

96PR562(9/26/96)

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

Case No. 96PR562

IN THE MATTER OF

The Estate of Spicer H. Breeden,

Deceased.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

This matter comes before the Court for trial on a Petition for Formal Probate of Will and Formal Appointment of Personal Representative. Petitioner, Sydney Stone, offers a handwritten document for probate as the holographic will of the decedent, Spicer Breeden. Objections to the petition were filed by Elaine Fieman, a devisee under a prior will of the decedent; and jointly by Vic E. Breeden (decedent's father), Vic E. Breeden III (decedent's brother and the personal representative nominated in the prior will) and Holly Breeden Connell (decedent's sister).

Objectors asked the Court to deny probate to the handwritten document, alleging lack of testamentary intent, lack of capacity including testamentary capacity, lack of disposing memory, undue influence, duress, illegal contract and revocation. At trial, Objectors narrowed their objections to lack of testamentary intent and lack of testamentary capacity and added one objection: that the document does not comply with C.R.S. § 15-11-502.

I. INTRODUCTION

Spicer Breeden died in his home on March 19, 1996 from a self-inflicted gunshot wound following 48 hours of intense police and media attention resulting from his involvement in a fatal hit and run accident. Following his death the Denver Police found, on the decedent's desk, a writing tablet [see Objectors' Exhibit 26B] opened to the handwritten document which is now offered for probate.

The parties stipulated to the following facts:

Spicer Breeden died on March 19, 1996, at the age of 36 years, domiciled in the City and County of Denver, State of Colorado;
Venue for this proceeding is proper in the City and County of Denver because the decedent

was a domiciliary of this county on the date of death;
No personal representative has been appointed in this state or elsewhere;
The original, one-page, handwritten document continues in the custody of the Denver Police Department; Exhibit "A" is a true copy thereof and by stipulation of the parties was admitted as an exhibit in lieu of the original;
The material portions of the original copy of Exhibit A were in the handwriting of the decedent;
The original of Exhibit A was written by Spicer Breeden between March 16, 1996 and the time of his death on March 19, 1996.
Objectors contend that: 1) the document does not satisfy Colorado's requirements for a will as set out in C.R.S. § 15-11-502; 2) the decedent did not intend the document to be his will; and 3) at the time he drafted the document Spicer Breeden lacked the requisite mental capacity to make a will. The Court considers each argument in turn.

II. C.R.S. § 15-11-502

Objectors contended, in closing argument, that the document was not signed as is required for any will by C.R.S. § 15-11-502. Although the signature appears at the bottom of the document, it appears below the postscript denying culpability for the automobile accident, instead of above the postscript immediately following the language referring to the disposition of property. The placement of the signature, continue Objectors, indicates that decedent intended to sign only the postscript, not the remainder of the document.

The Court rejects Objectors' interpretation of the placement of the signature. This Court will not impose a format requirement not otherwise provided by our Legislature, see *Brock v. Erickson*, 28 Colo. App. 555, 556-57, 475 P.2d 346, 346 (1970), especially a requirement which has been resisted by the judiciary of other states, see, e.g., *Estate of Carroll*, 548 N.E.2d 650, 651 (Ill. App. Ct. 1989). The Court finds that the signature at the bottom of the page constitutes Spicer's signing of the will. See, e.g., *Estate of Gardner*, 588 A.2d 634, 638 (Conn. 1994) (nondispositive provisions intervening between dispositive clauses of the will and the testator's signature did not affect the validity of the instrument). The document satisfies C.R.S. § 15-11-502.

III. Intention to write a will

C.R.S. § 15-12-407 places the burden of establishing prima facie proof of due execution upon the proponent of a will. The parties stipulated that Spicer wrote the document, the Court found, above, that Spicer signed the document and the Court concluded at trial that the document itself could be a holographic will as a matter of law. See *Estate of Wong*, 47 Cal. Rptr. 2d 707 (Cal. App. 1996). Accordingly, Petitioner sustained her initial burden.

Objectors have the ultimate burden of establishing, by a preponderance of the evidence, the lack of testamentary intent or capacity. See Colo. Rev. Stat. § 15-12-407 (1987). See also *Matter of Estate of Olschansky*, 735 P.2d 927, 929 (Colo. App. 1987); *Matter of Estate of Grobman*, 635 P.2d 231, 232-33 (Colo. App.), cert. denied (Oct. 5, 1981).

In the *Olschansky* case, the Colorado Court of Appeals set forth the following test of "testamentary intent":

". . . . The writing, together with such extrinsic evidence as may be admissible, must establish that the decedent intended the writing itself to make a testamentary disposition of decedent's property."

Id. at 929.

No particular language is required to indicate testamentary intent. The Court must find that the language expresses (a) an intended disposition of property; and (b) which takes effect at death. See *Mallory v. Mallory*, 862 S.W.2d 879, 881 (Ky. 1993); *Ayala v. Martinez*, 883 S.W.2d 270, 272 (Tex. App. 1995).

When testamentary intent is in doubt, all relevant circumstances may be considered by the Court. See 94 C.J.S. *Wills* § 203 (1956). In regard to this issue the Court considered the document itself as well as extrinsic evidence. See *Olschansky*, 735 P.2d at 929.

Objectors introduced two prior testamentary documents, the March 4, 1991 will and a holographic will (herein referred to as the "codicil"), both of which Spicer allegedly executed while of sound mind and in accordance with the requirements of C.R.S. § 15-11-502. They assert that these two instruments establish Spicer's knowledge of the legal formalities of wills, and that because the holographic document now before the Court does not reflect Spicer's prior pattern, he did not intend a testamentary disposition of his property when he wrote Exhibit A. They further contend that the document was merely a "note" and was susceptible of reasonable nontestamentary interpretations, and that Spicer did not intend the document to take effect only after his death.

The Court concludes that the existence of Spicer's previous, formal will and holographic codicil equally supports and refutes the argument that the questioned document was intended as a dispositive instrument. Arguably, a man with an existing will, prepared after deliberation, would have no reason to write a hastily-drawn holographic will shortly before his death. Contrariwise, the 1991 holographic codicil was kept by Spicer with his copy of the 1991 formal, typed will. He showed both of these documents to his friends frequently and described them together as his "will." Spicer Breeden clearly understood that handwritten instructions could be given legal effect.

Unlike the 1991 holographic codicil, which was titled "WILL," there is no caption on Exhibit A. The document is signed but is not dated. Spicer initialed a correction he made to the word "homes" at the top of the questioned document, consistent with a correction he initialed on the 1991 holographic codicil.

The language Spicer used, "I want everything I have to go to Sydney Stone," is strongly indicative of dispositive intent. See, e.g., *Wong* at 713 ("want [devisee] to have" held sufficient language); *Sanders v. Maxwell*, 265 S.W.2d 683, 685-86 (Tex. 1954) ("desire," "wish," and "want" held to indicate intent to dispose of property); *Appeal of Thompson*, 100 A.2d 69, 71 (Pa. 1953) (same). See generally 94 C.J.S. *Wills* § 129 (1956). The language used by Spicer Breeden supports a finding that a disposition of his property was intended.

While the document itself does not contain language indicating that Spicer intended the disposition of property to take place after his death, the Court finds from the circumstances preceding his suicide that his approaching death was part of the mental state of Spicer Breeden at the time the document was written and signed. Denver Police Department Detective Miriam Reed testified that officers discovered Spicer's body on the evening of March 19, at the end of the 48 hour period when the parties stipulated and the evidence established he authored the questioned document. The police investigation revealed that Spicer killed himself deliberately and that he had made other physical preparations for this action around the time the document was written, including moving items to the basement and barricading the doors. The Court finds that these circumstances, taken as a whole, infuse the document with testamentary character. See *W.E. Shipley*, Annotation, Testamentary Intent--Evidence, 21 A.L.R.2d 319, 355 (1952) (citing cases from seven jurisdictions where imminence of death was relevant in determining testamentary intent).

The Court finds that Spicer intended the holographic document to effect a disposition of his property after his death.

Iv. Capacity to write a will

C.R.S. § 15-12-407 requires that Objectors prove by a preponderance of the evidence that Spicer Breeden, at the time he drafted the document, lacked the requisite mental capacity to execute a will.

Objectors assert that Spicer Breeden abused alcohol and cocaine, suffered from a psychotic mental illness, and exhibited insane delusions. Furthermore, they claim, his mental impairment, heavy use of alcohol and cocaine during the hours the document was presumably written, the trauma of the automobile accident, and the pressure of the police investigation and the media exposure so confused his mind and emotions that he lacked the requisites of testamentary capacity.

Jennifer Chelwick and Michael Crow, friends of Spicer's, testified that Spicer consumed alcohol and cocaine frequently, usually in the company of a friend or friends and at parties which would start on Friday evenings and last into Sunday or later. Although he actively concealed his alcohol and drug use from his family, the Fiemans, his ex-wife, and some of his friends, the Court finds that Spicer Breeden used alcohol and cocaine for several years prior to his death.

In addition, the evidence established that Spicer Breeden had used alcohol and cocaine on the evening of March 17 and between March 17 and 19. The autopsy report established that Spicer's blood alcohol level at death was 0.199%, which indicates that substantial alcohol was consumed proximate to the time of death. Spicer's sister testified that she discovered cocaine containers near the location where her brother's body was found. Evidence supporting use of cocaine was also present in the autopsy report.

The evidence also established that Spicer Breeden's moods were alternately euphoric, fearful and depressed. He worried excessively about threats or plots against himself and occasionally against his dog. Both Ms. Chelwick and Mr. Crow testified that Spicer "booby trapped" his house with homemade intruder-detection devices. He frequently scanned the neighborhood and his back yard at night with a high powered flashlight.

Deborah Thompson, an employee at Murray Motors and a friend of Spicer's, denied any knowledge of his use of alcohol or drugs. She testified, however, that during the last 18 months of his life Spicer "began to do bizarre things" and she took steps to avoid contact with him. He described to her his fears about the FBI and DEA and brought his cars into Murray Motors to have the alarm systems changed or to have the cars checked over for possible listening devices and explosives. Ms. Thompson testified that Spicer told her that his family's attorney was having his phone bugged. According to Ms. Thompson, Ms. Chelwick and Mr. Crow, Spicer had no rational basis for his fears and beliefs, and he expressed these beliefs both when sober and when intoxicated.

In addition to the anecdotal evidence of Spicer's behavior, Objectors presented the testimony of three experts: Dr. Ken Kulig, a forensic toxicologist; Dr. Jeffrey Metzner, a forensic psychiatrist; and Ms. Charla Janney, a forensic document examiner.

Dr. Kulig, a toxicologist with a medical degree, formed his opinion of Spicer's mental state by considering toxicological data from the autopsy report and by considering observations from Spicer's friends regarding Spicer's use of cocaine and alcohol. According to Dr. Kulig, the behavior described supported his opinion that Spicer Breeden suffered from cocaine psychosis

or paranoid schizophrenia, which persisted even when he was not using cocaine and alcohol and which affected his judgment. Based upon Dr. Kulig's understanding of the extent of Spicer's alcohol and cocaine use, Spicer would have been mentally impaired until the moment of his death. Dr. Kulig concluded that Spicer Breeden would have been suffering from insane delusions between March 17 and March 19 and was, therefore, not "of sound mind" at the time the holographic document was written and signed.

Dr. Jeffrey Metzner opined that, based upon his interviews with people who knew Spicer, Spicer suffered from substance-induced psychotic disorder or paranoid psychosis not otherwise specified. Whichever diagnosis was accurate, Spicer lacked testamentary capacity at the time he wrote the will due to the presence of insane delusions. Dr. Metzner testified that, although Spicer knew who he was, knew that he was writing a will, and knew his friends and family, his perceptions were grossly disrupted.

Charla Janney, Objectors' handwriting expert, stated that Spicer's handwriting on the questioned document showed that he was then under the influence of drugs and alcohol. In contrast, Andrew Bradley, Petitioner's handwriting expert, testified that Exhibit A was fairly representative of Spicer's typical handwriting and was unremarkable for evidence of drug or alcohol influences.

Debbie Charisse, Spicer's ex-wife, testified that Sydney Stone was her matron of honor when she and Spicer were married in 1986. Between 1986 and Spicer's death Ms. Charisse continued to have contact with Spicer and she testified that Sydney Stone helped manage some of Spicer's Denver properties. Ms. Charisse testified that Spicer had often talked to her about Sydney Stone.

Spicer's friend, Ken McSpadden, testified that he and Spicer had been estranged until a lunch meeting on March 14, 1996. He corroborated the testimony of others that Spicer was talking about threats on his life and a fear that he might be targeted for death in the near future. McSpadden testified that Spicer told him, on March 14, that, in the event of Spicer's death, he intended to leave his estate to McSpadden and Sydney Stone.

Another long-time friend, Rick Eagan, testified that, at a meeting two weeks prior to Spicer's death, Spicer reported that he would leave none of his estate to his father or to his sister and that his recent efforts to talk to his brother, Vic III, had been unsuccessful.

Spicer consistently characterized his relationships with his family and Mrs. Fieman in conversations with his friends. Spicer believed his father was irresponsible with money and, while Spicer supported him, he did not intend to leave any part of his estate to his father. Spicer liked his sister but disliked her husband and in his 1991 will made no provision for a gift to her. While Spicer expressed affection for his brother, their relationship was distant; they did not have regular or frequent contact. Spicer never expressed any disaffection towards Mrs. Fieman. The testimony established that Spicer Breeden primarily socialized with and felt close to his several groups of friends--some within the drug world, some not.

In the opinion of Dr. James Ruth, Petitioner's forensic toxicologist, Spicer's cocaine and alcohol abuse before his death would have impaired his motor skills but not his judgment to a degree necessary to question his testamentary capacity. Dr. Ruth concluded that Spicer, by the mere physical act of writing his will, demonstrated testamentary capacity. According to Dr. Ruth's analysis, the motor skills necessary to write Exhibit A would have failed before Spicer's ability to recall his family and friends, his property, and his dispositive wishes.

Dr. Cogan, Petitioner's forensic psychiatrist, testified that he performed a psychological autopsy on Spicer Breeden. His conclusions included a finding that Spicer abused alcohol and cocaine, that he had experienced emotional disappointments as an adolescent which may have contributed to his substance abuse and his feelings about himself and his family, that he was under the influence of alcohol at the time of his death and may have been under the influence of alcohol at the time the questioned document was written and signed, that he used cocaine and may have been using it at or about the time the questioned document was written and signed, and that he suffered from paranoia and delusions. Dr. Cogan testified that the paranoia and delusions suffered by Spicer Breeden did not affect his testamentary capacity.

Objectors rely on Colorado Jury Instruction (3d) Volume 34, Section 9, which states:

A will which was executed at a time when the person making the will lacked testamentary capacity is not valid and is not entitled to be admitted to probate. [Spicer Breeden] lacked testamentary capacity if it is proved that (he) . . . (was not of sound mind) at the time the will was (claimed to have been) executed.

(A person is not of sound mind if, when executing a will, [that person is afflicted with an insane delusion that affects or influences the dispositions of property made in the will] [or] [that person does not understand all of the following:

- (1) That he or she is making a will;
- (2) The nature and extent of the property he or she owns;
- (3) How that property will be distributed under the will;
- (4) That the will distributes the property as he or she wishes; and
- (5) Those persons who are the natural ones to receive his or her property.]

The Court agrees that the instruction sets forth the law applicable to this case. See also *Cunningham v. Stender*, 127 Colo. 293, 299, 255 P.2d 977, 980 (1953).

The Court finds that the Objectors have not proven, by a preponderance of the evidence, that Spicer Breeden's chronic use of alcohol and drugs or their use between March 17 and March 19 so impaired his mind and reason as to render him not of sound mind under the applicable legal standard. Nor can the Court find, by a preponderance of the evidence, that the stress and anxiety which compelled Spicer to suicide deprived him of testamentary capacity.

The will itself is legible, logical in content, and reasonably sets out Spicer's intent. It indicates that he could index the major categories of property comprising his estate and knew the addresses of his home and his rental property. He identified the devisee by name and gave her current address. That knowledge evidences a sufficient understanding of the general nature of his property and the disposition under the will to satisfy the legal tests. See *Columbia Savings and Loan Ass'n v. Carpenter*, 33 Colo. App. 360, 368, 521 P.2d 1299, 1303 (1974) (citing *Cunningham*, 127 Colo. at 299, 255 P.2d at 980), remanded on other grounds sub nom. *Judkins v. Carpenter*, 189 Colo. 95, 537 P.2d 737 (1975). The Court found convincing Dr. Ruth's testimony regarding the motor skills necessary actually to write the document and Andrew Bradley's testimony, borne out by the Court's own observation, that the handwriting was unremarkable when compared to other exemplars of Spicer's writing.

The Court further finds that Spicer's insane delusions did not affect or influence the disposition of property made in the will, as contemplated by Colorado Jury Instructions (3d) Volume 34, Section 9. An insane delusion is more than a questionable choice, it is a belief with absolutely no basis in reality. See 34 Colorado Jury Instructions (3d) § 10 (1990). See also *In re Estate of Nicholson*, 644 N.E.2d 47, 52 (Ill. App. Ct. 1994); *Matter of Estate of Brodbeck*, 915 P.2d 145, 155 (Kan. Ct. App. 1996), reh'g denied (June 12, 1996); *Matter of Estate of Aune*, 478 N.W.2d 561, 565 (N.D. 1991).

While the Court is satisfied that Spicer labored under insane delusions regarding his friends, government agencies and others, Objectors did not prove by a preponderance of the evidence that these delusions caused Spicer to misapprehend the nature of his property, the identities of or his relationships

with Objectors, or the manner in which he wished to dispose of his property at the time the will was written. Objector's argument that the trauma of the events occurring March 17 to 19 could have created such anxiety and stress on Spicer's mind and emotions that delusions about Objectors affected or influenced him to change his will against their interests is speculative and is not supported by the evidence.

Objectors' own expert testified that Spicer knew the identities of his friends and the members of his family. They urge the Court to conclude that Spicer's failure to provide for them appropriately in his last will supports a finding of lack of testamentary capacity. The fact that Spicer favored one friend in this will as opposed to his family and another friend is not so inconsistent with his lifestyle, his relationships or his prior wills that the Court can conclude that it exhibits "unsound mind." Spicer had omitted his father and sister from the 1991 will. Rick Eagan's testimony indicates that Spicer had talked about revisions to his dispositive plan several weeks before his death and Ken McSpadden testified that on March 14 Spicer was considering his then-friends as alternate takers, including Sydney Stone. Having determined that Spicer Breeden possessed the requisite testamentary capacity at the time the will was written, the Court is not permitted to evaluate the wisdom of his choices. See *Nicholson* at 52; *Brodbeck* at 155; *Aune* at 564.

ORDER

The Court finds that the required notices have been given, that venue is proper, that the proceeding was commenced within the time period required by law, that the decedent died March 19, 1996 while domiciled in Denver, Colorado. Exhibit A is formally admitted to probate as the will of Spicer H. Breeden. His heir is his father, Vic E. Breeden. Prior to trial the parties stipulated to the appointment of the Public Administrator as special administrator for the estate. At this time the Court defers ruling on the request for formal appointment of a personal representative until further action of the parties.

DATED September 26, 1996.

C. Jean Stewart

Judge, Probate Court