Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of January, 2021** are as follows:

BY Hughes, J.:

2020-C-00239 *SUCCESSION OF PEGGY BLACKWELL BRUCE (Parish of Calcasieu)*

REVERSED AND REMANDED. SEE OPINION.

Retired Chief Justice Johnson participated in this decision, which was argued prior to her retirement.

Retired Judge James H. Boddie, Jr., heard this case as Justice pro tempore, sitting in the vacant seat for District 4 of the Supreme Court. He is now appearing as an ad hoc for Justice Jay B. McCallum.

Weimer, C.J., concurs in the result and assigns reasons.
Crichton, J., concurs and assigns reasons.
Crain, J., concurs in the result for the reasons assigned by Chief Justice Weimer.

01/27/2021

SUPREME COURT OF LOUISIANA

No. 2020-C-00239

SUCCESSION OF PEGGY BLACKWELL BRUCE

On Writ of Certiorari to the Court of Appeal,
Third Circuit, Parish of Calcasieu

HUGHES, J.[*]

The primary issue in this case is whether the language of an attestation clause in a notarial testament, which failed to expressly state that the testator declared or signified that she signed the testament "at the end," even though it was stated that the testator signed "on each page," violates the requirements of La. C.C. art. 1577 and renders the testament absolutely null under La. C.C. art. 1573 ("The formalities prescribed for the execution of a testament must be observed or the testament is absolutely null.").

The testator herein executed a notarial testament in 2016, naming her niece as her sole legatee. After the testator's death in 2018, her widower challenged the testament, contending *inter alia* that it was rendered invalid by the failure to state in the attestation clause that the testator declared she had signed "at the end" of the testament. The 2016 testament reads, in pertinent part:

> IN WITNESS WHEREOF, in the presence of the undersigned Notary Public and competent witnesses, I have declared this to be my Last Will and Testament and have ***signed each page*** hereof on this 21st . . . day of November, 2016, in Lake Charles, Calcasieu Parish, Louisiana.
>
> [signature of testator]

* * *

[*]Retired Chief Justice Johnson participated in this decision, which was argued prior to her retirement. Retired Judge James H. Boddie, Jr., heard this case as Justice pro tempore, sitting in the vacant seat for District 4 of the Supreme Court. He is now appearing as an ad hoc for Justice Jay B. McCallum.

> ***Signed on each page*** and declared by Testator, PEGGY B. BRUCE, above named, in our presence, to be her Last Will and Testament, and in the presence of the Testatrix and each other, we hereunto subscribed our names on this the 21st day of November 2016.
>
> [signature of witnesses, notary, and testator]
>
> * * *

(Emphasis added.)

Despite the fact that the testator actually signed on each separate page and at the end of the testament,[1] the testament stated only that it was "[s]igned on each page." However, La. C.C. art. 1577(2) provides as follows:

> In the presence of the testator and each other, the notary and the witnesses shall sign the following declaration, ***or one substantially similar***: "In our presence the testator has declared or signified that this instrument is his testament and has ***signed*** it ***at the end and on each other separate page***, and in the presence of the testator and each other we have hereunto subscribed our names this ____ day of _____, __."

(Emphasis added.)

The district court invalidated the testament and, as described by the appellate court, the district court "found the only deviation from La.Civ.Code art. 1577(2) was the absence of the words 'at the end' in the attestation clause." **Succession of Bruce**, 19-0208, p. 3 (La. App. 3 Cir. 1/8/20), 289 So.3d 121, 123.[2] The appellate court affirmed. **Succession of Bruce**, 19-0208 at p. 6, 289 So.3d at 125. This court granted the subsequent writ application to review these rulings. **Succession of Bruce**, 20-00239 (La. 6/22/20), 297 So.3d 773.

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[1] In her two-page testament the testator, Peggy Blackwell Bruce, signed: at the bottom of the first page; at the end of her testamentary recitations on the second page; and at the bottom of the second page, after the attestation clause. We note that 1997 Revision Comment (b) to La. C.C. art. 1577, infra, states that, even though the testator is not required to sign after the attestation, rather only at the end of the dispositive or appointive provisions of the testament, "the validity of the document is not affected by such a 'double' signature."

[2] While the testator's widower raises several other minor defects in the testament, in brief to this court, he does not appear to contest the appellate court finding that the district court ruled solely on the absence of the words "at the end" in the attestation clause; therefore, we deem these additional assertions of minor defects to be in support of his contention that the testament was hastily drafted and therefore defective in failing to state in the attestation clause that the testator signed at the end of the testament.

A disposition mortis causa may be made only in the form of a testament authorized by law. La. C.C. art. 1570. The formalities prescribed for the execution of a testament must be observed or the testament is absolutely null. La. C.C. art. 1573. A notarial testament is one that is executed in accordance with the formalities of Articles 1577 through 1580.1. La. C.C. art. 1576.

The codal provisions governing an attestation clause within a notarial testament state that the mandated attestation clause need only be "substantially similar" to the model declaration provided therein. See **Successions of Toney**, 16-1534, p. 5 (La. 5/3/17), 226 So.3d 397, 401. See also **In re Succession of Holbrook**, 13-1181, p. 9 (La. 1/28/14), 144 So.3d 845, 851 ("There must be an attestation clause, or clause of declaration. However, its form is not sacrosanct: It may follow the form suggested in the statute or use a form substantially similar thereto.") (quoting **Succession of Morgan**, 257 La. 380, 385, 242 So.2d 551, 552 (1970)). "The attestation clause is designed to evince that the facts and circumstances of the confection and execution of the instrument conform to the statutory requirements." **In re Succession of Holbrook**, 13-1181 at p. 9, 144 So.3d at 851 (citing **Succession of Morgan**, 257 La. at 385, 242 So.2d at 552). "The witnesses and the notary are attesting to the observance of the formalities." La. C.C. art. 1577, 1997 Revision Comment (b).

Our jurisprudence requires that the validity of a testament should be maintained through the liberal construction and application of the codal articles, rather than a strict interpretation, as long as there is substantial compliance with the codal provisions. See **In re Succession of Holbrook**, 13-1181 at pp. 8-9, 144 So.3d at 851; **Succession of Guezurag**a, 512 So.2d 366, 368 (La. 1987). This court held in **Successions of Toney** that "[t]here is a presumption in favor of the validity of testaments in general, and proof of the nonobservance of formalities must be

exceptionally compelling to rebut that presumption." **Successions of Toney**, 16-1534 at p. 5, 226 So.3d at 401.

Thus, the issue presented herein is whether an attestation clause verifying that the testator declared that the testament was "[s]igned on each page" is substantially similar to the Article 1577 requirement that an attestation clause verify that the testator declared that the testament was signed "at the end" and "on each other separate page."

With respect to the La. C.C. art. 1577 language at issue herein, a review of the history of this article as well as its precursor, La. R.S. 9:2442, shows that when former Section 2442 was enacted in 1952, it required only that the testator "sign each separate sheet of the instrument" and that the witnesses and notary public attest that the testator had "[s]igned (on each page)." See 1952 La. Acts, No. 66, § 1. Thereafter, former Section 2442 was amended in 1964 to slightly modify the pertinent language, requiring the testator to "sign his name on each separate sheet of the instrument" and requiring the witnesses and notary to attest that the testator had "[s]igned on each page." See 1964 La. Acts, No. 123, § 1. In 1974, the first of these former Section 2442 phrases was amended to read: "sign his name ***at the end of the will*** and on each separate sheet of the instrument"; however, there was no similar change to the requisite attestation that the testator had "[s]igned on each page." See 1974, No. 246, § 1 (emphasis added). In 1980, both of these former Section 2442 phrases underwent a minor re-wording, with the former changed to require that the testator sign his name "at the end of the will and on each ***other*** separate ***page***" and the latter phrase modified so that the witnesses and notary attested that the testator had signed "***at the end and*** on each ***other separate*** page." See 1980 La. Acts, No. 744, § 1 (emphasis added).

In the April 28, 1980 minutes of the House Committee on Civil Law and Procedure, Professor H. Alston Johnson, III, Reporter for the Louisiana State Law

Institute, stated that House Bill 439 (subsequently passed as 1980 Act No. 744) "would permit people who cannot read to execute a statutory will," and that the bill "makes ***mostly technical corrections to help harmonize*** R.S. 9:2442 and 2443." (Emphasis added.) Professor Johnson further stated that "the only substantive change is that a statutory will cannot be executed in braille or other similar mode of expression." At the June 3, 1980 minutes of the Committee on Judiciary A, Terry Ryder, Research Coordinator for the Louisiana State Law Institute, indicated that House Bill 439 was one of four bills presented by the Law Institute, and it was "a revision bill of statutory will provisions and the bill ***only proposed organization and semantical revisions***," with the only substantive change to provide that a braille will could not be used under these provisions. (Emphasis added.) House Bill 439 was reported favorably.

From this history, we can see that, prior to the 1980 amendment, former Section 2442 required the testator to "sign his name at the end of the will and on each separate sheet of the instrument," but the witnesses and notary were required to attest only that the testator had "[s]igned on each page"; however, the 1980 amendment changed both of these phrases to state that the testator had signed "at the end" and "on each other separate page." In addition, the comments by Professor Johnson and Mr. Ryder, representing the author (the Louisiana Law Institute) of the bill that became 1980 Act No. 744, make it apparent that these 1980 changes were part of the technical or semantic revisions that the 1980 amendment was intended to effect.

Thus, when former La. R.S. 9:2442 was repealed and its substance re-enacted as La. C.C. art. 1577 (by 1997 La. Act No. 1421, §§ 1 & 8, eff. July 1, 1999), both of the requirements – directing where the testator was required to sign and what the witnesses and notary were required to attest about where the testator had signed – employed the language "at the end" and "on each other separate page." The relevant

language of former La. R.S. 9:2442, as re-enacted in La. C.C. art. 1577, currently states that the testator must sign his name "at the end" of the testament and "on each other separate page" and that the witnesses and notary must attest that the testator signed his name "at the end" of the testament and "on each other separate page."

In contrast, we observe that the attestation clause employed in the notarial testament at issue herein made use of the exact language set forth in the sample attestation clause in the *pre*-1980 version of former La. R.S. 9:2442; i.e., that the will was "[s]igned on each page" (as noted, when changed in 1980 to its current wording, the difference was denominated by its authors as a technical and/or semantic change). The question before this court, therefore, is whether such a semantic departure from Article 1577's current language can be considered substantially similar to the requisite attestation – that the testator "signed at the end and on each other separate page."

We recognize that these two phrases have slightly different connotations, as once the testator signs "at the end" of the testamentary recitations he is not required to sign after the attestation clause even if it concludes on a subsequent page; the testator is only required to sign on each of the other separate pages that precede his signature at the end of the testamentary recitations. See La. C.C. art. 1577, 1997 Revision Comment (b),[3] and **Succession of Guezuraga**, 512 So.2d at 368-69 (holding that a testator is not required to sign on a page that contains only the concluding portion of the attestation clause, which contains no testamentary recitations). However, since a statement that the testator signed "on each page" is a

[3] Revision Comment (b) states:

> ***The testator need not sign after both the dispositive or appointive provisions of this testament and the declaration, although the validity of the document is not affected by such a "double" signature***. The testator is disposing of property, appointing an executor or making other directions in the body of the testament itself. He need only sign at the end of the dispositive, appointive or directive provisions. The witnesses and the notary are attesting to the observance of the formalities; they need only sign the declaration. [Emphasis added.]

more extensive statement (inevitably including the page on which the "end" of the testament appears and encompassing even those pages beyond the testamentary recitations) than that currently required by La. C.C. art. 1577(2) – that the testator signed "at the end and on each other separate page" – we cannot say that stating that the testator has "signed on each page" impermissibly deviates from Article 1577's model language.

Based on the foregoing, we conclude that the statement contained in the attestation clause at issue – that the testator "[s]igned on each page" – accomplished the intended purpose of ensuring that the notarial testament complied with the signature requirements and was substantially similar to the model language of La. C.C. art. 1577, requiring an attestation that the testator signed "at the end and on each other separate page."

We distinguish the cases of **Succession of Hanna**, 19-01449 (La. 11/25/19), 283 So.3d 493 (per curiam), and **Succession of Liner**, 19-02011 (La. 1/27/21), ___ So.3d ___ (rendered contemporaneously with the instant case), in which the attestation clauses in the notarial testaments at issue stated only that the will had been "signed" by the testator; such language was *not* found to be substantially similar to the language required by the codal articles (La. C.C. art. 1577 in **Hanna**, and La. C.C. art. 1579 in **Liner**), requiring an attestation that the testator had signed "at the end" and "on each other separate page." As we held in **Liner**, the statement that the testator had "signed" the testament establishes only that the will was signed *once* and does not establish that the testament was signed at the end and on each other separate page, particularly for multiple-page testaments such as those at issue in both **Hanna** and **Liner**. See **Succession of Liner**, 19-02011 at pp. 5-8, ___ So.3d at ___. In contrast, we conclude herein that a declaration that a testator has signed "on each page" of a testament necessarily establishes that the testament has been signed on every page, including the page containing the end of the testament.

DECREE

Accordingly, we reverse the appellate court and the district court decisions, and we remand to the district court for further proceedings consistent with the foregoing.

REVERSED AND REMANDED.

01/27/2021

SUPREME COURT OF LOUISIANA

No. 2020-C-00239

SUCCESSION OF PEGGY BLACKWELL BRUCE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF CALCASIEU

WEIMER, C.J., concurring in the result.

I concur in the result reached by the majority in this case. I write separately only to note my disagreement with the majority's citation to **Succession of Hanna**, 19-1449 (La. 11/25/19), 283 So.3d 493, and **Succession of Liner**, 19-2011 (La. 1/__/21), ___ So.3d ___, cases in which I dissented due to concerns over whether, in applying the "substantially similar" requirement of La. C.C. arts. 1577(2) and 1579(2), the court unduly elevated form over the substance of the testator's intent.[1] For further explanation and analysis, see my dissenting opinion in **Succession of Liner**, 19-2011 at __, ___ So.3d at ___ (Weimer, C.J., dissenting.).

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[1] **Succession of Hanna**, 19-1449 at 1, 283 So.3d at 493 (Weimer, J., dissenting); **Succession of Liner**, 19-2011 at ___, ___ So.3d at ___ (Weimer, C.J., dissenting).

01/27/2021

SUPREME COURT OF LOUISIANA

No. 2020-C-00239

SUCCESSION OF PEGGY BLACKWELL BRUCE

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL, THIRD CIRCUIT, PARISH OF CALCASIEU

Crichton, J., concurs and assigns reasons:

I concur in the result of the majority opinion. For the reasons assigned in my dissent to *Succession of Liner*, 19-2011 (1/27/21), -- So. 3d --, I find that the 2018 testament is valid even though the attestation clause states that the testator "signed each page" before the witness and notary and does not include the exact language of the form attestation clause provided by C.C. art. 1577(2), *i.e.* that the will was signed "at the end" and "on each other separate page." *Succession of Liner*, 19-2011 (1/27/21), -- So. 3d -- (Crichton, J., dissenting).