IN THE CHANCERY COURT OF CARROLL COUNTY, MISSISSIPPI
SECOND JUDICIAL DISTRICT

IN THE MATTER OF THE ESTATE OF
MICHAEL EDWARD ROBERTS, DECEASED CIVIL ACTION NO: 2017-10

OPINION AND ORDER

THERE IS PENDING before this court an action to determine whether the instrument, identified as document dated January 11, 2016 is a will or an instrument parading as one. Leading into today's hearing, this case was initially filed March 30, 2017 (Mec Doc 1) and with limited exception, resided undisturbed until recently. An order was entered, setting a time and place by agreement by all counsel for hearing. (Mec Doc 110).

EXHIBITS

Exhibit 1	Mec Doc. 146	A copy of the last will and testament 2016. Original filed in the clerk's office.
Exhibit 2 -	Mec Doc. 147	Letter by Teresa Herd
Exhibit 3 -	Mec Doc. 148	Renasant Bank sign in safe deposit sheet
Exhibit 4 -	Mec Doc. 149	Renasant Bank sign in safe deposit sheet
Exhibit 5 -	Mec Doc. 150	2001 Will
Exhibit 6 -	Mec Doc. 151	Renasant Bank Statement of Account
Exhibit 7 -	Mec Doc. 152	Renasant Bank Statement of Account
Exhibit 8 -	Mec Doc. 153	Curriculum Vitae, Expert Robert G. Foley
Exhibit 9 -	Mec Doc. 154	Comparison and Question Documents

Exhibit 10 - Mec Doc. 155 Comparison and Question Documents

WILL OR NO WILL

The centerpiece for resolution is whether the instrument purporting to be the Last Will and Testament of Michael Edward Roberts is such. Before jumping into the finer points of the law, a review of the testimony and exhibits are necessary in order to frame out the explanation, context and understanding of this court's decision.

Witness Number One

Lena Lockart Berry

Lena is eighty-nine years of age. As a beginning point of discussion, the court visually tracked Witness Berry from her beginning point outside the well of the court, past the attorneys sitting behind their respective tables. Once she had cleared the court reporter's station, she sat in the witness booth, and of importance, appeared to this Chancellor to take this moment seriously. Though her words lacked the thunder of a cannon, her gentle voice carried an air of certainty, infringed occasionally by the passage of time.

Despite her lack of precision at giving transcription like detail regarding an event many years removed from January 11, 2016, she is not an unenlightened source. Her presence at trial, much like her presence in the decedent's office in early January of 2016, provided her opportunity to have more than a modest role of simply observing those events. In the present, hers is one of interpreting those events through her eyes.

In terms of back story, Witness Berry served as the coordinator for a federal program involving the school system in Montgomery County, Mississippi for approximately forty years. When discussing the decedent, she spoke with an informal tone, recounting their relationship as

both a friend (considered him both a brother and son) and fellow church member. Also, she acknowledged knowing him since he "was a little boy." This information provides another layer of her appreciation of the decedent's personality.

The set up.

According to Witness Berry, the decedent flagged her down at a service station, rolled down his window, then requested that she "do him a little favor." She arrived at his funeral home later that afternoon, uncertain of what the favor might be. Upon arriving, she identified another person present – Miss Blueitt.

The decedent invited her into his office located within that building. At that moment, and gathered from Witness Berry's testimony, there appeared to be no formal request that she witness a will. In lieu of this, Witness Berry claims that this decedent requested both herself and Miss Blueitt sign a document. Referencing the document, she noted this instrument said a "little something about a will." Miss Blueitt accepted his request. Witness Berry accepted his request also. Witness Berry witnessed both Miss Blueitt sign and the decedent sign this document. In referencing the other witness anecdotally, Witness Berry indicated that Miss Blueitt wasn't a member of her church, but she knew her to be a good friend of the decedent's mother, and she knew her "real well." This other witness, Miss Blueitt, has since passed away.

Walking through her testimony a second time, she again recalled her invite by the decedent into his office. Further discussion by Witness Berry revealed that she had no "idea what he wanted until I got there."

When questioned by Attorney Jimmy Powell, Witness Berry acknowledged witnessing a will for the decedent. Closely following this exchange, she then testified that she "didn't know"

what she was doing, but witnessed the will for Michael Edward Roberts.

By implication, the language immediately above, where Witness Berry states "I didn't know what I was doing," contextually is understood by this fact finder to mean she didn't understand *at the time* what she was being asked to do, other than arrive at his office. Later, Witness Berry acknowledged that she didn't know if what she had signed was The Last Will and Testament of the deceased, but she noted while being examined that she didn't read the instrument presented, but saw the word "will" on it.

This testimony perplexes at first glance. One moment Witness Berry explains, adds depth to the execution of the will, and not many breaths removed, acknowledged that she was uncertain of what she signed. Both competing responses by Witness Berry provide each side room for interpretation. Sussing out her words in proper context will be addressed below and leaves but one conclusion.

Exhibit 1

The Will

A cursory examination of this instrument, the one in which Witness Berry affixed her signature, is titled by the anonymous author as the LAST WILL AND TESTAMENT OF MICHAEL EDWARD ROBERTS.

Following the natural progression as to the signing, she would have seen a blank line with the decedent's name typed in bold caps, and below that space in BOLD caps the word: Witnesses. Below that line, a signature line existed both for her and the other witness. Interestingly enough, information of Mary Lee Blueitt, 709 Freedman Street, Winona, MS 38967, and Witness Berry was typed on the instrument. All signature lines are within inches of each

other. As noted earlier, Witness Berry recalled visually seeing the word "will." *No where on the signature page of this instrument is such a word stated.* If she recognized the word "will," that term was found on another page. This instrument remains as a witness of sorts to the decedent's purported disposition of his assets, and the layout remains relevant for what it reflects.

On the heels of Witness Berry, Miss Blueitt's daughter testified. As noted earlier, Miss Blueitt passed after the signing of the instrument in question.

Witness Number Two

Lena Mae Blueitt Scott

Practically every question offered to Witness Scott, regarded her mother's signature. Witness Scott acknowledged her mother's (Mary Blueitt's) signature on Exhibit 1.

Witness Number Three

Teresa Denise Herd

As the mother and guardian of her child, Witness Herd inquired into whether a will or insurance policies existed. This inquiry is understandable and logical considering that the decedent and this witness have a young son together. Witness Herd recalled several conversations between her and members of the decedent's family.

Witness Number Four

Keith Stokes Roberts

Witness Keith Roberts testified that both he and his brother worked for the family business – Roberts and Sons Mortuary. According to Witness Keith, the decedent served as the business manager for the funeral home. Witness Keith characterized this conversation between he and his brother as one tinged with a thread of clairvoyance and part confession.

Witness Keith recalled this meeting as intensive and lengthy – five hours. This conversation took place on the eve of the decedent's passing. Witness Keith's testimony measured out a concern he held – regarding mishandling of funeral home money by his brother. At times, Witness Keith appeared visibly upset while speaking in court. This witness recalled a cryptic recollection from his brother: that he [decedent] had a home to go to, a home for which no payment was due, and that he [decedent] held no board meetings to discuss any occurrences on that premises.

Witness Keith further recalled his brother stating if "he didn't get back, for me to keep everything in the middle of the road." While at the funeral home, during what would be their last conversation, the decedent admitted to having a will, telling his brother to "look around" the funeral home for it and also the safety deposit box. After further questioning about the location of the will, Witness Keith admitted to finding the will in the decedent's office. Michael Edwards Roberts died the following day.

Witness Keith further explained his discovery of the will within the decedent's office, along with some bank statements and notes. He discovered this will on February 24, 2017, among other documents belonging to this sibling. This same witness also discovered a copy of another will. When questioned regarding Exhibits 2-7, he indicated that none of those signatures are fabricated.

While being cross examined, Witness Keith noted that he was not paid for the last four years of his work at the funeral home. As to the various ways in which his brother signed his name, Witness Keith indicated his brother's signatures on the bank card varied. He also noted his brother's use of various iterations of his name on death certificate authorization forms.

Witness Number Five

The Expert

On the afternoon of January 17, 2023, Robert G. Foley qualified as expert in forensic document examination. This qualification was by agreement, followed by admittance of his curriculum vitae (See Exhibit Number 8). With fifty years experience in the area, he noted that he had testified in at least 500 trials.

Expert Foley revealed that the questioned document presented for review was a copy of a last will and testament of Michael Edward Roberts, dated January 11, 2016. He further noted that he had requested comparative documents. In this particular case, he requested signatures contemporaneous to the date of the questioned document within reason and documents of similar import.

He further explained that his use of the word "Q" signifies the question document and "C" being the comparative documents. These latter documents had been reviewed for comparative measures against the will's signature and used in formulating his opinion.

Expert Foley identified through his testimony comparative documents C-1 though C-9.

In explaining his opinion concerning the January 11, 2016 will, Expert Foley generated an overview regarding the documents preceding and following the date of this instrument, surmising in his vernacular, "obvious differences." In granular fashion, his testimony outlined nuances in how different letters has been formed by the decedent over time, the obvious changes expected by one aging, as well as giving a general education into the study of signatures. Following his remarks, Expert Foley opined that the person who signed the Michael Edward Roberts' signatures in the known samples for comparative purposes -- did not sign the Michael Edward Roberts'

signatures appearing on the will dated January 11, 2016.

Much like Witness Berry, thoughtful words characterized Expert Foley's testimony. Though by inference, his testimony calls into question another's memory and/or possibly another's veracity. Still another question lurks below the surface – regarding the efficacy of this blend of art and science and its interaction within this area of law.

Analysis

Mississippi Jurisprudence

A proper beginning spot for inquiry is the premise that "our law has given each competent adult to direct from the grave the disposition of [her] worldly goods." *Tinnin v. First United Bank of Miss.*, 502 So. 2d 659, 667 (Miss. 1987). This necessarily mandates properly executing the document which "speaks at the death of the testator." *Johnson v. Bd. of Trs. Miss. Annual Conference Methodist Church*, 492 So. 2d 269, 276 (Miss. 1986). "[W]ills must be strictly construed in accordance with statutory requirements." *Murakami v. Young* (*In re Last Will & Testament of Massingale*), 199 So. 3d 710, 713 (¶12) (Miss. Ct. App. 2016) (citing *Wilson v. Polite*, 218 So. 2d 843, 849 (Miss. 1969).

Mississippi Code § 91-5-1 (Rev. 2021) indicates the following:

> Every person eighteen (18) years of age or older, being of sound and disposing mind, shall have power, by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, or to lands, tenements, hereditaments, or annuities, or rents charged upon or issuing out of them, or goods and chattels, and personal estate of any description whatever, provided such last will and testament, or codicil, be signed by the testator or testatrix, or by some other person in his or her presence and by his or her express direction. Moreover, if not wholly written and subscribed by himself or herself, it shall be attested by two (2) or more credible witnesses in the presence of the testator or testatrix.

On it's face, a review of Mississippi Code Ann § 91–5–1 doesn't set forth any mental requirements for attesting witnesses. However, jurisprudence defines both a subscribing and an attesting witness.

The Mississippi Supreme Court explained in the case of *In re Will & Estate of Jefferson v. Moore*, 349 So.2d 1032, 1036 (Miss.1977). (emphasis added) the following:

> The cases cited and quoted from hereinbefore abundantly hold that the purpose of signing by the attesting witnesses in the presence of the testator is that the testator will know that the witnesses are attesting the testator's will and not another document; that the witnesses will know the same; these reasons to avoid imposition of fraud on either the testator or the witnesses by substitution of another will in place of that signed by the testator; and that the witnesses will be reasonably satisfied that the testator is of sound and disposing mind and capable of making a will.

In the case of *In re Est. of Holmes*, 101 So. 3d 1150, 1152 (Miss. 2012), Justice Dickinson, writing on behalf of the Mississippi Supreme Court, and beginning midway though ¶ 10, states the following:

> The attesting witnesses must meet four requirements: First, the testator must request them to attest the will [*Green v. Pearson*, 145 Miss. 23, 110 So. 862, 864 (1927); second, they must see the testator sign the will [*Matter of Jefferson's Will*, 349 So.3d 1032, 1036 (Miss. 1977)]; third, they must know that the document is the testator's last will and testament [*Estate of Griffith v. Griffith*, 20 So.2d 1190, 1194 (Miss. 2010)]; and finally, they must satisfy themselves that the testator is of sound and disposing mind and capable of making a will. [*Matter of Jefferson's Will*, 349 So.2d at 1036 (Miss.1977).]

Noted earlier, Miss Blueitt has passed, leaving only the memory of eighty-nine year old Witness Berry as the final living witness to this event. Her words are formed by proximity. She had a story to tell, and as noted earlier, offered insight into what transpired – as both an ocular and auditory observer of the events.

Reiterating in short fashion what is stated earlier in this opinion, Witness Berry testified

that the decedent signed the instrument in her presence, after she and Miss Blueitt had signed moments earlier. This meets the element of seeing the testator sign the will.

In terms of satisfying herself that the decedent held a sound and disposing mind, capable of making a will, Witness Berry expressed personal knowledge of the decedent. This Court accepts that no formal interrogation of the decedent's mental state occurred prior to his signing of the will. However, Witness Berry expanded upon her familiarity with the decedent, never once insinuating, causing inference, nor stating that the decedent had been anything other than his typical self that day. Unlike situations that arise when a mad scramble is made to find a witness for the execution of a will, this particular witness had known the decedent since his youth, and voiced that the decedent had stopped her at a gas station on January 11, 2016, requesting her assistance. Grabbing her attention with such a request, she arrived at his office that same afternoon.

Thinking deeper, no evidence surfaced alerting this court that it's hands were full, dealing with a witness airbrushing her words. Her rendition of events held a raw, unrehearsed tinge to it, with an account leading into the execution of this will. No testimony reflected that the decedent was not his usual self – the one she had known for a lifetime. Contextually speaking, the testimony reveals that this witness had satisfied herself that the testator was of sound and disposing mind and mentally cognizant of what he was requesting.

The remaining two requirements drew the most contention.

1. Whether the testator requested the witnesses attest the will.
2. Whether the witnesses knew (at that time) if the document is the testator's last will and testament.

The cases, *Estate of Griffith v. Griffith*, 30 So. 3d 1190,1194 (Miss 2010) and *In re Est. of Holmes*, 101 So. 3d 1150, 1152–53 (Miss. 2012), hold similarities to the one presented to this Court.

In the *Holmes* case, the two subscribing witnesses testified that they did not know they had witnessed a will, nor had been asked to witness a will, with further testimony that neither satisfied themselves that the decedent was of sound and disposing mind when she executed the will. *Holmes* at 1151.

In ¶ 5, the Mississippi Supreme Court offered the following:

> Chawla also admitted that she had never spoken to Lela before the day she signed the will, and she did not actually speak to her when she signed the Will. When asked whether she knew the document she was witnessing was a will, Chawla responded: "just by looking at it. You know, I just thought it was some important paper." But then, Chawla admitted she "did not think [she] knew it was a will." Chawla acknowledged that the Will had five different handwriting patterns, and she could not identify who wrote the date, "20th June."

In ¶ 6, the Mississippi Supreme Court stated that:

> The second witness to the Will, Jennifer Delaney, identified her own signature, Chawla's signature, and Lela's signature on the Will. She testified that she believed the notary—as opposed to Lela—had asked her to witness the Will. At first, she testified that she, Chawla, and Lela had signed the Will in each other's presence, but later admitted that she could not "recollect if Ms. Holmes signed [the Will]."

Following this, the Mississippi Supreme Court noted in ¶ 7 :

> Delaney admitted that she did not know Lela before that day, that she had no opportunity to observe whether Lela had the ability to understand and appreciate the "effects of her act" of signing the will, and that she did nothing to assure herself that Lela was of sound mind and memory.

Id. at 1152 (Miss. 2012).

In the *Holmes* case, the Mississippi Supreme Court agreed with the chancellor that the

witnesses had been present while that decedent signed the document. *Id.* at 1153. "So the document satisfied the requirement that the witnesses see the testator sign the will." *Id.* Differing with the chancellor, the Court stated as follows, "but the record does not support a finding that the witnesses satisfied the other three requirements." *Id.*

In a case preceding the *Holmes* decision by a couple years, *In the Matter of the Est. of Griffith v. Griffith*, 30 So. 3d 1190, 1193–95 (Miss. 2010), the Mississippi Supreme Court stated in ¶ 17, the following:

> In accord with our previous cases of *Maxwell, Jefferson*, and *Kennebrew*, we find that an attesting witness must have some knowledge that the document being signed is, in fact, the testator's last will and testament. Therefore, Scott and Bell were not "attesting" witnesses under Section 91–5–1 but merely subscribing witnesses.

Parsing through the above illustrates the differing attributes assigned to a subscribing witness and that of an attesting witness. The nuance being the added cerebral element to the equation for the attesting witness.

Regarding the matter before this Court, Witness Berry's observations invite this court into the decedent's office on January 11, 2016 – viewed as a play by play, if you will, of events taking place seven years earlier. Unlike the witnesses in the *In re Est. of Holmes* matter, it's worth mentioning once more that Witness Berry had known the decedent since he was a young child. She expressed nothing out of the ordinary regarding his demeanor on January 11, 2016. She witnessed Miss Blueitt sign her name. Also worth noting, is that she watched the decedent affix his signature to the same instrument which contained the word "Will" within it's four corners.

Drawn from her recollection, the facts reveal:

(1) the decedent summonsed Witness Berry into his office;

(2) Miss Blueitt was present within the same office to which Witness Berry had been summonsed;

(3) the decedent displayed an instrument and asked each to sign;

(4) a personalized line existed for the witnesses' signatures;

(5) Miss Blueitt, herself and the decedent signed the document;

(6) though no formal proclamation was voiced by Witness Berry that the instrument in question was the decedent's Last Will and Testament, Witness Berry identified the word "will" affixed on that same document.

In the matter of *Green v. Pearson*, the Mississippi Supreme Court found that publication may be accomplished through construction, noting that: "[i]t is sufficient that enough is said and done in the presence and with the knowledge of the testator to make the witnesses understand that he desires them to know that the paper is his will, and they are to be the witnesses thereto." *Green*, 145 Miss. 23, 110 So. 862, 864 (1927).

From this, it is clear the decedent requested each to attest his will.

Finally, did this witness understand that at that time of execution, that the document in question had been the decedent's last will and testament? And what of her contradictory statement and has this court discounted the expert testimony – giving his words and experience no credence?

During the question and answer, objection was made that although Witness Berry identified signatures on the instrument in question, she never identified the document (the instrument of January 11, 2016) as the Last Will and Testament of the decedent. Witness Berry stated "I don't know."

These words had been voiced after agreeing that she had been asked to sign a will earlier. How one sees the term "will," while also adding such a rich description of the activities leading up to the instrument's execution, only to lay a pall upon the moment with contradictory language remains baffling, until the context of her testimony reveals the substance behind her words.

According to her testimony, she appeared within the decedent's private office and at his invitation, with Miss Blueitt present, and signed the document offered by him. She mentioned seeing "a little something about a will."

Stitching those words together – "a little something" – adds a layer of substance to the scene and reveals the instrument for what it is. The fact that seven years passed since witnessing this act, and considering her testimony collectively, *in her terms*, what she referenced, described and testified to was the decedent's Last Will and Testament. That's what she knew about this same instrument that was later found in the decedent's office at the funeral home - the one the decedent managed.

Also, this court points out the education received from Expert Foley. He guided this Court through his process, addressing questions with ease, and acknowledged the field is one of art and science. Unlike Expert Foley, Witness Berry stood on the scene as this instrument evolved into more than a typed description of an individual's desired intentions.

Hindsight

Hindsight offers 20/20 optics and is indeed a powerful tool. On a cognitive level, the legal profession recognizes the complexities regarding the execution of wills. This insight is the legal profession's hindsight.

However, how does someone dispose of his or her property in a manner which does not run askew of the law when proceeding without the oversight of a professional ? A review of jurisprudence offers a landscape of misery for those unwilling to invest the time to read the printed law. With the passage of time, problems surface ever so often. If truth be known, should a witness to the execution of a will be later questioned at trial or deposition, and should their memory fail, or perhaps they use a terminology less precise than what might be expected, then voila – conflict.

Perhaps Witness Berry's memory could have been refreshed. Nonetheless, her testimony stood in lieu of that instrument.

Having noted this witness' testimony, her body language and words, this court believes Witness Berry's recollection remains tied to truth, a fact not lost on this court. When cross examined, Witness Berry indicated that she had not discussed the contents of her testimony with any of the parties or attorneys.

Testimony, body language, voice and context all play a role in the evaluation of this witness, as all other witnesses before this court, giving Chancellors another tool – a tool for the evaluation of matters presented. See *Estate of Volmer v. Volmer*, 832 So. 2d 615, 621-22 (Miss. Ct. App. 2002) (will contest where issue was not tried by a jury).

Finally, it is unknown why this decedent elected to dispose of his property as he had. That matter is not before the court. The salient issue before this Court is whether the instrument in question is a will or not a will, and the proponent of this will in question has proved due execution of same by a preponderance of the evidence, persuading this trier of fact on that issue.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the document

executed on January 11, 2016 is hereby admitted as the Last Will and Testament of Michael Edward Roberts.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the clerk of this court is directed to mail a filed stamped copy of this Opinion and Order to non -Mec participants.

So ORDERED, ADJUDGED AND DECREED, this the 19th day of May, 2023.

– THIS IS A FINAL JUDGMENT ON THIS ISSUE –

CHANCELLOR KILEY KIRK