

LAW REVIEW

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Last Will and Testament on Cigarette Carton Valid?

A reader sent me a bizarre will contest case out of the Orphans' Court in Franklin County, Pennsylvania.

It's well documented that smoking cigarettes causes lung cancer and otherwise tortures the human body. The Orphans' Court case discusses whether a deceased cigarette smoker could legally write his will on a cigarette carton. Unlike your writer, the Court did not discuss the irony and connection between death and cartons of cigarettes.

Cigarette Carton Will

Norman F. Shelly died on July 27, 1999. It has taken this long to probate his estate. There is a good reason.

Submitted into the probate court as Shelly's Will was a cardboard panel of a cigarette carton, no witness attestations and no notarizations, not much of anything, but a few writings, just enough to fire up the lawyers and a hand full of wannabe beneficiaries. The purported "Will" read:

"FIRST AND LAST ONLY WILL"

"DRAFT?"

"MONEY. DEVIDE: MICHAEL COOKS SONS...FARM MACH + MACHINES
AND TOOLS...MICHAEL COOK SR. LIVING MY AGE"

(signed by) NORMAN F. SHELLY

Orphans' Court

The first question to be decided by the judges of the Orphans' Court, I mean how perfect is that, Orphans' Court, was whether the writings on a cigarette carton amounted to a "disposition of assets". In other words, does it show the will maker, the testator, was clearly disposing of his property to specific individuals?

Other questions discussed by the Court were whether the word "DRAFT?" destroyed the testamentary character of the so-called will, and finally whether the writing on the cigarette carton constituted a will at all.

It's not clear how much money Mr. Shelly left behind, but it must have been a bundle as there was no shortage of will contestants weighing in on what he intended with his cigarette carton scribbles.

First and Last Only Will

I'm guessing that Mr. Shelly was dyslexic given how he wrote FIRST AND LAST ONLY WILL, but the Orphans' Court accepted that a will can be written on a cigarette carton, and looked into the meaning of Mr. Shelly's words to decipher his intent. The only term that suggested his property was to be divided and distributed was "DEVIDE" (sic), but even then who gets what? No way to tell.

The Court found the word "DRAFT?" can only mean that Mr. Shelly contemplated a final will would be created at a later time. I.e., it takes more than simply labeling a document "Will".

Plus there were no witnesses to the cigarette carton writings, no statements to anyone that this was a last will and testament, certainly no witnesses attesting to the signing of the will.

In California, witnesses are not necessary in a holographic (handwritten) Will but testamentary intent is required (as is a signature).

Cigarettes

So in the end, the Orphans' Court apparently ruled for the orphans, throwing out the will for lacking testamentary intent and any decipherable disposition of Mr. Shelly's property. His property will go to his heirs as if he died intestate—without a will.

I guess you could say cigarettes got the best of Mr. Shelly--right to the end.

HAVE A FUN THANKSGIVING—BE THANKFUL FOR YOUR BLESSINGS.

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