

Euna SCRITCHFIELD et al v.
Ralph Robert LOYD, Executor

79-270

589 S.W. 2d 557

Opinion delivered October 29, 1979

WILLS — SIGNATURE OF TESTATOR — COMPLIANCE WITH STATUTE, WHAT CONSTITUTES. — Where a testator places his signature in the attestation clause of his will because he believes that it belongs there and with the requisite testamentary intent, it constitutes a sufficient compliance with Ark. Stat. Ann. § 60-403 (Repl. 1971), requiring the signature to be “at the end” of the instrument.

Appeal from Faulkner Probate Court, *Dan D. Stephens*, Judge; affirmed.

Clark & McNeil, for appellants.

Guy H. Jones, Phil Stratton, Guy H. Jones, Jr. and Casey Jones, by: *Phil Stratton*, for appellee.

CONLEY BYRD, Justice. By this appeal appellants, Euna Scritchfield, et al, collateral heirs of Johnnie D. Loyd, deceased, contend that the signature of Johnnie D. Loyd appearing in the attestation clause of his will does not meet the requirements of Ark. Stat. Ann. § 60-403 (Repl. 1971), requiring that the testator’s “signature must be at the end of the instrument.” The stipulation entered into by the parties shows the following:

“ Marie Hutto, if called as a witness in this cause, would testify in substance as follows: ‘My name is Marie Hutto. I reside at Damascus, Arkansas, where my husband, Ray Hutto, and I operate a feed mill. On April 20, 1976, Johnnie David Loyd came to our place of business, bringing with him a blank form headed “Last Will and Testament” and asked me to help him make a will. I told Mr. Loyd I did not know anything about these matters and he then asked if I would write what he told me to in the various blanks in the form, as he requested. I did so. Under Mr. Loyd’s instructions, I filled in the

blanks in the will form, and this is the instrument which has been tendered for probate as Mr. Loyd's will. All handwritten portions of the will were written by me, except as hereinafter excepted. Mr. Loyd signed his name "Johnnie D. Loyd" in the upper left hand portion of the will, just below the printed words "Last Will and Testament" and just above the start of the printed portion of the form. He signed the name "Johnnie D. Loyd" in the attestation paragraph below the body of the will. I signed my name as a Notary Public on the line at the end of the will and inserted my commission expiration date to the left of my signature. Ray Hutto and Ralph Porter were also in our place of business at this time, and at Mr. Loyd's request, they signed their respective names as witnesses to the will.' ''¹

Based upon the foregoing facts the trial court ruled that the will was valid. We agree with the trial court.

There is a distinct conflict among the authorities as to whether a signature in an attestation clause qualifies as a signature "at the end." See 44 A.L.R. 3d 701 § 14. Appellants rely upon *In re Estate of George H. Glaze, Deceased*, 413 Pa. 91, 196 A. 2d 297 (1964) and *Sears v. Sears*, 77 Ohio St. 104, 82 N.E. 1067 (1907), to support their contention that a signature in the attestation clause does not constitute a signature "at the end" of the instrument. However, we 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 to be "at the end." See *In re Morey's Estate*, 75 Cal. App. 2d 628, 171 P. 2d 131 (1946) and *In re Schiele's Estate*, 51 S. 2d 287 (Fla. 1951).

Affirmed.

HARRIS, C.J., not participating.

¹ Attached hereto as an appendix is a photostatic copy of the will.

APPENDIX

77-SHORT WILL

The State of Arkansas, General Supply House, Little Rock.

Johnnie D. Loyd Last Will and Testament **FILED**
Johnnie D. Loyd, of *Lamar* COUNTY, ARKANSAS, State of *Ark.*, being of sound mind and memory and considering the uncertainty of this frail and transitory life, do therefore make, ordain, publish and declare this to be my last WILL AND TESTAMENT.

FIRST, I order and direct that my Executor *hereinafter named*, pay all my just debts and funeral expenses as soon after my decease as conveniently may be.

SECOND, After the payment of such funeral expenses and debts, I give, devise, and bequeath all my personal and real estate property - and all my money, cash on hand or in the bank, to *Ralph Robert Loyd*.

LASTLY, I make, constitute and appoint *Ralph Robert Loyd* to be Executor of this, my last will and Testament, hereby revoking all former wills by me made (if any).

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal the *20th* day of *April*, 1976, in the year of our Lord, one thousand nine hundred 76

My Comm: int 12-1-1976

Marie L. Hutto Seal

This instrument was on the day of the date thereof, signed, published and declared by the said testator *Johnnie D. Loyd* to be his last Will and Testament in the presence of us who *His* request have subscribed our names thereto as witnesses in his presence and in the presence of each other and who do hereby certify that at the time of the execution of said will, the testator was of sound and disposing mind and memory and understanding and under no restraint.

Ralph R. Loyd