

**COURT OF COMMON PLEAS
PROBATE DIVISION
HAMILTON COUNTY, OHIO**

ESTATE OF	:	CASE NO. 963626
NAOMI R. RINEHARDT	:	
	:	
	:	OPINION AND ENTRY
	:	REJECTING ADMISSION
	:	OF PURPORTED WILL TO
	:	PROBATE

This matter came before Judge Wayne F. Wilke on September 10, 1996, concerning the admission to probate of the purported Last Will and Testament of Naomi R. Rinehardt. Present were James P. Sullivan, who represents the Estate and is a proponent of the will, and Richard M. Hopple, who represents the Cincinnati Chapter of the Alzheimer's Association and who also seeks the will's admission to probate. After the Court received all testimony, it gave the Cincinnati Chapter of the Alzheimer's Association until September 13, 1996, to file a post-hearing memorandum in support of the will's admission.

FACTS

The facts of this case are not complicated. Attorney Edward O. Keller drafted a Last Will and Testament for the decedent in May of 1991 (hereafter "the 1991 will"). The Court finds that such will was properly executed in accordance with R.C. §2107.03. The issue in this case concerns whether the testator properly revoked this 1991 will.

Sherry R. Chaney, a good friend of the decedent, testified without objection about several matters. Ms. Chaney testified that the decedent had undergone a religious conversion since the execution of the 1991 will. She testified that the decedent wanted to execute either a new will or a codicil to the 1991 will but that the decedent's attempts to

reach attorney Keller were in vain. Ms. Chaney further testified that the decedent told here that the original will was to be destroyed. The decedent's frustration with her inability to talk to attorney Keller caused her to write to him. By letter dated February 18, 1993, the decedent instructed Mr. Keller to "destroy my old Will and all of the papers you have in my file. I got a new Will worked up." A copy of that letter was introduced as evidence without objection.

At the top of the first page of the will being offered for probate, the decedent wrote "Canceled - 9-93". No one is contesting the admission to probate of the 1991 will.

CONCLUSIONS OF LAW

Revised Code §2107.33(A) explains the methods for the revocation of a will. It states in part

"A will shall be revoked by the testator by tearing, canceling, obliterating, or destroying it with the intention of revoking it, or by some person in the testator's presence, or by the testator's express written direction, or by some other written will or codicil..."

Revised Code §2107.33 provides the exclusive methods by which a will may be revoked. In order to make an effective revocation of a previously-made will, there must be strict compliance with the provisions of the statute. *Kronauge v. Stoecklein*, 33 Ohio App.2d 229, (1972). The law in Ohio has long been settled that for a proper revocation, the testator must intend to revoke the will, and this intention must be demonstrated by some outward and visible sign or symbol. *Kent v. Mahaffey* (1859), 10 Ohio St. 204, 213.

The plain meaning of R.C. §2107.33 allows for several methods of revoking or voiding a will. A properly executed, valid will may be torn. It may be obliterated with

the intention of revoking it. It may be destroyed with the intention of revoking it. Last and more importantly for the case *sub judice*, it may be canceled with the intention of revoking it. There was a cancellation of the will in accordance with the commonly-used meaning attributed to that term. Accordingly, Naomi Reinhardt's cancellation of the 1991 will obligates this court to deny the admission of the will to probate.

When drafting R.C. §2107.33, the General Assembly long ago created a number of methods by which to void a will and one of those methods involved canceling a will. Revised Code R.C. §2107.33(A) allows a will to be revoked by physically destroying it, which encompasses the terms “tearing” and “destroying”, and by physically altering the will by marking or erasure, which encompasses the terms “canceling” and “obliterating”. Revised Code §1.42 states that words and phrases in statutes shall be read in context and construed according to common usage. Section 1.42 further provides that only words with a technical or particular meaning should be so construed.

The term “cancel” is defined as “to obliterate; to strike or cross out; To destroy the effect of an instrument by defacing, obliterating, expunging, or erasing it. To revoke or recall; to annul or destroy, make void or invalid, or set aside. To rescind; abandon; repeal.” *Black's Law Dictionary* (p. 206, 6th ed. 1990). It is also defined as “to make invalid; annul”. *Webster's New World Dictionary* (p. 108, 2d ed. 1977).

The Court agrees with counsel for the Estate and for the Cincinnati Chapter of the Alzheimer's Association that the decedent's writing of the letter to attorney Keller is insufficient to revoke the 1991 will. The Supreme Court of Ohio has long held that a mere intention, or even an expression of an intention, to revoke a will is insufficient to

operate as a revocation. 10 Ohio St. 204 at 213. The Court in *Kent* agreed with earlier decisions requiring some visible sign or symbol of the statutory act upon the paper itself.

In this case, the decedent provided such a visible sign upon the will. She took that extra step, beyond a mere intention to revoke her will, that also avoids the taint of parol evidence. The decedent herself indicated on her will that it was “canceled”. When that fact is combined with her letter asking attorney Keller to destroy her will, it is manifestly plain that the decedent revoked the 1991 will and fully intended to do so. To hold otherwise would offend R.C. §1.42 by attributing a different meaning to the common usage of the term “cancel”.

Therefore, the admission of the purported Last Will and Testament of Naomi R. Reinhardt is HEREBY DENIED.

WAYNE F. WILKE, JUDGE

cc: James P. Sullivan
Richard M. Hopple