

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



[John Narron](#) is a Board Certified Family Law Specialist and has been practicing law in North Carolina since 1977, with a practice concentration in all manner of civil disputes that frequently involve complex equitable distribution proceedings, alimony trials, will caveats, employment disputes, personal injury trials and negotiations, and a wide variety of commercial business disputes. John has served as a mediator in more than 200 family law disputes in Wake County, Franklin County, Johnston County, Wayne County, Guilford County, Forsyth County, and Pender County.

A Handwritten Codicil Can Lead to Disaster

June 29, 2017 | by

Mr. James Paul Allen of Beaufort County, North Carolina executed a duly drafted will on August 29, 2002. The will was prepared by his longtime attorney who had represented him in many matters. Mr. Allen was not married and had no children. He had a close female friend with whom he had been in a relationship for quite some time. The properly prepared will left all of his assets to his girlfriend, but if she predeceased him, the will left his assets to his nephew Melvin for Melvin's lifetime and at Melvin's death to his nieces, Hope and Christian.

Unfortunately, his girlfriend died, and rather than go back to his lawyer to change his will, Mr. Allen tried to do it himself. That was the decision that resulted in a Will Caveat being filed and later a North Carolina Court of Appeals decision that was decided on June 6, 2017.

What Mr. Allen did was take down his original will, and on it, he wrote in his own handwriting "beginning 7-7-03 do not honor Article IV void Article IV James Paul Allen" (sic). If these words were written by Mr. Allen to remove Article IV from his will, then he would have disinherited his nieces, Hope and Christian. His entire estate would have gone to his nephew, Melvin, in the wake of his girlfriend's passing.

Melvin submitted the will to probate and took the position that the handwritten statement set out above was a codicil to the will and that he was the only heir to the will.

Hope and Christian filed a caveat action asserting that the handwritten note on the properly executed will was not in Mr. Allen's handwriting, but even if it were, it did not amount to a codicil to the original will.

Melvin, on the other hand, contended that the handwritten notes constituted a holographic codicil, since the note on the original will was written in Mr. Allen's handwriting and the original will with the note on it was found in Mr. Allen's important papers following his death.

North Carolina law found at N.C.G.S. §31-3.4 provides the definition of a holographic will or codicil. That statute tells us that the codicil or will must be signed by the testator, found in the testator's important papers following his death, written entirely in the

handwriting of the testator, but “when all the words appearing on a paper in the handwriting of the testator are sufficient to constitute a valid holographic will, the fact that other words or printed matter appear thereon not in the handwriting in the testator and NOT AFFECTING THE MEANING OF THE WORDS IN SUCH HANDWRITING, shall not affect the validity of the will.” (Emphasis added.)

On Mr. Allen’s Will and codicil the only handwriting read: “beginning 7-7-03 do not honor Article IV void Article IV James Paul Allen.” The rest of the document was the actual original typewritten will prepared by his lawyer back in 2002. The question becomes, is the handwritten portion of the language quoted herein sufficient as a codicil without reference to the typewritten words on the will?

The trial Judge in Beaufort County heard the arguments from both parties on whether or not summary judgment should be granted to the Propounder, Melvin, who contended that the language of Mr. Allen on the codicil portion of the will was sufficiently clear, such that Melvin should prevail. When the trial Judge ruled that way, the Caveators, Hope and Christian, appealed to the North Carolina Court of Appeals. When you appeal a ruling on summary judgment to the Court of Appeals, the Court is allowed by law to review the case from a fresh eye standpoint and can rule differently based on the same evidence that the trial Judge ruled on. That is exactly what happened in this case.

On appeal, the Court of Appeals ruled that the handwritten language standing alone was not sufficient to constitute a codicil because, in order to understand the handwritten language, you had to then look at Article IV which was part of the typewritten will.

In support of this ruling, the Court of Appeals cited a North Carolina Supreme Court case from 1948 (in re Will of Goodman, 229 N.C. 444, 50 s.e.2d 34 1948). In the Goodman case, the Court looked at a similar problem and stated that “...where words not in the handwriting of the Testator are essential to give meaning to the words used, the instrument will not be upheld as a holographic will.” Applying this standard to Mr. Allen’s alleged codicil, the Court of Appeals completely reversed the trial court decision, and instead of giving summary judgment to the Propounder, Melvin, it ruled that the Caveators, Hope and Christian, should prevail in this matter as the codicil was not an appropriate holographic codicil.

In the end, Mr. Allen’s original will prepared by his lawyer in 2002 is now the document that controls his estate. His nieces, Christian and Hope, will end up owning all of his real estate subject to the life estate that his nephew Melvin will have in the property.

The key takeaway from this court case is simply this: to safeguard your familial relationships as it pertains to an estate plan or Will documentation; always seek the advice and counsel of an experienced wills and estates attorney before making any modifications. An estate planning attorney can guide you through the process to help you avoid a disaster that can wreck a family.

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