



1981

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Recommended Citation

William Taylor Marshall, *Wills—Validity of Signature for Arrested Wills*, 4 U. ARK. LITTLE ROCK L. REV. 139 (1981).

Available at: <https://lawrepository.ualr.edu/lawreview/vol4/iss1/7>

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WILLS—VALIDITY OF SIGNATURE FOR ATTESTED WILLS.
Scritchfield v. Loyd, 267 Ark. 24, 589 S.W.2d 557 (1979).

Johnnie D. Loyd went to a Notary Public to have a do-it-yourself form will completed and executed. The Notary Public informed him that she did not know how to execute a will and declined to provide this service. Loyd asked the Notary Public to fill in the various blanks in the form will according to his instructions. She agreed and filled in the blanks, including the dispositive provisions, in her handwriting. The line on the form which provides for the testator's signature was signed by the Notary Public, and she placed her commission expiration date to the left of her signature. Loyd signed the form will below its heading and in the blank in the attestation clause at the bottom of the will. Two individuals at the Notary Public's business signed the will as witnesses. The instrument left the testator's entire estate to a nephew and also appointed him as executor.

After the testator's death, the instrument was admitted to probate, and a brother and two sisters of the decedent filed a timely contest of the will. The contestants argued that the testator's signature, which appeared in the attestation clause of the will, did not comply with the statutory provisions for the execution of attested wills which require that the testator's signature be at the end of the instrument.¹

The probate court held that the instrument was in form legally sufficient to constitute a will under Arkansas law. On appeal, the Arkansas Supreme Court upheld the will, stating that there was sufficient compliance with the statute requiring the signature to be at the end. *Scritchfield v. Loyd*, 267 Ark. 24, 589 S.W.2d 557 (1979).

In England, the location of the testator's signature in a will was not initially considered important.² The English Statute of Frauds of 1677 only required that the testator sign a will devising land.³ The English Wills Act of 1837 amended the Statute of Frauds and required that the will be signed "at the foot or end thereof."⁴ In

1. ARK. STAT. ANN. § 60-403(a)(5) (1971) provides: "In any of the above cases the signature must be at the end of the instrument and the act must be done in presence of two [2] or more attesting witnesses."

2. 2 PAGE ON WILLS § 19.54 (Bowe-Parker rev. 1960).

3. 29 Car. II, c. 3 (1677).

4. 7 Will. IV & 1 Vict., c. 26 (1837).

1852, the English Wills Act was amended to provide that the testator's signature might be placed "at or after, or following, or under, or beside, or opposite to the End of the Will," so long as it appeared from the face of the will that the testator intended by his signature to give effect to the writing as his will.⁵

A majority of the state wills acts do not specify a particular place for the testator to sign his will.⁶ This view has also been adopted by the Uniform Probate Code.⁷ A minority of states have adopted the requirement set forth in the English Wills Act of 1837 that the will be signed at the end.⁸

The states which have statutes requiring wills to be signed by the testator at the end are confronted with cases litigating the many fact situations concerning the location of the testator's signature.⁹ For example, there is a conflict in authority regarding the validity of an attested will when the deceased's signature is located at the logical end, but not the physical end of the document.¹⁰ This situation could easily arise when the will contains several pages which are not in the proper order. A majority of the states hold that when the internal continuity of the instrument concludes logically with the signature of the decedent, the will is valid.¹¹

There is also a conflict in authority regarding whether the deceased's signature in the attestation clause of the instrument constitutes a substantial compliance with the statutory requirement that an attested will be signed at the end.¹² Those courts which strictly construe the statute and hold that a signature in the attestation clause is not a signature at the end do not place emphasis on the fact that the testator intended that his signature be effective as executing his last will and testament.¹³ In *Sears v. Sears*,¹⁴ for example, the

5. 15 & 16 Vict., c. 24 (1852).

6. Rees, *American Wills Statutes: I*, 46 VA. L. REV. 613, 619 (1960).

7. U.P.C. § 2-502.

8. Rees, *American Wills Statutes: I*, 46 VA. L. REV. 613, 619 (1960).

9. Some of the fact situations in which there seems to be a conflict in authority regarding whether the placement of the testator's signature satisfies similar statutory provisions include: marginal notations above the signature of the testator, wills containing blank spaces, wills containing testamentary writing on both sides, wills written on several sheets of paper and signed at the logical end, wills written on several sheets of paper and signed at the physical end, the signature of the testator on the back of the will, the signature following the attestation clause or witness's signature, and the signature preceding the codicil. Annot., 44 A.L.R.3d 701 (1972).

10. *Id.* at 717.

11. *Id.*

12. *Id.* at 730.

13. *See, e.g., Sears v. Sears*, 77 Ohio St. 104, 82 N.E. 1067 (1907); *Schubert v.*

Ohio court held that even if the testatrix wrote her name in the attestation clause, such fact would be immaterial because her signature was not at the end of the will. The Ohio court also indicated that the intent of the testatrix was not important.¹⁵

The courts which hold that a signature in the attestation clause sufficiently complies with the statutory requirement that the signature be at the end place the major emphasis on the testator's intent.¹⁶ In *In re Schiele's Estate*,¹⁷ for example, the Florida court held a signature by the testator in the attestation clause with the intention that the instrument should constitute the will of the testator was in substantial compliance with the statute requiring the signature to be at the end.

An analysis of the cases in Arkansas seems to indicate that the Arkansas Supreme Court places the major emphasis on the testator's intent.¹⁸ Prior to the enactment of Act 140 of 1949,¹⁹ the Arkansas statute required that all wills be signed by the testator at the end of the will.²⁰ The purpose of this requirement was to protect against fraud.²¹ There are no Arkansas cases construing this old statute with respect to whether the testator's signature in an attested will was at the end. An analysis of the cases concerning holographic wills, however, indicates that the statute was not strictly construed

Christman, 16 Ohio App. 432 (1922); *Herbster v. Pincombe*, 10 Ohio App. 322 (1918); *In re Estate of Knupp*, 428 Pa. 409, 235 A.2d 585 (1967); *In re Estate of Glace*, 413 Pa. 91, 196 A.2d 297 (1964); *In re Friese's Estate*, 336 Pa. 24, 9 A.2d 401 (1939); *In re Bridge's Estate*, 139 Pa. Super. Ct. 606, 13 A.2d 125 (1940); *Glover Estate*, 80 Pa. D. & C. 310 (1951).

14. 77 Ohio St. 104, 82 N.E. 1067 (1907).

15. *Id.* at 108, 82 N.E. at 1072.

16. *See, e.g., In re Tonneson's Estate*, 81 Cal. App. 2d 703, 185 P.2d 78 (1947); *In re Morey's Estate*, 75 Cal. App. 2d 628, 171 P.2d 131 (1946); *In re Schiele's Estate*, 51 So. 2d 287 (Fla. 1951); *In re Rivers' Will*, 58 N.Y.S. 2d 589 (1945); *In re Eyett's Will*, 124 Misc. 523, 209 N.Y.S. 251 (1925); *In re Noon's Will*, 31 Misc. 420, 65 N.Y.S. 568 (1900); *In re Estate of Tretinger*, 440 Pa. 616, 269 A.2d 497 (1970); *In re Estate of Miller*, 414 Pa. 385, 200 A.2d 284 (1964).

17. 51 So. 2d 287 (Fla. 1951).

18. *Scratchfield v. Loyd*, 267 Ark. 24, 589 S.W.2d 557 (1979); *Walpole v. Lewis*, 254 Ark. 89, 492 S.W.2d 410 (1973); *Weems v. Smith*, 218 Ark. 554, 237 S.W.2d 880 (1951); *Musgrove v. Holt*, 153 Ark. 355, 240 S.W. 1068 (1922); *Borchers v. Borchers*, 145 Ark. 426, 224 S.W. 729 (1920).

19. ARK. STAT. ANN. §§ 60-403 to -404 (1971).

20. 2 POPE'S DIGEST § 14512 (1937) provides in pertinent part: "Every last will and testament of real or personal property, or both . . . must be subscribed by the testator at the end of the will, or by some person for him, at his request."

21. *Owens v. Douglas*, 121 Ark. 448, 181 S.W. 896 (1915). The court indicated that "[t]he purpose of our statute in requiring wills to be signed at the end thereof is to provide against fraud, and this statutory requirement must not be frittered away by loose interpretation." *Id.* at 452, 181 S.W. at 898.

when there was an absence of fraud and the requisite testamentary intent was present.²²

In *Borchers v. Borchers*²³ the alleged will consisted of a statement following the deceased's signature in a letter to his father. The court indicated that the dispositive provision followed the deceased's signature and was therefore not in compliance with the Arkansas statute requiring that all wills be signed by the testator at the end.²⁴ The court placed emphasis on the fact that the deceased had written his mother several letters which indicated a contrary intent.²⁵

Even though the court in *Borchers* strictly construed the statute, several cases which followed indicated that the court would place more emphasis on the testator's intent and the absence of fraud. In *Musgrove v. Holt*²⁶ non-dispositive words followed the testator's signature in a holographic will. The court upheld the will, indicating that there was no indication of fraud, and that the non-dispositive provisions following the signature did not affect the will.²⁷ The court in *Weems v. Smith*²⁸ went a step further and held that a holographic will in which the last three words of the sole dispositive clause were below the testator's signature²⁹ was in substantial com-

22. *Weems v. Smith*, 218 Ark. 554, 237 S.W.2d 880 (1951); *Musgrove v. Holt*, 153 Ark. 355, 240 S.W. 1068 (1922); *Borchers v. Borchers*, 145 Ark. 426, 224 S.W. 729 (1920).

23. 145 Ark. 426, 224 S.W. 729 (1920). The statement following the decedent's signature provided: "Papa, if I die for my country, I want you to receive my insurance money. Goodbye." *Id.* at 427, 224 S.W. at 729.

24. *Id.* at 428, 224 S.W. at 729.

25. *Id.* at 427, 224 S.W. at 729. Letters written by the decedent both before and after the letter in question indicate that the decedent had purchased an insurance policy and designated his mother as beneficiary.

26. 153 Ark. 355, 240 S.W. 1068 (1922). The last clause of the will originally provided: "I appoint J.I. Porter and Earl Holt my executors of this, my last will and testament, without bond. Consideration \$1,000 dollars. (Signed) P.D. Porter." Pencil marks were run through the words 'Consideration \$1,000 dollars' and after the signature was written. . . . "They to receive \$1,000 in full for their services." *Id.* at 358, 240 S.W. at 1068.

27. *Id.* at 364, 240 S.W. at 1070.

28. 218 Ark. 554, 237 S.W.2d 880 (1951).

29. The following is a literal transcription of the holographic will which was in issue:

Sallie god Bless you
Ben so sweet and good to me
god Bless all the Ladies that
been so sweet & good to me
and you Mr. & Mrs. Conden
Sallie you know my troubles Better
than eny one else 35 year
Since 1914 tell Mr. Meeks to
help on Burial
no Doctor and not able

pliance with the statutory requirement that all wills be signed at the end. There was no indication of fraud, and the testamentary intent was clear. The majority stated that the writing at the bottom of the testator's signature was not a dispositive provision. Justice George Rose Smith in dissent, however, observed that the last three words of the sole dispositive provision were clearly below the testator's signature.³⁰ After the *Weems* case, it appeared that the Arkansas court, at least with respect to holographic wills, would not strictly construe the statute which required all wills to be signed at the end when there was no indication of fraud and when testamentary intent was present.

By Act 140 of 1949,³¹ holographic wills were no longer required to be signed at the end.³² After the passage of this Act, it was uncertain whether the Arkansas court would construe attested wills as liberally as it had construed holographic wills, and to what extent the *Weems* case would be controlling.³³ Moreover, the legislative intent in completely removing holographic wills from the requirements applied to attested wills was also unclear.³⁴ The general spirit and pur-

To go to one Salle this
is to much on you
Sallie god Bless you
for being so Sweet & good To
me this house blong to you
and every Sidney Smith
every thing in it
Dear Sallie you was so sweet
and good to Me

Id. at 555, 237 S.W.2d at 881.

30. *Id.* at 560, 237 S.W.2d at 883.

31. ARK. STAT. ANN. § 60-404 (1971).

32. ARK. STAT. ANN. § 60-403 (1971) provides in pertinent part: "The execution of a will, other than holographic, must be by the signature of the testator and of at least two [2] witnesses . . . [T]he signature must be at the end of the instrument and the act must be done in the presence of two [2] or more attesting witnesses."

33. *Weems v. Smith*, 218 Ark. 554, 237 S.W.2d 880 (1951). ARK. STAT. ANN. § 60-404 (1971), which no longer required a holographic will to be signed at the end, was not applicable because Smith died a few months prior to the effective date of the statute. A student note written not long after the adoption of Act 140 of 1949 argued that the Arkansas Supreme Court should apply the *Weems* reasoning to attested wills as well. 7 ARK. L. REV. 159, 160 (1953).

34. In *Smith v. McDonald* the court stated:

[T]here is considerable room for speculation as to the legislative intent in completely removing holographic wills from the requirements as applied to other wills and leaving other wills (other than holographic) to be executed "by the signature of the testator . . . at the end of the instrument."

. . . Such relaxation as to holographic wills does not appear illogical when we consider that the purpose of a will is to make disposition of property to take effect

pose of Act 140 of 1949, Arkansas's first Probate Code, was that "estates of decedents, minors and incompetents be quickly, efficiently and expeditiously handled to the best interests of all concerned, safeguarding every party at interest."³⁵ The extensive power given the probate judge seemed to indicate that the general purpose of the Code was to promote greater flexibility.³⁶ In light of the general purpose of Act 140 of 1949,³⁷ it seemed logical that the Arkansas court would not alter its liberal construction of the statutory requirement that the testator's signature appear at the end of the will, even though this requirement was amended to apply to attested wills only.

*Walpole v. Lewis*³⁸ seemed to add support to this conclusion, although the placement of the testatrix's signature in the will was not an issue that the court addressed. In *Walpole* a holographic will was admitted to probate as an attested will. One sentence appeared below the signature of the testatrix which designated the testatrix's personal representative. The court indicated that in construing the statute which required the testatrix to request that the witnesses sign as attesting witnesses, it would follow its historical practice of avoiding a strict technical construction of statutory requirements when there is no indication of fraud, deception, imposition, or undue influence.³⁹

Any doubt that the court would liberally construe the statutory requirement that an attested will be signed at the end was removed in *Scratchfield v. Loyd*.⁴⁰ The court recognized that there is a distinct conflict among the authorities regarding whether a signature in the attestation clause qualifies as a signature at the end.⁴¹ The court reasoned: "[W]e believe the better rule to be that where the testator places his signature in the attestation clause because he believes that it belongs there and with the requisite testamentary intent, it constitutes a sufficient compliance with the statute requiring the signature

upon death, and the purpose of the statute relative to signature, is to protect against fraud.

252 Ark. 931, 936, 481 S.W.2d 741, 744 (1972).

35. Meriwether, *Act 140, The Probate Code*, 3 ARK. L. REV. 375, 376 (1949).

36. *Id.*

37. ARK. STAT. ANN. §§ 60-401 to -417 (1971).

38. 254 Ark. 89, 492 S.W.2d 410 (1973). The court did not discuss the fact that a sentence appeared below the testator's signature.

39. *Id.* at 94, 492 S.W.2d at 414.

40. 267 Ark. 24, 589 S.W.2d 557 (1979).

41. *Id.* at 25, 589 S.W.2d at 559.

to be 'at the end.'"⁴²

Scritchfield aligns Arkansas with states which hold that a signature by the testator with the requisite testamentary intent in the attestation clause of an attested will constitutes substantial compliance with the statutory requirement that an attested will be signed at the end. Although the decision is largely fact-oriented, it provides some insight into how the court might view several other factual situations which have not been tested in Arkansas.

The result in *Scritchfield* seems to support the proposition that the *Weems* case would be controlling in litigation involving an attested will. Therefore, absent evidence of fraud, and if the requisite testamentary intent is present, the court should hold that dispositive matter following the testator's signature in an attested will which logically follows the body of the will would not invalidate the instrument.

In addition, *Scritchfield* seems to indicate that the court would find that a signature at the logical end of a will, as opposed to the physical end of the writing, would also sufficiently comply with the statute which requires that the signature of the testator be at the end.

The possible fact situations which could arise are as numerous as the possible locations where a signature could be placed other than at the physical end of the will.⁴³ Where the court will draw the line is always hard to predict. Conceivably, the court could apply the *Scritchfield* reasoning to any signature placement in an attested will when there is no indication of fraud, and when the requisite testamentary intent is present.

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42. *Id.*

43. See note 9 *supra*.

