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ARETHA FRANKLIN'S ESTATE: ARE HANDWRITTEN DOCUMENTS VALID WILLS?

Aretha Franklin's heirs are embroiled in a court battle due to several handwritten documents that the Queen of Soul wrote before her death. The issue at hand is: Are these handwritten documents valid wills under Michigan law?
Shortly after Aretha's death in August 2018, no will could be found, which meant that Aretha's assets would be distributed to her next of kin via Michigan's intestate law. Later, three separate handwritten wills were found in Aretha's home, leading to a dispute between Aretha's children in the Michigan probate court. One will was found in a notebook stashed under some couch cushions in Aretha's living room. The attorney for Aretha's estate submitted these handwritten wills to the probate court, even though he questioned whether these handwritten wills were valid under Michigan law. The documents lack the usual formalities of a Last Will and Testament–some of the handwriting is difficult to read, some verbiage is crossed out, and some notes are penned in the margins of these documents.

The validity of handwritten wills is often questioned because it is difficult to know whether the decedent really did write the document, whether that document truly conveys the decedent's last wishes, and sometimes, what the decedent's last wishes were.

Michigan Law May Honor Aretha's Handwritten Will

In Michigan, the general rule is that a will is valid if it meets three requirements: (1) it is in writing; (2) it is signed by the testator or, while the testator is present, by another at the testator's direction; and (3) it is signed by at least two witnesses within a reasonable time after seeing the testator sign or after the testator acknowledges the signature. At first glance at this statute, it would appear the handwritten wills of Aretha drafted in private do not comply with the Michigan statutory requirements.

However, Michigan recognizes an exception to the will requirements under what is known as a "holographic will." A holographic will is an informal will that is handwritten and signed by the testator, but there is no witness requirement or the need for lawyer involvement, thereby forsaking some of the execution formalities required under Michigan law. Michigan simply requires a holographic will to be dated, signed, and that the material terms of the will are in the testator's handwriting.

For any of Aretha's holographic wills to be upheld the proponents of her will need to establish she intended these documents to be her last will and testament. Michigan courts will declare a holographic will valid only if it can be demonstrated by "clear and convincing evidence" that the testator intended the document to be the decedent's will. Aretha's intent can be proven by using outside evidence such as the nature of the relationships with her sons or even portions of the documents not in her handwriting. Aretha's intent may be difficult to prove, because of the informal and secretive nature of the handwritten wills. Even if Aretha's intent can be shown and a handwritten will is upheld by the court, a long and expensive court battle among her children will likely follow.

Wisconsin Law Does Not Allow Holographic Wills

Unlike Michigan, Wisconsin has taken a firm stance against holographic wills and will not uphold them as valid. In Wisconsin there are nearly identical will requirements to those in Michigan: (1) it must in writing; (2) the will must be signed by the testator or in the presence of the testator at the testator's direction; and (3) the will must be signed by at least two witnesses within a reasonable time after witnessing the signing of the will, after the testator's acknowledgment of their signature on the will, *or* after the testator's acknowledgement of the will. What is not identical is Wisconsin's acceptance of holographic wills. If the controversy was taking place in Wisconsin, Aretha's handwritten documents would not be held to be valid wills and Aretha's estate would be distributed to Aretha's next of kin via Wisconsin's default intestate rules.

Estate planning can be a challenging and stressful process that all too often ends in disputes such as this. Wisconsin residents should meet with an experienced estate planning attorney to ensure his or her will is valid under Wisconsin law.

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