

STATE OF MICHIGAN
PROBATE COURT FOR THE COUNTY OF OAKLAND

IN THE MATTER OF:

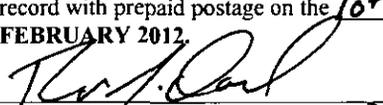
THE ESTATE OF ELEANOR SHEHIN,
Deceased.

Case No: 2011-335518-DE
HON. LINDA S. HALLMARK

STEPHEN C. ALBERY (P36121)
Personal Representative of the Estate
2550 S. Telegraph Road, Suite 101
Bloomfield Hills, MI 48302
(248) 858-2303

MICHAEL E. MOODY (P51985)
State Attorney General's Office
State Public Administrator
P.O. Box 30755
Lansing, MI 48909
(517) 373-1123

TONY F. DI PONIO (P48656)
Calhoun & Di Ponio, PLC
Attorney for Christine Kelel
31000 Telegraph Road, Suite 280
Bingham Farms, MI 48025
(248) 594-1500

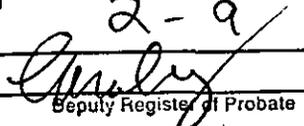
Proof of Service
I certify that a copy of the above instrument was served upon the attorneys of record or the parties not represented by counsel in the above case by mailing it to their addresses as disclosed by the pleadings of record with prepaid postage on the 10th day of **FEBRUARY 2012**.

Signed: Ryan Deel (P60599)

OPINION AND ORDER

At a session of said Court, held in the City
of Pontiac, County of Oakland, State of
Michigan, on

FEB 09 2012

IT IS ORDERED THAT the will described by Nancy Gardella is valid and
admitted to probate.

FILED
Film 2-9 2012

Deputy Register of Probate

WITNESS

Nancy Gardella

INTRODUCTION

This matter was initiated by a petition filed by Christine Kelel, as a creditor, seeking to appoint Steve Albery, Oakland County Public Administrator, personal representative. The petition also sought an order determining that the decedent died intestate. The petition listed the heirs as unknown. At a hearing on May 4, 2011, the petition was granted and Steve Albery was appointed personal representative.

On December 20, 2011, Steve Albery filed a Petition for Instruction to determine how to proceed to distribution. The petition alleges that a niece-in-law, Nancy Gardella, has come forward stating that in 2002 she witnessed the preparation and execution of a will by the decedent. She states that the will provided for an equal division of property to Christine Kalel, Shirley Kojaian and Patricia Kunkle. Ms. Gardella testified that the Decedent gave her the will for safekeeping in 2010, but she lost it.

The Court held an initial hearing on the petition on January 11, 2010. The State Public Administrator submitted a letter objecting to the construction of the statements as a will of the decedent. The Court set the matter for an evidentiary hearing on January 25, 2012, which was adjourned to February 1, 2012 at 1:30 p.m. at the request of the parties.

On February 1, 2012, the Court held a hearing on Mr. Albery's Petition for Instruction. The Court heard testimony from Nancy Gardella. No other witnesses or exhibits were presented for consideration.

Mr. Albery takes no position regarding the document. The State Public Administrator argues that the will should not be admitted to probate and, because the decedent had no heirs, the estate's property should escheat to the State of Michigan.

BACKGROUND

Nancy Gardella testified that her mother was the sister of the Eleanor Shehin's husband. She considered herself Ms. Shehin's niece. The decedent was a widow and had no children or siblings. She died on March 8 2011.

Nancy Gardella testified that on June 1, 2002, she was present for the preparation of Ms. Shehin's will. Nancy Gardella testified that she and her father went to Ms. Shehin's home and had dinner. She recalled the exact date because her father, who lived in Oklahoma, was in Michigan for his birthday, which is June 2nd. Nancy Gardella testified that after dinner her father and Ms. Shehin filled out a document, which was titled, "Eleanor Shehin's Will." She testified that her father and Ms. Shehin spoke in Polish.

Nancy Gardella testified that Ms. Shehin handwrote the document and that she signed and dated it. She and her father, who is now deceased, witnessed the document. Her father asked Ms. Shehin to take the document to his attorney, but Ms. Shehin wanted to keep it. Nancy Gardella testified that the document was left on the *kitchen table of Ms. Shehin's home.*

Nancy Gardella testified that the document directed that Ms. Shehin's home and belongings would go to Christine Kalel, Shirley Kojaian and Patricia Kunkle. Christine

Kalel and Shirley Kojaian are Nancy Gardella's maternal aunts. Pat Kunkel is Nancy Gardella's sister.

Nancy Gardella testified that she next saw the document on May 12, 2010. She testified that Patricia Kunkle, who lives in Oklahoma, was visiting relatives in Michigan. Nancy Gardella testified that while visiting Ms. Shehin, Ms. Shehin brought out a case containing a necklace, which she gave to Nancy Gardella. Ms. Shehin told her that the will was under the necklace in the bottom of a velvet case. Nancy Gardella testified that she observed the will in the case that day. Ms. Shehin told her that the document was very important.

Nancy Gardella testified that her home was foreclosed, which required her to move items from her home. After Ms. Shehin died, she could not locate the will, despite searching her belongings. She testified that she unsuccessfully searched for the document prior to Ms. Shehin's funeral.

LAW

MCL 700.3402(1)(c) governs the admission of a will when the original is lost:

If the original will is not in the court's possession or neither the original will nor an authenticated copy of a will probated in another jurisdiction accompanies the petition, the petition must also state the will's contents and shall indicate that the will is lost, destroyed, or otherwise unavailable.

Under MCL 700.2502(1), a will is valid only if it is all of the following:

- (a) In writing.
- (b) Signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction.
- (c) Signed by at least 2 individuals, each of whom signed within a reasonable time after he or she witnessed either the signing of the will as described in subdivision (b) or the testator's acknowledgment of that signature or acknowledgment of the will.

A document that does not meet the requirements of MCL 700.2502(1) is valid as a holographic will if it is dated and if the testator's signature and the document's material portions are in the testator's handwriting. MCL 700.2502(2).

A testator can revoke a will by performing a revocatory act on the will with the intent and purpose of revocation. MCL 700.2507(1)(b). A "revocatory act on the will includes burning, tearing, canceling, obliterating, or destroying the will or part of the will." *Id.* (internal quotation marks omitted).

When the original will cannot be found upon the death of the testator, and the testator was in possession of the original, there exists a rebuttable presumption that it was destroyed with the intent to revoke it. *In re Christoff Estate*, 193 Mich App 468, 473; 484 NW2d 743 (1992), quoting MRE 901(a); *In re Smith Estate*, 145 Mich App 634, 637; 387 NW2d 555 (1985). Whether the presumption is rebutted is a question of fact. *In re Taylor's Estate*, 323 Mich 101, 108; 34 NW2d 474 (1948).

Christine Kalel argues that the testimony presented by Nancy Gardella is sufficient to establish the existence of a valid will and satisfies the requirements of MCL 700.3402(1)(c). The State Public Administrator asserts that the presumption should apply in this case and, because there are no known heirs, the estate assets should escheat to the State of Michigan.

The Court finds that the original will was not held by the testator, Ms. Shehin. It was given to Nancy Gardella and lost. Since the will was not in the possession of Ms. Shehin from May 12, 2010 until her death on March 8, 2011, the presumption of revocation does not apply.

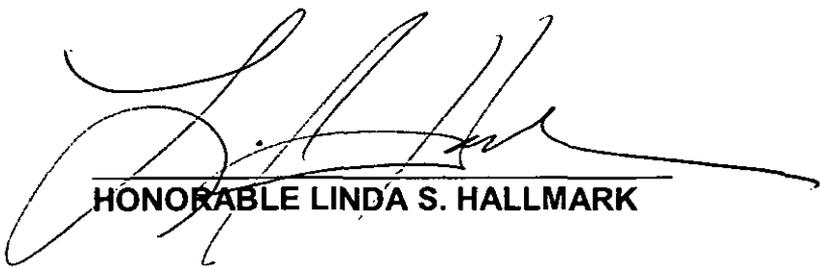
FINDINGS

The testimony of Nancy Gardella established the existence of a valid will which was in writing, signed by Ms. Shehin and witnessed by Nancy Gardella and her father. The will described by Nancy Gardella meets all of the criteria of a written will and a holographic will. Ms. Gardella's testimony is credible for a number of reasons. She does not directly benefit from under the will and would not benefit from being untruthful with respect to the will. She was able to remember specific details, such as the placement of the will in the jewelry case and that Ms. Shehin and her father were speaking Polish while the will was drafted. She connected dates related to the will to other important family events to assist her recollection. It was clear from Nancy Gardella's testimony that Christine Kalel, Shirley Kojaian and Patricia Kunkle were in-law relatives, but from the perspective of Ms. Shehin they were her only family members. Nancy Gardella testified Patricia Kunkle called Ms. Shehin every Friday from Oklahoma. Ms. Kunkle and Ms. Gardella cared for Ms. Shehin and visited regularly. Ms. Shehin gave the will to Nancy Gardella on May 12, 2010. She passed away on March 8, 2011 and there is no evidence that she executed a subsequent will or other testamentary instrument.

The Court finds that the testimony of Nancy Gardella establishes the existence of a valid and unrevoked will and the Court will admit the terms as testified to by Nancy Gardella as the will of Eleanor Shehin.

IT IS HEREBY ORDERED.

DATED: 2-9-12


HONORABLE LINDA S. HALLMARK