

PROBATE COURT OF HAMILTON COUNTY, OHIO

ESTATE OF CLEON O. GREEN, DECEASED

CASE NO. 2001000781

OPINION AND ENTRY ADMITTING LOST WILL TO PROBATE

This matter came before Judge Wayne F. Wilke on March 7 and April 17, 2001 regarding an application to admit a lost will to probate. Present were Jan-Michele Lemon Kearney on behalf of the Applicant, Val G. Coleman and Michael S. Bailey on behalf of Respondent Tanya Brumby. After each side had rested, the Court ordered written closing arguments to be submitted. This matter is now ripe for decision.

The law regarding the admission of a lost will to probate was changed in 1999 to make it easier to admit lost or destroyed wills to probate. Pursuant to R.C. §2107.26, when an original will is lost, spoliated, or destroyed before or after the death of a testator, the probate court must admit the lost, spoliated, or destroyed will to probate if first, the proponent of the will establishes by clear and convincing evidence that the will was executed with the formalities required at the time of execution as well as the contents of the will, and second, if no one opposing the admission of the will to probate establishes by a preponderance of the evidence that the testator had revoked the will. The old statute required the proponent of a lost will's admission to prove by clear and convincing evidence that the will was lost or destroyed without the testator's knowledge. Once the threshold issues are met, the current statute shifts the burden to one opposing the will's admission to prove by a preponderance of the evidence that the testator had revoked the

will. The case law interpreting R.C. §2107.26 is much less instructive since the burden of proof has been so significantly changed.

In this case, Val G. Coleman carried the burden of proof on the first two elements required under the statute. He proved the will dated May 18, 2000 was properly executed and he proved its contents. Conversely, Tanya Bumbry has not carried her burden of proof that the decedent revoked the will dated May 18, 2000. Ms. Bumbry speculates but offers no concrete evidence to remotely suggest that the will was revoked. Ms. Bumbry concludes her closing argument by writing “Mr. Green was changing his mind about his affairs, and may have destroyed or revoked the May 18, 2000 will”.¹ Clearly, Ms. Bumbry has not proven the May 18, 2000 will was revoked.

Accordingly, the Court hereby admits to probate the decedent’s May 18, 2000 will, previously filed on February 12, 2001, and orders that the fiduciary administer this estate consistent with its provisions.

SO ORDERED.

WAYNE F. WILKE, JUDGE

cc: Jan-Michele Lemon Kearney
Michael S. Bailey

¹ Page 5, ¶ 5 of Respondent’s Closing Argument.