENNESSEE, GREENE COUNTY SHERIFF , in his Individual and Official Capacity, HEALTH PARTNERS, I ., in his Individual and Official Capacity, , in her Individual and Official Capacity, , in her Individual and Official Capacity, J , in her Individual and Official Capacity, in her Individual and Official Capacity, and UNKNOWN JAIL OFFICERS.

Applicant Further Avers:

these facts are true to the best knowledge, information, and belief of Applicant; no person is currently serving as administrator or executor for this estate; Applicant is aware of no person interested in the estate or willing to serve as administrator; Applicant is ready, willing, and qualified to serve as administrator *ad litem* according to law; the Administrator *ad litem*'s sole duty and function will be to provide a nominal party for a legal cause of action; and where it becomes necessary for Applicant to take control and custody of property or assets of this estate, Applicant shall execute a bond with good security before taking control and custody of such property or assets.

ITEM 3. PREMISES CONSIDERED, APPLICANT PRAYS:

1. That facts have been shown herein, or will be made known by the testimony or affidavit of an interested person, to support the appointment of a limited administrator.
2. That applicant be appointed Administrator ad litem of this estate pursuant to T.C. § 30-1-109.
3. That the CLERK & MASTER qualify Applicant and issue Letters of Administration for Cause of Action Only.

STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF GREENE

STATE OF TENNESSEE
CHANCERY COURT OF GREENE COUNTY

Sworn to and subscribed before me on 3/23/18 (*date*) By NOTARY PUBLIC

RE - PROBATE ENTERED March 24 2021
Minute Book 197
Clerk and Master

PROBATE ENTERED March 24 2021
Minute Book 197
Clerk and Master

We are surety for costs in this cause.

Attorney for Plaintiff

MASTER'S ORDER

From an examination of the Application, submitted (KA, CM) ~~Applicant and witnesses~~ under oath, it appears the facts stated in the Application are true, and that after proper qualification and payment of costs and pursuant to T.C.A. § 16-16-201 letters of limited administration for an administrator *ad litem* are to be issued for cause of action only to:

Court costs are paid OR will be paid. (KA CM)

No further reports are required by the COURT, except for a Final ORDER and ~~[redacted]~~ Required OATH of the Personal Representation.

~~5-YEAR CAUSE OF ACTION? ☐ NO ☐ YES If yes, this estate shall remain open for a period of five (5) years after which it shall be closed unless requested by Administrator *ad litem*. Additional letters shall be issued as necessary upon payment of additional costs.~~

This 24 day of MARCH, 2021.

GREENE COUNTY CLERK & MASTER

RE PROBATE
ENTERED March 24, 2021
Minute Book 197
Clerk and Master

PROBATE
ENTERED March 24, 2021
Minute Book 197
Clerk and Master

EXAMPLE ORDER

IN THE PROBATE COURT FOR GREENE COUNTY, TENNESSEE

IN THE MATTER OF: (RE: TCA 30-1-109)

THE ESTATE OF
Deceased

No. 2021-PR-68

; Petitioner

ORDER APPOINTING ADMINISTRATOR AD LITEM FOR CAUSE OF ACTION ONLY

Based upon the Petition heretofore filed, it hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. That [redacted] shall serve as Administrator Ad Litem for the Estate of [redacted] pursuant to Tennessee Code Annotated Section 30-1-109 and Tennessee Code Annotated Sections 20-5-101 et seq. for the purpose of serving as the proper party in pursuing a wrongful death claim on behalf of Decedent's next of kin.

2. That the Clerk shall issue Letters of Limited Administration for Cause of Action Only to [redacted]

3. No formal administration of this estate is or shall be required.

4. This matter shall be closed without ~~further order~~ upon entry of a proper order* but may be re-opened on motion of Petitioner or any heir so as to deal with any award in the claim.

This the 5 day of MARCH 2021.

Probate Judge

PROBATE LODGED
DATE 3-1-21
TIME 4:10 PM
Kay Armstrong, J.D. C&M
Clerk and Master

APPROVED FOR ENTRY:

[redacted]
Knoxville, TN 37923

PROBATE
ENTERED March 5, 2021
Minute Book 197
Clerk and Master

CHANCELLOR INTERLINEATED:
* "UPON ENTRY OF A PROPER ORDER"

West's Tennessee Code Annotated
Title 32. Wills
Chapter 1. Execution of Wills (Refs & Annos)
Part 1. Execution Generally

T. C. A. § 32-1-104

§ 32-1-104. Manner of execution

Effective: April 19, 2016
Currentness

(a) The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two (2) witnesses as follows:

(1) The testator shall signify to the attesting witnesses that the instrument is the testator's will and either:

(A) The testator sign;

(B) Acknowledge the testator's signature already made; or

(C) At the testator's direction and in the testator's presence have someone else sign the testator's name; and

(D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses.

(2) The attesting witnesses must sign:

(A) In the presence of the testator; and

(B) In the presence of each other.

(b)(1) For wills executed prior to July 1, 2016, to the extent necessary for the will to be validly executed, witness signatures affixed to an affidavit meeting the requirements of § 32-2-110 shall be considered signatures to the will, provided that:

(A) The signatures are made at the same time as the testator signs the will and are made in accordance with subsection (a); and

(B) The affidavit contains language meeting all the requirements of subsection (a).

(2) If the witnesses signed the affidavit on the same day that the testator signed the will, it shall be presumed that the witnesses and the testator signed at the same time, unless rebutted by clear and convincing evidence. If, pursuant to this subsection (b), witness signatures on the affidavit are treated as signatures on the will, the affidavit shall not also serve as a self-proving affidavit under § 32-2-110. Nothing in this subsection (b) shall affect, eliminate, or relax the requirement in subsection (a) that the testator sign the will.

Credits

1941 Pub.Acts, c. 125, § 4; 2016 Pub.Acts, c. 843, § 1, eff. April 19, 2016.

Formerly 1950 Code Supp., § 8098.4; § 32-104.

T. C. A. § 32-1-104, TN ST § 32-1-104

Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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West's Tennessee Code Annotated
Title 32. Wills
Chapter 2. Probate of Wills (Refs & Annos)

T. C. A. § 32-2-110

§ 32-2-110. Witnesses; affidavits

Effective: October 1, 2007
Currentness

Any or all of the attesting witnesses to any will may, at the request of the testator or, after the testator's death, at the request of the executor or any person interested under the will, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating the facts to which they would be required to testify in court to prove the will, which affidavit shall be written on the will or, if that is impracticable, on some paper attached to the will, and the sworn statement of any such witness so taken shall be accepted by the court of probate when the will is not contested as if it had been taken before the court.

Credits
1972 Pub.Acts, c. 568, § 1.

Formerly § 32-211.

T. C. A. § 32-2-110, TN ST § 32-2-110
Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

End of Document

See TCA 32-1-104

2015 WL 557970
Only the Westlaw citation is currently available.

SEE COURT OF APPEALS RULES 11 AND 12

Court of Appeals of Tennessee,
AT NASHVILLE.

IN RE **ESTATE** OF Bill **MORRIS**

No. M2014–00874–COA–R3–CV

December 03, 2014 Session

Filed February 9, 2015

Application for Permission to Appeal
Denied by Supreme Court June 15, 2015.

Appeal from the Chancery Court for Franklin County, No. 19721, Jeffrey F. Stewart, Chancellor

Attorneys and Law Firms

Eddy R. Smith and J. Scott Griswold, Knoxville, Tennessee, for the appellants, Bill **Morris**, Jr. and Cheryl **Morris**

Russell L. Leonard, Winchester, Tennessee, for the appellees, Gary **Morris** and Pamela **Morris**

Jerre M. Hood, Winchester, Tennessee, for the **Estate** of Bill **Morris**

KENNY ARMSTRONG, J. delivered the opinion of the Court, in which J. STEVEN STAFFORD, P.J., W.S., and ARNOLD B. GOLDIN, J., joined.

OPINION

KENNY ARMSTRONG, J.

1 This is a will contest. Appellants, Bill **Morris, Jr., and Cheryl **Morris**, appeal the trial court's determination that their Father's will was properly executed pursuant to the requirements of Tennessee Code Annotated Section 32–1–104. We conclude that the witnesses to the will only signed the affidavit of attesting witnesses and not the will itself. Accordingly, we reverse and remand.

I. Factual and Procedural History

On October 10, 2008, Bill **Morris** ("Decedent") executed his Last Will and Testament. The Decedent died on July 7, 2011, leaving four surviving children: Bill **Morris**, Jr. and Cheryl **Morris** ("Appellants"); Gary **Morris** and Pamela **Morris** ("Appellees"). Decedent's daughter, Debbie Roberson, predeceased him and was survived by four children: Deidra Roberson, Vickie Roberson, Judith Roberson, and Charles Michael Roberson (together "Grandchildren"). Because three of the Grandchildren are minors, the Probate Court appointed a guardian *ad litem* to represent their interests in this case. The will, signed by Decedent, omitted three of his heirs at law: Bill **Morris**, Jr., Cheryl **Morris**, and Charles Michael Roberson.

The Decedent's Last Will and Testament was admitted to probate on July 26, 2011, and letters testamentary were issued to Gary **Morris** and Pamela **Morris**, who were named in the will as Co–Executors. In support of the petition to admit the will to probate, the affidavits of the two attesting witnesses were submitted to the Probate Court.

On July 25, 2013, Bill **Morris**, Jr. filed a verified complaint and notice of will contest in the Probate Court of Franklin County, Tennessee. Therein, Appellant averred that Decedent's will was not properly executed because the will was not signed by witnesses as required by Tennessee Code Annotated Section 32–1–104. In response, Appellees filed a motion to dismiss the will contest, alleging that the will was properly executed and valid. On October 29, 2013, the probate court entered an order transferring the will contest to the chancery court for Franklin County, Tennessee. On November 18, 2013, Bill **Morris**, Jr. filed a motion for summary judgment in the chancery court action, averring that the will was invalid and seeking a determination that the Decedent died intestate. On this same date, Appellant, Cheryl **Morris** filed a motion to intervene as a Plaintiff in the will contest, and a motion for summary judgment adopting the arguments advanced by Appellant, Bill **Morris**, Jr. in his motion for summary judgment. Upon consideration of the various motions filed by the parties, the trial court entered a Final Order on April 7, 2014, granting the Appellees' motion to dismiss the will contest, which the trial court treated as a summary judgment motion, and denying the Appellants' motions for summary judgment. Specifically, the trial court found that the testator and the two witnesses executed the will in compliance with Tennessee Code Annotated Section 32–1–104.

II. Issue

Whether the trial court erred when it held that the execution of Decedent's will was in compliance with the statutory requirements set out in Tennessee Code Annotated Section 32–1–104.

III. Standard of Review

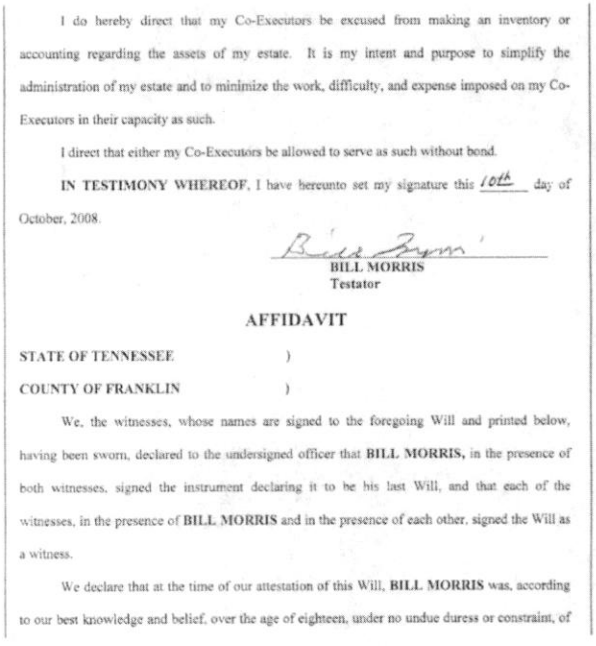
***2** As this case presents a question of statutory interpretation, it is a question of law. With respect to the trial court's conclusions of law, our review is *de novo* with no presumption of correctness. *Ganzevoort v. Russell,* 949 S.W.2d 293, 296 (Term.1997); *Southern Constructors, Inc. v. Loudon County Bd. of Educ.,* 58 S.W.3d 706, 710 (Tenn.2001); *Broadbent v. Broadbent,* 211 S.W.3d 216, 219–20 (Tenn.2006).

IV. Analysis

There is no dispute that the testator properly signed his will at the end of the document. The question raised here is whether the will was properly signed by the witnesses as required by Tennessee Code Annotated Section 32–1–104. This section sets out the formal requirements that must be met for a will to be validly executed in Tennessee:

> The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two (2) witnesses as follows:
>
> (1) The testator shall signify to the attesting witnesses that the Instrument is the testator's will and either:
>
> (A) The testator sign;
>
> (B) Acknowledge the testator's signature already made; or
>
> (C) At the testator's direction and in the testator's presence have someone else sign the testator's name; and
>
> (D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses.
>
> (2) The attesting witnesses must sign:
>
> (A) In the presence of the testator; and
>
> (B) In the presence of each other.

Tenn.Code Ann. § 32–1–104. The relevant portions of the Decedent's will are reproduced below:



I do hereby direct that my Co-Executors be excused from making an inventory or accounting regarding the assets of my estate. It is my intent and purpose to simplify the administration of my estate and to minimize the work, difficulty, and expense imposed on my Co-Executors in their capacity as such.

I direct that either my Co-Executors be allowed to serve as such without bond.

IN TESTIMONY WHEREOF, I have hereunto set my signature this 10th day of October, 2008.

BILL MORRIS
Testator

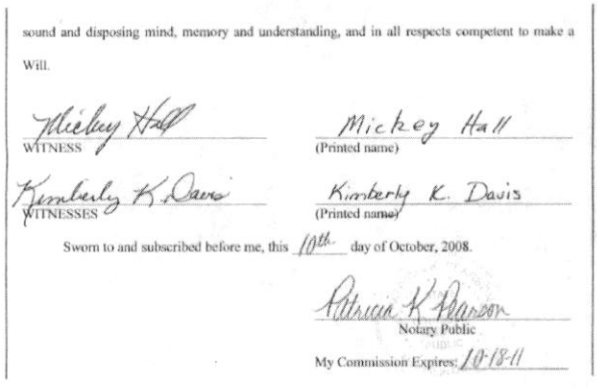
AFFIDAVIT

STATE OF TENNESSEE)
COUNTY OF FRANKLIN)

We, the witnesses, whose names are signed to the foregoing Will and printed below, having been sworn, declared to the undersigned officer that **BILL MORRIS**, in the presence of both witnesses, signed the instrument declaring it to be his last Will, and that each of the witnesses, in the presence of **BILL MORRIS** and in the presence of each other, signed the Will as a witness.

We declare that at the time of our attestation of this Will, **BILL MORRIS** was, according to our best knowledge and belief, over the age of eighteen, under no undue duress or constraint, of

The third page continues as follows:



sound and disposing mind, memory and understanding, and in all respects competent to make a Will.

WITNESS — Mickey Hall (Printed name)

WITNESSES — Kimberly K. Davis (Printed name)

Sworn to and subscribed before me, this 10th day of October, 2008.

Notary Public

My Commission Expires: 10-18-11

As shown above, the two witnesses, Mickey Hall, and Kimberly K. Davis signed the affidavit but did not sign any other part of the will. Appellants, thus, argue that the will is invalid because the two attesting witnesses failed to sign the actual will and only signed what is in effect a "self-proving affidavit." Appellants contend that the affidavit signed by the witnesses is a separate and distinct document and that the witnesses' signatures on the affidavit fail to satisfy the statutory requirement for the witnesses to sign the will. In short, Appellants argue that the attesting witnesses

must sign the will itself and then may sign an affidavit pursuant to Tennessee Code Annotated Section 32–2–110. As such, Appellants contend that the will proffered by Appellees should not have been admitted to probate.

Appellees argue that the affidavit executed by the witnesses is not a "separate and distinct document." Rather, they contend that the affidavit, due to its placement in the middle of page two of the will "immediately underneath the testator's signature" was "incorporated in the will as part of the will." The Appellees further argue that the affidavit is merely an attestation clause, and not an affidavit to prove the will as suggested by Appellants.

Tennessee Code Annotated Section 32–2–110 permits the use of witness Affidavits to prove a will. This statute reads as follows:

> Any or all of the attesting witnesses to any will may, at the request of the testator or, after the testator's death, at the request of the executor or any person interested under the will, make and sign an affidavit before any officer authorized to administer oaths in or out of this state, stating the facts to which they would be required to testify in court to prove the will, ***which affidavit shall be written on the will*** or, if that is impracticable, on some paper attached to the will, and the sworn statement of any such witness so taken shall be accepted by the court of probate when the will is not contested as if it had been taken before the court.

***3** Term.Code Ann. § 32–2–110 (emphasis added). This statute is separate and distinct from Tennessee Code Annotated Section 32–1–104. While the witness signatures required by 32–1–104 are mandatory for proper execution, the affidavit contemplated by 32–2–110 is permissive, and serves a separate function distinct from execution.

"Where a will is drafted by a lawyer, technical words used therein must be given technical meanings ... and [e]very word used by the testator is presumed to have some meaning." *Daughtery v. Daughtery,* 784 S.W.2d 650, 653 (Tenn.1990). In this case, an attorney prepared both the will and the affidavit. The title "AFFIDAVIT" is typed in bold, all capital letters, placed there by an attorney indicating that the document is sworn to by the witnesses. The testimonial aspect of this document is further bolstered by the inclusion of the signature and seal of a notary public.

"The relevant statute clearly and unmistakably requires attesting witnesses to *sign the will* in the presence of the testator and in the presence of each other. Term.Code Ann. § 32–1–104.... Supplying an affidavit of attesting witnesses pursuant to Tenn.Code Ann. § 32–2–110 does not operate either to negate or satisfy the requirements of Tenn.Code Ann. § 32–1–104." *In re Estate of Stringfield,* 283 S.W.3d 832, 837 (Tenn.Ct.App.2008). Relying on *Whitlow v. Weaver,* 478 S.W.2d 57 (Tenn.Ct.App.1970), the Appellees argue that the Affidavit is "not an affidavit to prove the will." The *Whitlow* case, however, is distinguishable from the instant appeal.

Unlike the case at bar, in *Whitlow,* there was no affidavit. There was merely an attestation clause stating:

> Signed by the said Guy H. Weaver, as and for his Last Will and Testament, *consisting of three pages, including this page,* in the presence of us, the undersigned, who, at his request, and in his sight and presence, and in the sight and presence of each other, have subscribed our names as attesting witnesses, the day and date above written.
>
> /s/ Ernest Ray Barton
>
> /s/ Bobby E. Barton
>
> Subscribing Witnesses'

Whitlow, 478 S.W.2d at 58 *(emphasis added).* In *Whitlow,* the language of the attestation clause clearly indicates that the clause is included as a part of the will. Here, although the affidavit begins on the last page of Decedent's will, the affidavit states that the witnesses' names were "signed to the foregoing will and printed below." In this regard, the affidavit is inaccurate because these witnesses did not in fact, sign the "foregoing will." They only signed the affidavit and their signatures do not appear anywhere else in the document. Merriam–Webster's Dictionary defines "foregoing" as "listed, mentioned, or occurring before." Merriam–Webster, Web. (29 Jan. 2015), http://www.merriam-webster.com/dictionary/foregoing. Because the affidavit refers to the will as a "foregoing" document, we cannot, as Appellees suggest, conclude that the affidavit is part of the will so as to satisfy

the requirements of Tennessee Code Annotated Section 32–1–104.

In essence, Appellees are asking this Court to apply the doctrine of integration by which "a separate writing may be deemed an actual part of the testator's will, thereby merging the two documents into a single instrument." *In re Will of Carter,* 565 A.2d 933, 936 (Del.1989). In *In re Estate of Chastain,* 401 S.W.3d 612 (Tenn.2012), the Tennessee Supreme Court held that the decedent's signature on the affidavit did not satisfy the statute requiring the testator's signature on a will. The *Chastain* court explained that, in these types of cases, Tennessee has not adopted the doctrine of integration "because doing so would amount to a relaxation of statutory requirements." *Id.* at 622. The Supreme Court opined:

> ***4** the General Assembly has not enacted Section 2–504(c) of the Uniform Probate Code, which provides that '[a] signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will, if necessary to prove the will's due execution.' (quoting Unif. Probate Code § 2–504(c) (2008)) .... the Legislature is the entity authorized to prescribe the conditions by which property may be transferred by will in this State, ... and courts have no authority to modify those conditions.... [W]e decline to adopt the doctrine of integration because doing so would amount to a relaxation of statutory requirements.

Id. at 621–22 (internal citations omitted).

In *Chastain,* the testator's name was printed on the first page of the will, and the testator's initials, along with the witnesses' initials, appeared on the bottom of the first page of the will. Although all the witnesses signed the second page of the will, the testator's name was not located anywhere on that page of the will, and the testator did not sign the second page. Instead, the witnesses and the testator signed a separate one page document titled "self-proving will affidavit". The affidavit further contained the instructions "attach to will." See *id.* at 613–615. Because the Chastain affidavit referred to the will as "the attached or foregoing instrument," the Court held that "both the statute and the affidavit establish that the affidavit is not a continuation of will. Accordingly, Decedent's signature on the affidavit is not sufficient to satisfy the statutory requirement that he sign the will by one of the means provided by statute." *Id.* at 621–622.

Likewise, in *In re Estate of Stringfield,* 283 S.W.3d 832 (Tenn.Ct.App.2008), the witnesses to the will initialed the first two pages of the will. On the third and final page of the will, the names of the witnesses were typed onto the will, but the witnesses did not sign it. The *Stringfield* witnesses signed an affidavit of attesting witnesses. In the absence of the witnesses' actual signatures on the will, this Court held that initialing the first two pages and providing affidavits pursuant to Tenn. Code Ann. § 32–2–110 is insufficient to satisfy the explicit requirements of Tenn.Code Ann. § 32–1–104 that the witnesses sign the will. *Id.* at 832.

Courts endeavor to effectuate a testator's intent "unless prohibited by a rule of law or public policy," *In re Estate of McFarland,* 167 S.W.3d 299, 302 (Tenn.2005), and courts will sustain a will as legally executed if it can be done consistently with statutory requirements, *Leathers v. Binkley,* 264 S.W.2d 561, 563 (Tenn.1954). However, courts may not ignore statutory mandates in deference to a testator's intent. *Chastain,* 401 S.W.3d at 621; *Ball v. Miller,* 214 S.W.2d 446, 449–50 (Tenn.Ct.App.1948). "Tennessee courts have consistently interpreted statutes prescribing the formalities for execution of an attested will as mandatory and have required strict compliance with these statutory mandates." *Chastain,* 401 S.W.3d at 619. By allowing the affidavit to "be written on the will or, if that is impracticable, on some paper attached to the will," the legislature has drawn a clear distinction between the affidavit of attesting witnesses and their signatures on a will. *Id.* at 620. We hold in this case, that the signature of the witnesses on the affidavit, without having signed the will, does not satisfy the statutory formalities for executing a will in this state. As such, we further hold that the Decedent died intestate.

Conclusion

***5** For the foregoing reasons, we reverse the order of the trial court. This case is remanded to the trial court for such further proceedings as may be necessary and are consistent with this opinion. Costs of the appeal are assessed against the Appellees, Gary **Morris** and Pamela **Morris**, for all of which execution may issue if necessary.

All Citations

Not Reported in S.W. Rptr., 2015 WL 557970

End of Document

RE: WITNESSES FAILED TO SIGN WILL.

545 S.W.3d 458
Court of Appeals of Tennessee,
Middle Section, AT NASHVILLE.

IN RE ESTATE OF Veronica STEWART

No. M2016-02355-COA-R3-CV
|
August 22, 2017 Session
|
FILED 10/20/2017
|
Application for Permission to Appeal
Denied by Supreme Court February 14, 2018

Synopsis

Background: Father and heir-at-law of decedent brought action contesting decedent's will, due to lack of witnesses' signatures, that included an unrelated individual as primary beneficiary. Following amendment to statute governing manner of will execution that rendered valid certain wills witnesses failed to sign, the Chancery Court, Warren County, Larry B. Stanley Jr., Chancellor, granted summary judgment in father's favor. Unrelated individual appealed.

Holdings: The Court of Appeals, Frank G. Clement, Jr., P.J., held that:

[1] Legislature intended for amendment to statute governing manner of will execution to apply to all wills executed prior to July 1, 2016;

[2] retrospective application of amendment advanced public policy;

[3] retrospective application of amendment advanced decedent's expectations; and

[4] retrospective application of amendment was remedial.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (22)

[1] **Appeal and Error** ⇐ De novo review

Appeal and Error ⇐ Summary Judgment

The Court of Appeals reviews the granting of a motion for summary judgment de novo without a presumption of correctness.

[2] **Statutes** ⇐ Giving effect to entire statute and its parts; harmony and superfluousness

When interpreting a statute, the Court of Appeals must presume that the legislature intended to give each word of the statute its full effect.

[3] **Statutes** ⇐ Plain language; plain, ordinary, common, or literal meaning

When interpreting a statute and the statutory language is unambiguous, the Court of Appeals must accord the language its plain meaning and ordinary usage.

[4] **Statutes** ⇐ Wills, estates, and trusts

Wills ⇐ Statutory provisions

Legislature intended for amendment to statute governing manner of will execution, which rendered valid certain wills witnesses failed to sign, to apply to all wills executed prior to July 1, 2016, notwithstanding whether the testator died before the law went into effect. Tenn. Code Ann. § 32-1-104.

[5] **Constitutional Law** ⇐ Presumptions and Construction as to Constitutionality

The Court of Appeals begins analysis of constitutionality of statute with the strong presumption that the statute is constitutional.

[6] **Constitutional Law** ⇐ Doubt

Statute's presumption of constitutionality requires the Court of Appeals to resolve any doubt it may have as to the validity of the statute in favor of its constitutionality.

[7] **Constitutional Law** ⇐ Constitutional guarantees in general

Constitutional Law ⇐ Existence and validity of contract

Constitutional Law ⇐ Existence and extent of impairment

Statutes ⇐ Effect on substantive rights

Statutes ⇐ Effect on vested rights

Constitutional provision governing retrospective laws applies only to retrospective statutes that create new rights, take away vested rights, or impair existing contractual obligations. Tenn. Const. art. 1, § 20.

[8] **Statutes** ⇐ Effect on vested rights

There are four factors to consider when deciding whether a retrospective law impairs a vested right, namely: (1) whether a retrospective application of the statute advances or impedes the public interest; (2) whether a retrospective application gives effect to or defeats the bona fide intentions or reasonable expectations of the persons involved; (3) whether the new statute surprises individuals who have long relied on a contrary state of the law; and (4) the extent to which a statute appears to be procedural or remedial; none of the factors are dispositive, and because factors (2) and (3) are closely related, they can be analyzed together. Tenn. Const. art. 1, § 20.

[9] **Statutes** ⇐ Wills, estates, and trusts

Wills ⇐ Statutory provisions

Retrospective application of amendment to statute governing manner of will execution, which rendered valid certain wills that witnesses failed to sign, advanced public policy with respect to decedent's will that witnesses failed to sign, since retrospective application vindicated decedent's right to decide how her property should be distributed upon her death. Tenn. Code Ann. § 32-1-104.

[10] **Wills** ⇐ Nature of power

The power to dispose of property by will is not a natural or a constitutional right.

[11] **Wills** ⇐ Nature of power

The legislature has created the right to dispose of property by will and has provided the means by which an individual may exercise this right.

[12] **Wills** ⇐ Statutory provisions

Legislature enacted statutory formalities governing execution of wills to prevent fraud or mistake and to ensure that the testator's property is distributed in accordance with the testator's wishes upon his or her death. Tenn. Code Ann. § 32-1-104.

[13] **Statutes** ⇐ Wills, estates, and trusts

Wills ⇐ Statutory provisions

Retrospective application of amendment to statute governing manner of will execution, which rendered valid certain wills that witnesses failed to sign, advanced decedent's expectations regarding her will, although witnesses did not sign will, where decedent expected that will would dispose of her property at death and believed that she adhered to statutory execution requirements. Tenn. Code Ann. § 32-1-104.

[14] **Wills** ⇐ Property, estate, or other general terms

"Estate," for purposes of probate law, includes both realty and personalty.

[15] **Wills** ⇐ Determination in probate proceedings as to validity or construction of provisions of will

Commencing a probate proceeding gives interested parties the opportunity to contest the validity of the will offered for probate or to seek judicial construction of portions of a will that are ambiguous or uncertain.

[16] **Wills** ⇐ Partial Intestacy

Where there is no residuary clause, property not specifically bequeathed in the will passes as if the deceased died intestate.

[17] **Wills** ⇐ Actions and proceedings to set aside or determine validity of probated will

In any probate proceeding there is a presumption against intestacy.

[18] **Wills** ⇐ Actions and proceedings to set aside or determine validity of probated will

Once a will is admitted to probate, there is a presumption that the will is valid.

[19] **Wills** ⇐ Persons Who May Attack or Contest Will or Probate

Everyone who claims an interest in the decedent's estate has a right to become a party to the will contest.

[20] **Wills** ⇐ Nature and form of remedies in general

Purpose of a will contest is to determine once and for all who is entitled to inherit the decedent's property, and the primary question to be decided is whether the decedent left a valid will.

[21] **Statutes** ⇐ Wills, estates, and trusts

Wills ⇐ Statutory provisions

Retrospective application of amendment to statute governing manner of will execution, which rendered valid certain wills that witnesses failed to sign, was remedial statute that could be applied to decedent's will without interfering with vested rights of decedent's father and heir-at-law, even though will lacked witness signatures; statute cured procedural defect of lack of signatures, father had no vested right in law that would allow him to take advantage of procedural defect, and General Assembly enacted statute to correct deficiency in the law that resulted in will invalidations. Tenn. Code Ann. § 32-1-104.

1 Cases that cite this headnote

[22] **Wills** ⇐ Nature and grounds of distinction

A "vested right," for purposes of probate matter, is a right that is absolute, complete and unconditional to the exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent on a contingency.

***460 Appeal from the Chancery Court for Warren County, No. 3159P, Larry B. Stanley Jr., Chancellor**

Attorneys and Law Firms

Josh A. McCreary, Murfreesboro, Tennessee, for the appellant, Lazaro Serna.

Michael D. Galligan, McMinnville, Tennessee and Thomas K. Austin, Dunlap, Tennessee, for the appellee, Derwood Stewart.

Frank G. Clement Jr., P.J., M.S. delivered the opinion of the Court, in which Andy D. Bennett, J. and J. Steven Stafford, P.J., W.S., joined.

OPINION

Frank G. Clement Jr., P.J.

This appeal arises from a will contest. The contestant insists the purported Last Will and Testament of the decedent, dated June 19, 2015, is invalid because the attesting witnesses, who duly executed the attestation affidavit, failed to affix their signatures to the will as required by the Tennessee Execution of Wills Act at the time the will was executed.

The proponent insists the will was validly executed based on a 2016 amendment to Tenn. Code Ann. § 32–1–104, which applies to wills executed prior to July 1, 2016, and states "to the extent necessary for the Will to be validly executed, witness signatures affixed to an affidavit meeting the requirements of § 32–2–110 shall be considered signatures to the Will." The trial court ruled that the 2016 amendment did not apply because the testator died before it went into effect. Consequently, the 2015 will was invalid because it was not executed in accordance ***461** with the law then in effect. We have determined that the 2016 amendment to Tenn. Code Ann. § 32–1–104 applies retrospectively to wills executed prior to July 1, 2016, because that is the clear and unambiguous intent of the legislation. We have also determined that the retrospective application of the law does not impair any vested legal right of the contestant. Therefore, we reverse and remand for further proceedings consistent with this opinion.

The facts of this case are not in dispute. On June 19, 2015, Veronica Stewart ("Ms. Stewart") executed her Last Will and Testament ("the will"). Ms. Stewart signed the bottom of each of the three pages of her will in the presence of two witnesses, and the witnesses signed the attestation affidavit in the presence of Ms. Stewart, each other, and a notary public; however, the witnesses failed to sign the will.

Ms. Stewart died on September 16, 2015, without a surviving spouse or issue. On September 22, the will was admitted to probate in the Chancery Court for Warren County, Tennessee, and the court issued letters testamentary to the executor of the estate, Ms. Stewart's accountant. The primary beneficiary under the will was Lazaro Serna ("Mr. Serna"), an unrelated individual. Three days later, Ms. Stewart's father, Derwood Stewart ("Mr. Stewart"), who was an heir-at-law, filed a verified complaint contesting the will. Mr. Serna filed an answer in which he insisted that the will was valid.

On January 11, 2016, Mr. Stewart filed a motion for summary judgment. Relying primarily on *In re Estate of Morris*, M2014–00874–COA–R3–CV, 2015 WL 557970, at *1 (Tenn. Ct. App. Feb. 9, 2014), Mr. Stewart argued that the will did not meet the execution requirements set forth in Tenn. Code Ann. § 32–1–104, because the witnesses to Ms. Stewart's will failed to sign the will.

On April 16, 2016, Governor Haslam signed House Bill 1472 into law. It was subsequently codified as an amendment to Tenn. Code Ann. § 32–1–104. Pursuant to the amendment, wills executed prior to July 1, 2016, are validly executed if the witness signatures are affixed to an affidavit in compliance with Tenn. Code Ann. § 32–2–110, provided that (1) the signatures are made contemporaneously with the testator's signature, and (2) the affidavit contains language meeting all of the requirements of Tenn. Code Ann. § 32–1–104(a).

Less than a week later, Mr. Serna filed a response to Mr. Stewart's motion for summary judgment and a cross-motion for summary judgment, arguing that under the 2016 amendment to Tenn. Code Ann. § 32–1–104, Ms. Stewart's will was validly executed. Mr. Stewart then filed a response to Mr. Serna's motion and a notice with the Tennessee Attorney General that he was challenging the constitutionality of the 2016 amendment. In his response, Mr. Stewart argued that a retrospective application of the 2016 amendment to the will would violate Article I, § 20 of the Tennessee Constitution because it would interfere with Mr. Stewart's vested rights as an heir-at-law. Mr. Serna and the Tennessee Attorney General both argued that a retrospective application of the 2016 amendment did not interfere with any vested right of Mr. Stewart.

The trial court ruled:

> [T]he Court finds that the law enacted on April 19, 2016, would have resulted in the decedent's Will being perfectly executed and admissible in this Court had it been in effect at the time of her death. The Court is required to follow the Testamentary laws that were in place at the date of death. Therefore, at the date of her death the decedent's Will did not comply with the rigorous requirements ***462** of Tennessee Code Annotated § 32–1–104 and is therefore invalid.

This appeal by Mr. Serna followed.

Mr. Serna insists that Tenn. Code Ann. § 32–1–104, as amended by Public Chapter 843 of the Acts of 2016, applies retrospectively to validate the execution of Ms. Stewart's 2015 will because the legislature expressly stated that it applies to wills executed prior to July 1, 2016. Mr. Stewart contends that the law in effect when Ms. Stewart died in 2015 applies.

He argues that applying the 2016 amendment retrospectively would violate Article I, § 20 of the Tennessee Constitution by impairing his vested legal right of inheritance as the decedent's heir-at-law. Mr. Serna counters by arguing that the retrospective application of the amendment does not impair any of Mr. Stewart's vested rights.

STANDARD OF REVIEW

[1] This court reviews the granting of a motion for summary judgment de novo without a presumption of correctness. *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015) (citing *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997)). Accordingly, this court must make a fresh determination of whether the requirements of Tenn. R. Civ. P. 56 have been satisfied. *Id.*; *Hunter v. Brown*, 955 S.W.2d 49, 50–1 (Tenn. 1997).

Summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. In this case, there are no disputed facts, and the issues present a question of law. Our review of a trial court's determinations on issues of law is de novo, without any presumption of correctness. *Lind v. Beaman Dodge, Inc.*, 356 S.W.3d 889, 895 (Tenn. 2011).

ANALYSIS

The first issue for our consideration is whether the 2016 amendment to Tenn. Code Ann. § 32–1–104 retrospectively applies to the decedent's will.

I. THE TENNESSEE EXECUTION OF WILLS ACT

The execution of attested wills in Tennessee is governed by the Tennessee Execution of Wills Act codified in Tenn. Code Ann. § 32–1–104. *In re Estate of Chastain*, 401 S.W.3d 612, 618 (Tenn. 2012). When the will was executed in 2015, the mandatory requirements for the valid execution of an attested will [1] pursuant to the Tennessee Execution of Wills Act were set forth in Tenn. Code Ann. § 32–1–104:

> (a) The execution of a will, other than a holographic or nuncupative will, must be by the signature of the testator and of at least two (2) witnesses as follows:
>
> (1) The testator shall signify to the attesting witnesses that the instrument is the testator's will and either:
>
> (A) The testator sign;
>
> (B) Acknowledge the testator's signature already made; or
>
> (C) At the testator's direction and in the testator's presence have ***463** someone else sign the testator's name; and
>
> (D) In any of the above cases the act must be done in the presence of two (2) or more attesting witnesses.
>
> (2) The attesting witnesses must sign:
>
> (A) In the presence of the testator; and
>
> (B) In the presence of each other.

Tenn. Code Ann. § 32–1–104.

In February 2015, this court rendered a decision in a will contest, the facts of which are substantially similar to those at issue here, and the execution requirements outlined in Tenn. Code Ann. § 32–1–104 were dispositive of the case. [2] *In re Estate of Morris*, 2015 WL 557970, at *2. The *Morris* court concluded that "the signature of the witnesses on the affidavit, without having signed the will, does not satisfy the statutory formalities for executing a will in this state." *Id.* at *4. As such, the court held that the decedent died intestate. *Id.*

The Tennessee Supreme Court denied permission to appeal on June 15, 2015. Shortly thereafter, House Bill 1472 was introduced in the legislature to address the legal consequences of the *Morris* decision. The bill was approved by both chambers, and, on April 19, 2016, the Governor of Tennessee signed House Bill 1472 into law, which was subsequently designated as Public Chapter 843 of the Acts of 2016 and codified as an amendment to Tenn. Code Ann. § 32–1–104. The amended portion of the statute, which was added as subsection (b), reads:

(b)(1) For wills executed prior to July 1, 2016, to the extent necessary for the will to be validly executed, witness signatures affixed to an affidavit meeting the requirements of § 32–2–110 shall be considered signatures to the will, provided that:

(A) The signatures are made at the same time as the testator signs the will and are made in accordance with subsection (a); and

(B) The affidavit contains language meeting all of the requirements of subsection (a).

(2) If the witnesses signed the affidavit on the same day that the testator signed the will, it should be presumed that the witnesses and the testator signed at the same time, unless rebutted by clear and convincing evidence. If, pursuant to this subsection (b), witness signatures on the affidavit are treated as signatures on the will, the affidavit shall not also serve as a self-proving affidavit under § 32–2–110. Nothing in this subsection (b) shall affect, eliminate, or relax the requirement in subsection (a) that the testator signed the will.

Tenn. Code Ann. § 32–1–104(b) (2016).

[2] **[3]** "When interpreting a statute, our role is to ascertain and effectuate the legislature's intent." ***464** *Stevens ex rel. Stevens v. Hickman Cmty. Health Care Servs., Inc.*, 418 S.W.3d 547, 553 (Tenn. 2013). We must "presume that the legislature intended to give each word of the statute its full effect." *Id.* Additionally, when the statutory language is unambiguous, we must "accord the language its plain meaning and ordinary usage." *Id.*

[4] Simply put, the language in the 2016 amendment is straightforward and unambiguous. Tenn. Code Ann. § 32–1–104(b) states, "For wills executed prior to July 1, 2016, to the extent necessary for the will to be validly executed, witness signatures affixed to an affidavit meeting the requirements of § 32–2–110 shall be considered signatures to the will." Clearly, the 2016 amendment to Tenn. Code Ann. § 32–1–104 was intended to provide relief for testators who believed they had executed a valid will prior to July 1, 2016, when the two witnesses duly executed the attestation affidavit at the same time as the will was executed by the testator, but the witnesses failed to sign the will itself. For these reasons, we conclude that the legislature intended for the 2016 amendment to apply to all wills executed prior to July 1, 2016, notwithstanding whether the testator died before the law went into effect.

Having made this determination, we will now determine whether the retrospective application of the 2016 amendment to the facts of this case violates Article I, § 20 of the Tennessee Constitution.

II. VESTED RIGHTS OF AN HEIR-AT-LAW

Mr. Stewart argues that the right of an heir-at-law to inherit property vests at the time of the decedent's death and that a subsequent law cannot be applied retrospectively to disturb vested rights. This contention is based in part on the Supreme Court's ruling in *Stewart v. Sewell*, 215 S.W.3d 815, 826 (Tenn. 2007), in which the Court stated, "[T]he law in effect when the testator dies controls all substantive rights in the estate, whether vested or inchoate."[3] (quoting *Fell v. Rambo*, 36 S.W.3d 837, 845 (Tenn. Ct. App. 2000)). Thus, he contends, applying the 2016 amendment retroactively constitutes a constitutionally impermissible application of a statute that would adversely affect his vested right as an heir-at-law.

[5] **[6]** We begin the analysis with the strong presumption that the statute is constitutional. *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). This presumption requires us to resolve any doubt we may have as to the validity of the statute in favor of its constitutionality. *Id.*

[7] Article I, § 20 of the Tennessee Constitution provides "[t]hat no retrospective law, or law impairing the obligations of contracts, shall be made." The "courts of this state have long held that, despite the prohibition against retrospective laws contained in Article I, § 20, 'not every retrospective law is objectionable in a constitutional sense.' " *Commissioners of the Powell–Clinch Utility Dist. v. Utility Mgt. Review Bd.*, 427 S.W.3d 375, 383–84 (Tenn. Ct. App. 2013) (quoting *Estate of Bell v. Shelby County Health Care Corp.*, 318 S.W.3d 823, 829 (Tenn. 2010)). Moreover, this constitutional provision applies only to retrospective statutes that create new ***465** rights, take away vested rights, or impair existing contractual obligations. *Doe v. Sundquist*, 2 S.W.3d 919, 923 (Tenn. 1999).

[8] The Tennessee Supreme Court has identified four factors to consider when deciding whether a retrospective law

impairs a vested right under the Tennessee Constitution, namely: (1) whether a retrospective application of the statute advances or impedes the public interest; (2) whether a retrospective application "gives effect to or defeats the bona fide intentions or reasonable expectations" of the persons involved; (3) whether the new statute surprises individuals who have "long relied on a contrary state of the law;" and (4) "the extent to which a statute appears to be procedural or remedial." *Id.* at 924 (quoting *Ficarra v. Department of Regulatory Agencies*, 849 P.2d 6 (Colo. 1993) for the first three factors). None of the factors are dispositive, and because factors (2) and (3) are closely related, they can be analyzed together. *Id.* We will discuss each factor in turn.

A. Public Interest

[9] **[10]** **[11]** The Tennessee Execution of Wills Act[4] is primarily concerned with the right of the testator to dispose of his or her property by will. *See In re Estate of Chastain*, 401 S.W.3d at 619; *see also Epperson v. White*, 156 Tenn. 155, 299 S.W. 812, 815 (1927). The power to dispose of property by will is not a natural or a constitutional right. *Epperson*, 299 S.W. at 815. The legislature has created this right and has provided the means by which an individual may exercise this right. *Id.*

[12] Tenn. Code Ann. § 32–1–104, the statute at issue here, outlines the procedural requirements for the execution of an attested will. *In re Estate of Chastain*, 401 S.W.3d at 619. The legislature enacted these statutory formalities to prevent fraud or mistake and to ensure that the testator's property is distributed in accordance with the testator's wishes upon his or her death. *Id.*

To further ensure that the testator's plan for the distribution of his or her property is realized, the legislature has created a procedure by which a will is admitted to probate. *In re Estate of Boote*, 198 S.W.3d at 717. Such formalities preserve "the inviolability" and the "sanctity" of the testator's right. *In re Estate of Chastain*, 401 S.W.3d at 619 (quoting *Ball v. Miller*, 31 Tenn.App. 271, 214 S.W.2d 446, 449 (Tenn. 1948)). This court explained:

> Proceedings to admit a will to probate are in rem proceedings. Their function is to provide the court with the information it needs to decide the proper distribution of the *res*, i.e., the estate. In making this determination, the court's polestar is the intent of the testator or testatrix. ***The proceedings are designed not to advance the interests of the living parties but rather to vindicate the right of the decedent to dispose of his or her property as he or she saw fit.***

In re Estate of Boote, 198 S.W.3d at 717 (internal citations omitted) (emphasis added).

As noted earlier, just a few months prior to the execution of Ms. Stewart's will, this court held that a will is invalid if the witnesses sign the self-proving affidavit without signing the body of the will. *In re Estate of Morris*, 2015 WL 557970, at *4. The legislature responded to the *Morris* decision by enacting Tenn. Code Ann. § 32–1–104(b), the purpose of which was to render valid those wills executed prior to July 1, 2016, that were executed in the same manner as the will in *Morris* and ***466** here. Thus, it is clear that the 2016 amendment to Tenn. Code Ann. § 32–1–104 was intended to provide relief for testators who believed they had executed a valid will prior to July 1, 2016, when the two witnesses duly executed the attestation affidavit at the same time as the will was executed by the testator, but the witnesses failed to sign the will itself. Therefore, we conclude that the enactment of the 2016 amendment to Tenn. Code Ann. § 32–1–104 was intended to advance the public policy of this state by vindicating the rights of testators to decide how their property should be distributed following their deaths.

Here, a retrospective application of the 2016 amendment to Ms. Stewart's will advances the public policy of this state because it vindicates her right to decide how her property should be distributed upon her death.

B. Reasonable Expectations

[13] **[14]** By executing her 2015 will, Ms. Stewart had the reasonable expectation that the will would dispose of her property at death. Moreover, Ms. Stewart believed that she was adhering to the execution requirements set out in Tenn.

Code Ann. § 32–1–104 and did not rely on a contrary state of the law. Thus, the 2016 amendment did not interfere with the reasonable expectations of the testator; in fact, it advanced her expectations. For his part, Mr. Stewart contends that, as an heir-at-law at the time of his daughter's death, he had the right to rely on the state of the law in effect at that time. Because his daughter died intestate in accordance with the law at the time of her death, Mr. Stewart claims he had a reasonable expectation as an heir-at-law to inherit from her estate.[5] We are not persuaded.

[15] **[16]** Mr. Stewart's right to inherit from his daughter was contingent upon whether she died intestate, partially intestate, or whether and to what extent he was a beneficiary under her will.[6] Whether a person died testate or intestate is a determination made by a court in a probate proceeding, and such a determination is often made weeks, if not months, after the decedent's death. *See In re Estate of Trigg*, 368 S.W.3d at 496–97. Thus, who inherits from a decedent's estate and what they inherit, if anything, is contingent on several factors. *Id.* It is for this and other reasons that the General Assembly enacted both substantive and procedural laws for the execution of wills and the administration of decedent's estates. *See* Tenn. Code Ann. §§ 30–1–101–30–5–105. Pursuant to these statutes, the probate proceeding

> provides the vehicle for identifying and collecting the decedent's property, paying the debts of the decedent and the estate in an orderly way, and distributing the remainder of the estate to those entitled to share in the estate either under the decedent's will or according to the laws of descent and distribution.... Commencing a probate proceeding gives interested parties the opportunity to contest the validity of the will offered for probate or to seek judicial construction ***467** of portions of a will that are ambiguous or uncertain.

In re Estate of Trigg, 368 S.W.3d at 496 (footnotes and internal citations omitted).

[17] **[18]** In any probate proceeding there is a presumption against intestacy. *See In re Estate of McFarland*, 167 S.W.3d 299, 303 (Tenn. 2005). Consequently, once a will is admitted to probate, there is a presumption that the will is valid. *See Wall v. Millsaps*, 199 Tenn. 241, 286 S.W.2d 343, 345 (1955) (When a will is probated, "it stands in effect until it is set aside under a proper proceeding, in the proper tribunal."). Thus, Mr. Stewart, as a contestant to the will, would have to overcome that presumption to inherit from his daughter's estate as an heir-at-law.

Furthermore, Tenn. Code Ann. § 31–2–103 provides that the personal property of a decedent, whether testate or intestate, vests in the executor or personal representative—not in the beneficiaries or heirs-at-law. Real property vests in the heirs-at-law if there is no will or in the devisees of the real property if there is a will.[7] Tenn. Code Ann. § 31–2–103. Because Ms. Stewart had a will, at her death, the personal property vested in the executor of her estate, and the real property vested in the devisees under the will, not in Mr. Stewart, the intestate heir.

[19] **[20]** Therefore, Mr. Stewart did not have a reasonable expectation that he would inherit from Ms. Stewart's estate on the date of her death. He did, however, have a reasonable expectation that he would have standing to contest Ms. Stewart's will. "Everyone who claims an interest in the decedent's estate has a right to become a party to the will contest." *In re Estate of Boote*, 198 S.W.3d at 713. The purpose of a will contest is to determine once and for all who is entitled to inherit the decedent's property, and the primary question to be decided is whether the decedent left a valid will.[8] *Id.* At Ms. Stewart's death, Mr. Stewart had a reasonable expectation that he would be permitted to contest the validity of Ms. Stewart's will, and Tenn. Code Ann. § 32–1–104(b) has not interfered with that reasonable expectation.

***468** Furthermore, the statute has not interfered with a long-held reliance on a contrary state of the law. Prior to the *Morris* decision, the law with respect to the validity of wills that only contained the witnesses' signatures on the attestation affidavit had not been decided. Thus, the law on this narrow issue was not well-established, and Mr. Stewart has not made a convincing argument that he had "long-relied on a contrary state of the law." *Doe*, 2 S.W.3d at 924.

C. Procedural or Remedial Statute

[21] We have determined that the 2016 amendment to Tenn. Code Ann. § 32–1–104 is a remedial statute that can be applied retrospectively without interfering with vested rights. Our decision is principally based on the reasoning in *Shields v. Clifton Hill Land Co.*, 94 Tenn. 123, 28 S.W. 668 (1894), which is both illuminating and persuasive.

The issue in *Shields* was whether the corporate charter of the Clifton Hill Land Company was invalid because it was not acknowledged before the proper officer as required by the law in effect when the charter was signed by the incorporators. *Id.* at 673. The incorporators, whom the plaintiffs sought to hold personally liable for the debts of the Clifton Hill Land Company, conceded that their acknowledgments were defective when they executed the charter; nevertheless, they insisted the defect was cured, and the charter made valid, as a consequence of subsequent legislation that was intended to apply retrospectively. *Id.* Thus, like here, the issue was whether a subsequent statute could be retroactively applied to cure a defect in the manner in which a document was signed. Also like here, the plaintiffs insisted that the consequence of applying the subsequent statute retroactively would affect their vested rights. *Id.* at 674. The substance of their position was that

> because of the invalidity of the charter on the day the land was conveyed to the corporation, the defendants then became personally liable for the payment of the purchase–money notes; that such personal liability was a vested and fixed right of the vendors, which could not be taken away or impaired by legislative enactment, as would be the effect if the act in question be applied in this case. The constitutional provision upon which this contention is made is as follows: "That no retrospective law, or law impairing the obligation of contracts, shall be made." Const. Tenn. art. 1, § 20.

Id.

The *Shields* Court disagreed, noting the constitutional provision "does not mean that absolutely no retrospective law shall be made, but only that no retrospective law which impairs the obligation of contracts, or divests or impairs vested rights, shall be made." *Id.* (citations omitted). The Court then outlined three circumstances where a retrospective law would not interfere with vested rights.

First, the Court explained that, generally, remedial statutes that correct procedural defects can be applied retrospectively without interfering with vested rights. *Id.* Such statutes "go to confirm rights already existing ... by curing defects, and adding to the means of enforcing existing obligations." *Id.* The Court offered as an example, a "statute to confirm former marriages defectively celebrated, or a sale of lands defectively made or acknowledged." *Id.* Though these statutes may act, to some degree, upon existing rights, they "have been held valid when clearly just and reasonable, and conducive to the general welfare." *Id.*

Second, the *Shields* Court discussed circumstances where a court or its officers ***469** "have failed to observe strictly the rules of procedure ... and, in consequence thereof, a party is ... in a position to take advantage of the error...." *Id.* The Court explained that "it is not only just, but highly proper that the legislature shall interfere, and cure the defect by validating the proceedings." *Id.* An individual "has no vested right in a rule of law which would give him an inequitable advantage over another." *Id.* Such a law could be applied retrospectively and still comport with the constitution. *Id.*

Third and finally, if the procedural flaw is something the legislature would have dispensed with by prior statute, "then it is not beyond the power of the legislature to dispense with it by subsequent statute." *Id.*

Applying the law to the facts in *Shields*, the Court concluded:

> [The plaintiffs] had no vested right in the defect in the charter of the Clifton Hill Land Company; hence the cure or removal of that defect did not divest or impair any vested right of theirs. ***The right to sue the defendants personally was not a vested right in legal contemplation. It was but a consequential right, resulting from the disability of the corporation, and not a right flowing from any contract with the individuals, as such.*** The mutual intention was to bind the corporation, not the incorporators, for the price of the land; and no vested right could arise contrary to that intention. A law which facilitates the intention of the parties to a contract never impairs its obligations, or divests or impairs any vested right thereunder.

Id. at 675 (emphasis added).

The 2016 amendment at issue in this case parallels the circumstances discussed in *Shields* in all three respects. First, the 2016 amendment is not unlike the examples given in *Shields* of a remedial statute enacted to cure a procedural defect. It validates Ms. Stewart's will in the same way that a statute might validate marriages defectively celebrated. And, like the statute in *Shields*, the 2016 amendment facilitates the intentions and the expectations of the parties to the will at the time of its execution.

Second, like the plaintiffs in *Shields*, Mr. Stewart had no vested right in a law that would allow him to take advantage of a procedural defect. It was well within the province of the legislature to cure the defect to prevent Mr. Stewart, and others similarly situated, from gaining an unfair advantage based on a mere technicality. As the *Shields* Court held, such laws can be applied retrospectively without running afoul of Article I, § 20 of the Tennessee Constitution.

Third, the 2016 amendment is remedial in the sense that the General Assembly enacted the 2016 amendment in order to correct a deficiency in the law that resulted in a number of wills being declared invalid. Thus, the procedural flaw in the execution of Ms. Stewart's will is one that the legislature "might have dispensed with by prior statute." *Id.* at 674. Consequently, it is constitutionally permissible for the legislature to dispense with it by subsequent statute.

Considering the foregoing, Mr. Stewart did not have a vested right to inherit from Ms. Stewart's estate. He merely had what the *Shields* Court described as a "consequential right," resulting from a defect in the law that allowed him to take advantage of an alleged flaw in the execution of the will. *See id.* at 675. The Court explained that a law that "facilitates the intention of the parties to a contract never ... impairs any vested right thereunder." *Id.*

Similarly, a law which facilitates the intentions of the testator cannot impede any ***470** vested right of an heir-at-law. Ms. Stewart intended for her property to be distributed to those beneficiaries named in the will. The Execution of Wills Act focuses first and foremost on the right of the testator to dispose of his or her property by will and not the right of potential heirs-at-law to receive that property. In other words, the right of an heir-at-law to inherit property is merely contingent upon whether the testator has properly exercised his or her right to make a will. A law that vindicates the primary right cannot possibly interfere with a contingent right.

[22] The term "vested right" is a right "that is absolute, complete and unconditional to the exercise of which no obstacle exists and which is immediate and perfect in itself and not dependent on a contingency." *In re Estate of Jenkins*, 97 S.W.3d 126, 132 (Tenn. Ct. App. 2002) (quoting *Calhoun v. Union Planters Nat'l Bank*, R.D., No. 90986-3, 1987 WL 13834, at *7 (Tenn. Ct. App. Jul. 16, 1987) (reversed in *Calhoun v. Campbell*, 763 S.W.2d 744 (Tenn. 1988) on grounds irrelevant to this quotation)). Unlike the facts in *Stewart*, 215 S.W.3d at 826, Mr. Stewart did not have a vested right to inherit under his daughter's will.[9] Upon Ms. Stewart's death, Mr. Stewart's rights of inheritance remained contingent and uncertain until a court could determine if Ms. Stewart properly exercised her right to make a will.

Because the retrospective application of the 2016 amendment does not impair any of Mr. Stewart's vested rights, it may be applied retrospectively. Applying the 2016 amendment retrospectively renders the decedent's 2015 will valid. Therefore, the judgment of the trial court is reversed, and this case is remanded for further proceedings consistent with this opinion.

IN CONCLUSION

The judgment of the trial court is reversed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against the appellee, Derwood Stewart.

All Citations

545 S.W.3d 458

Footnotes

1 There are three types of wills: attested, holographic, and nuncupative. *See* Jack W. Robinson, Sr., Jeffrey Mobley, and Andra J. Hedrick, *Pritchard on Wills and Administration of Estates*, § I–12 (Matthew Bender, 7th ed. 2009). The decedent's will is an attested will. The legal requirements for executing a valid will of each type are specified by statute. *See* *In re Estate of Boote*, 198 S.W.3d 699, 722 (Tenn. Ct. App. 2005). Tenn. Code Ann. §§ 32–1–104 and 32–1–109 apply to attested wills. Tenn. Code Ann. §§ 32–1–105 and 32–1–110 apply to holographic wills. Tenn. Code Ann. § 32–1–106 applies to nuncupative wills.

2 The testator signed his will in the presence of two attesting witnesses. *In re Estate of Morris*, 2015 WL 557970, at *2. Directly under the signature of the testator appeared the word AFFIDAVIT, which represented the title to and the beginning of the attestation affidavit. *Id.* As is the case here, the *Morris* affidavit stated that the witnesses signed the will in the sight and presence of the testator and each other. *Id.* The affidavit also stated that the witnesses intended to witness the testator's Last Will and Testament. *Id.* The witnesses further declared that the testator was, to the best of their knowledge, over the age of eighteen; under no duress or constraint; of sound and disposing mind, memory and understanding; and in all respects competent to make a will. *Id.* The witnesses affixed their signatures at the end of the attestation affidavit, and the notary public's acknowledgement immediately followed the witnesses' signatures. *Id.*

3 In *Stewart*, 215 S.W.3d at 826, after the Court stated the principle of law that "[s]tatutes are presumed to operate prospectively unless the legislature clearly indicates otherwise," the Court noted that "[a]t the time Clara [Stewart] died, Tennessee Code Annotated section 32–3–111 was not in effect" and found that "[n]othing in the language of the statute indicates that the legislature intended it to apply retroactively." In the case at bar, the legislature made it clear that it intended for the 2016 amendment to apply retrospectively.

4 Tenn. Code Ann. §§ 32–1–101 to –202.

5 The word "estate" includes "both realty and personalty." *In re Estate of Trigg*, 368 S.W.3d 483, 501 (Tenn. 2012) (quoting *Haskins v. McCampbell*, 189 Tenn. 482, 226 S.W.2d 88, 91 (1949)).

6 "Where there is no residuary clause, property not specifically bequeathed in the will passes as if the deceased died intestate." *In re Estate of Jackson*, 793 S.W.2d 259, 260 (Tenn. Ct. App. 1990) (citing *Pinkerton v. Turman*, 196 Tenn. 448, 268 S.W.2d 347 (1954)); *Bedford v. Bedford*, 38 Tenn.App. 370, 274 S.W.2d 528 (1954).

7 Tenn. Code Ann. § 31–2–103 states:

> The real property of an intestate decedent shall vest immediately upon death of the decedent in the heirs as provided in § 31–2–104. The real property of a testate decedent vests immediately upon death in the beneficiaries named in the will, unless the will contains a specific provision directing the real property to be administered as part of the estate subject to the control of the personal representative. Upon qualifying, the personal representative shall be vested with the personal property of the decedent for the purpose of first paying administration expenses, taxes, and funeral expenses and then for the payment of all other debts or obligations of the decedent as provided in § 30–2–317. If the decedent's personal property is insufficient for the discharge or payment of a decedent's obligations, the personal representative may utilize the decedent's real property in accordance with title 30, chapter 2, part 4. After payment of debts and charges against the estate, the personal representative shall distribute the personal property of an intestate decedent to the decedent's heirs as prescribed in § 31–2–104, and the property of a testate decedent to the distributees as prescribed in the decedent's will.

8 Mr. Stewart argues that "Tennessee decisional law is clear that a legislative enactment after the testator's death cannot change how courts evaluate the testator's will." *Fell v. Rambo*, 36 S.W.3d 837, 844–458[sic] (Tenn. Ct. App. 2002) (citing *Calhoun v. Campbell*, 763 S.W.2d at 749; 4 William J. Bowe and Douglas H.

Parker, Page on the Law of Wills § 30, 27, 169 (1961))." Mr. Stewart is correct in that the law at the time of the decedent's death governs construction. However, we are not construing the will to determine how the decedent wished to distribute her property. We are determining whether the will is *valid*.

9 In *Stewart*, 215 S.W.3d at 826, the dispositive issue was which beneficiaries inherited pursuant to Clara Stewart's will, as distinguished from the issue here, which is whether the decedent's attested will was executed in compliance with the Tennessee Execution of Wills Act.

End of Document

West's Tennessee Code Annotated
Title 32. Wills
Chapter 3. Construction, Operation and Effect (Refs & Annos)

T. C. A. § 32-3-115

§ 32-3-115. Written statements or lists referenced in a will that dispose of property; admissibility

Effective: July 1, 2017
Currentness

(a)(1) Notwithstanding the requirements of a holographic will, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities, and property used in a trade or business.

(2) To be admissible under this section as evidence of the intended disposition, the writing:

(A) Must:

(i) Be either in the handwriting of the testator or signed by the testator;

(ii) Be dated; and

(iii) Describe the items and the devisees with reasonable certainty;

(B) May be prepared before or after the execution of the will;

(C) May be altered by the testator after its preparation, provided that the testator signs and dates the alteration; and

(D) May be a writing that has no significance apart from its effect upon the dispositions made by the will.

(3) If more than one (1) otherwise effective writings exist or a single writing contains properly signed and dated alterations, the provisions of the most recent writing or alteration revoke any inconsistent provisions of all prior writing.

(b) A personal representative is not liable for any distribution of tangible personal property to the apparent devisee under the testator's will without actual knowledge of the written statement or list, as described in subsection (a), and the personal representative has no duty to recover property distributed without knowledge of the written statement or list.

(c) If the writing is admitted to the probate proceeding as permitted in subsection (a), the recipient or recipients of items distributed in accordance with the written list or statement shall file a receipt for the item or items received in accordance with § 30-2-707.

Credits

2017 Pub.Acts, c. 290, § 11, eff. July 1, 2017.

T. C. A. § 32-3-115, TN ST § 32-3-115

Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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As of 4-7-2021,

West's Tennessee Code Annotated
Title 30. Administration of Estates
Chapter 2. Management, Settlement and Distribution
Part 3. Inventory and Management

48-month statute of Limitation for TennCare claims.

T. C. A. § 30-2-310

§ 30-2-310. Limitation of actions; claims

Effective: April 7, 2021
Currentness

(a) All claims and demands not filed with the probate court clerk, as required by §§ 30-2-306 -- 30-2-309, or, if later, in which suit has not been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred.

(b) Notwithstanding subsection (a), all claims and demands not filed by the state with the probate court clerk, as required by §§ 30-2-306 -- 30-2-309, or, if later, in which suit has not been brought or revived before the end of twelve (12) months from the date of death of the decedent, shall be forever barred. This statute of limitations shall not apply to claims for taxes. Claims for state taxes shall continue to be governed by § 67-1-1501.

(c) Notwithstanding subsections (a) and (b), § 71-5-116, and §§ 30-2-306 -- 30-2-309:

(1) If the bureau of TennCare receives a notice to creditors as defined in § 30-2-306(b) within twelve (12) months of the decedent's date of death, then the bureau's claims and demands against the decedent's estate are forever barred unless the bureau files a claim with the probate court clerk or brings or revives suit within the later of:

(A) Twelve (12) months from the decedent's date of death; or

(B) Four (4) months from the date when the bureau received the notice to creditors.

(2) If the bureau of TennCare does not receive a notice to creditors as defined in § 30-2-306(b) within twelve (12) months of the decedent's date of death, then the bureau's claims and demands against the decedent's estate are forever barred unless the bureau files a claim with the probate court clerk or files a petition to open or re-open a decedent's estate within forty-eight (48) months of the decedent's date of death.

(3) If a claim is not filed by the bureau of TennCare pursuant to subdivision (c)(1) or (c)(2), then the requirements of § 71-5-116(c)(2) do not apply.

Credits

1939 Pub.Acts, c. 175, § 3A; 1947 Pub.Acts, c. 213, § 2; 1949 Pub.Acts, c. 176, § 1; 1971 Pub.Acts, c. 229, § 3; 1989 Pub.Acts, c. 395, § 4; 2000 Pub.Acts, c. 970, § 1, eff. Jan. 1, 2001; 2014 Pub.Acts, c. 883, § 1, eff. July 1, 2014; 2021 Pub.Acts, c. 102, § 1, eff. April 7, 2021.

Formerly mod. 1950 Code Supp., § 8196.4; Williams' Code, § 8196.3a; § 30-513.

T. C. A. § 30-2-310, TN ST § 30-2-310

Current with laws from the 2021 First Regular Sess. of the 112th Tennessee General Assembly, eff. through June 30, 2021, as well as the following chapters that include amended or adopted content effective July 1, 2021: Public chapters 36, 60, 65, 70, 86, 87, 91, 93, 97, 100, 104, 107, 108, 115, 125, 132, 134, 138, 139, 143, 144, 147, 150, 152, 155, 162, 163, 164, 166, 168, 169, 176, 180, 181, 182, 183, 184, 188, 189, 205, 206, 207, 210, 213, 214, 215, 216, 218, 220, 221, 223, 225, 227, 228, 235, 236, 240, 245, 246, 248, 252, 259, 260, 265, 266, 270, 272, 275, 277, 278, 280, 284, 291, 292, 293, 294, 295, 298, 299, 300, 303, 304, 307, 310, 311, 319, 322, 328, 334, 335, 341, 344, 345, and 566. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text. Unless legislatively provided, section name lines are prepared by the publisher.

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West's Tennessee Code Annotated
Title 39. Criminal Offenses
Chapter 14. Offenses Against Property (Refs & Annos)
Part 1. Theft (Refs & Annos)

CRIME = WILL DESTRUCTION

T. C. A. § 39-14-131

§ 39-14-131. Wills; destruction or concealment

Currentness

Any person who destroys or conceals the last will and testament of a testator, or any codicil thereto, with intent to prevent the probate thereof or defraud any devisee or legatee, commits a Class E felony.

Credits
1989 Pub.Acts, c. 591, § 1.

T. C. A. § 39-14-131, TN ST § 39-14-131
Current through the end of the 2020 Second Extraordinary Session of the 111th Tennessee General Assembly. Pursuant to §§ 1-1-110, 1-1-111, and 1-2-114, the Tennessee Code Commission certifies the final, official version of the Tennessee Code and, until then, may make editorial changes to the statutes. References to the updates made by the most recent legislative session should be to the Public Chapter and not to the T.C.A. until final revisions have been made to the text, numbering, and hierarchical headings on Westlaw to conform to the official text.

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